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9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

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Federal Register

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

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in September 2012. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for September 2012.[1]

The September 2012 interest assumptions under the benefit payments regulation will be 0.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for August 2012, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during September 2012, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 227, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
227	9–1–12	10–1–12	0.75	4.00	4.00	4.00	7	8

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

■ 3. In appendix C to part 4022, Rate Set 227, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
227	9–1–12	10–1–12	0.75	4.00	4.00	4.00	7	8

Dated: Issued in Washington, DC, on this 7th day of August 2012.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–20030 Filed 8–14–12; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0380]

Safety Zones; Annual Fireworks Event in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for an annual fireworks event in the Captain of the Port Detroit zone from 9:15 p.m. to 10 p.m. on August 18, 2012. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.941 will be enforced from 9:15 p.m. to 10 p.m. on August 18, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LT Adrian Palomeque, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.941, Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone, at the following date and times for the following event:

(1) *Cheeseburger Festival Fireworks, Caseville, MI.* The safety zone listed in 33 CFR 165.941(a)(11) will be enforced from 9:15 p.m. to 10 p.m. on August 18, 2012. In the case of inclement weather on August 18, 2012, this safety zone will be enforced from 9:15 p.m. to 10 p.m. on August 19, 2012.

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within this safety zone during the enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zone may request permission from the Captain of the Port Detroit. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF-FM. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is in effect.

This notice is issued under authority of 33 CFR 165.23 and 5 U.S.C. 552(a). If the Captain of the Port determines that this safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

Dated: August 2, 2012.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2012–20002 Filed 8–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0729]

RIN 1625–AA00

Safety Zone; Superior Bay, Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing a portion of the Duluth Harbor Basin, Northern Section, including the Duluth Entry. This safety zone is intended to help protect participants, event safety personnel, boaters and spectators during the Superior Man Triathlon.

DATES: This rule is effective from 6 a.m. to 8:30 a.m. on August 26, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0729]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Judson A Coleman, Marine Safety Unit Duluth U.S. Coast Guard; telephone (218) 720–5286 ext 111, email *Judson.A.Coleman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect participants, spectators, and vessels from the hazards associated with the Superior Man Triathlon, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

On August 26, 2012, the inaugural Superior Man Triathlon will occur along the Bay of Lake Superior. The 1.2 mile swim leg of the triathlon will travel from the Vista Fleet to the Bayfront Festival Park. The Captain of the Port Duluth has determined that the swim leg of the triathlon poses a danger to the boating public. Thus, pursuant to the authority in 33 U.S.C. 1231 and 33 CFR 1.05–1(f), the Captain of the Port Duluth is establishing a temporary safety zone to protect participants, event safety personnel, boaters, and spectators during the Superior Man Triathlon.

C. Discussion of the Final Rule

For the reasons stated in the preceding paragraph, the Captain of the Port is establishing a temporary safety zone. This temporary safety zone will encompass all waters of Superior Bay, including the Duluth Entry encompassed in an imaginary line beginning at point 46 46′36.1236″ N 092 06′06.987″ W, running southeast to 46 46′32.7534″ N 092 06′01.7382″ W, running northeast to 46 46′45.9228″ N 092 05′45.1818″ W, running northwest to 46 46′49.4718″ N 092 05′49.349″ W and finally running southwest to the original point.

This safety zone will be in effect and enforced on August 26, 2012 from 6 a.m. to 8:30 a.m.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This safety is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small, will be enforced for only two and a half hours, and is expected to have no impact on commercial vessel traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Duluth Harbor Basin, Northern Section from 6 a.m. to 8:30 a.m. on August 26, 2012.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will be in effect, and thus subject to enforcement, for only two and a half hours early in the day. Vessel traffic may be allowed to pass through the zone with the permission of the Captain of the Port. Before the enforcement of the zone, the Coast Guard intends on issuing local Broadcast Notice to Mariners so that mariners can plan accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will 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.

8. 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.

9. Protection of Children

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

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone, and, therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping, Security measure, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0729 to read as follows:

§ 165.T09–0729 Safety Zone; Superior Bay, Duluth, MN.

(a) *Location.* The following area is a temporary safety zone: All waters of the Duluth Harbor Basin, Northern Section, including the Duluth Entry encompassed in an imaginary line beginning at point 46 46′36.1236″ N 092 06′06.987″ W, running southeast to 46 46′32.7534″ N 092 06′01.7382″ W, running northeast to 46 46′45.9228″ N 092 05′45.1818″ W, running northwest to 46 46′49.4718″ N 092 05′49.349″ W and finally running southwest to the original point.

(b) *Effective and Enforcement Period.* This rule will be effective and enforced from 6 a.m. to 8:30 a.m. on August 26, 2012.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Marine Safety Unit Duluth, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Marine Safety Unit Duluth or his designated representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative will be aboard either a Coast Guard or Coast Guard auxiliary vessel. The Captain of the Port representative may be contacted via VHF channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Marine Safety Unit Duluth or his on-scene representative to request permission to do so. Vessel operators must comply with all directions given to them by the Captain of the Port, Marine Safety Unit Duluth or his on-scene representative.

Dated: July 27, 2012.

K.R. Bryan,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Duluth.

[FR Doc. 2012–20004 Filed 8–14–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2012–0450; FRL–9358–1]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 25 chemical substances which were the subject of premanufacture notices (PMNs). Fourteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 25 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on October 15, 2012. For purposes of judicial

review, this rule shall be promulgated at 1 p.m. (e.s.t.) on August 29, 2012.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before September 14, 2012 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**).

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0450, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2012–0450. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0450. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

• Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. 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**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (April 24, 1990 SNUR). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 25 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 25 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture and importation volume) and other uses designated in this rule may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 14 PMN substances (P–10–405, P–10–485, P–11–48, P–11–63, P–11–160, P–11–181, P–11–203, P–11–247, P–11–384, P–11–557, P–11–646, P–12–30, P–12–31, and P–12–32) that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

This rule also includes SNURs on 11 PMN substances (P–11–411, P–11–412, P–11–413, P–11–414, P–12–35, P–12–87, P–12–149, P–12–167, P–12–182, P–12–260, and P–12–275) that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''non-5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Number P–10–405

Chemical name: Perfluorinated alkylthio betaine (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: May 3, 2012.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a surfactant additive for dispersive use in fire fighting foams and vapor suppressing foams. In addition, EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substance. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence suggesting that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that the degradation products of the PMN substance will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including perfluorooctanoic acid (PFOA) and other perfluorinated carboxylates, such as the presumed environmental degradant of the PMN substance. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product of this PMN substance on humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires:

1. Manufacture of the PMN substance (a) according to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA and (b) within the maximum established limits of certain fluorinated impurities of the PMN substances as stated in the consent order.

2. Manufacture of the PMN substance at an annual manufacturing and import volume not to exceed the confidential production volume stated in the consent order.

3. Submission of certain testing prior to exceeding the two confidential production volume limits specified in the consent order.

4. Disposal of manufacturing wastes by incineration.

5. Releases to surface waters not to exceed 50 ppb for the specific processing and use streams identified in the consent order.

6. Risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a Material Safety Data Sheet (''MSDS''), within 90 days.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate and physical/chemical property testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The company has agreed not to exceed the first production limit without performing a modified semi-continuous activated sludge (SCAS) test (OPPTS Test Guideline 835.5045 or Organisation for Economic Co-operation and Development (OECD) Test Guideline 302A). The PMN submitter has also agreed not to exceed the second production limit without performing a hydrolysis as a function of pH and temperature test (OPPTS Test Guideline 835.3120 or OECD Test Guideline 111); a metabolism and pharmacokinetic test (OPPTS Test Guideline 870.7485 or OECD Test Guideline 417); a modified 1-generation reproduction test (OECD Test Guidelines 421 or 422) in rats or mice); and an avian reproduction test (OECD Test Guideline 206) in mallard ducks. EPA has also determined that the results of certain additional human health, ecotoxicity, and fate testing would help characterize the PMN substance. The consent order does not require submission of the pended testing specified in the consent order at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10516.

PMN Numbers P–10–485 and P–11–48

Chemical names: P–10–485: Alkyl methacrylates, polymer with substituted carbomonocycle, hydroxymethyl acrylamide and fluorinatedalkyl acrylate (generic); P–11–48: and Diethylene glycol, polymer with diisocyanatoalkane, polyethylene glycol monomethyl ether- and fluorinatedalkanol -blocked (generic).

CAS numbers: Not available.

Effective date of section 5(e) consent order: January 27, 2012.

Basis for section 5(e) consent order: The PMNs states that the substances will be used as open, non-dispersive textile finishes. EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substances. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substances could degrade in the environment. EPA has concerns that the degradation products of the PMN substances will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other

perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substances. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation products of the PMN substances in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to human health and the environment; may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities; and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these risks, the consent order requires:

1. Monitoring of the effluent waste water stream during manufacture in addition to the requirements of any existing NPDES permit. Data will be collected on the confidential analytes specified in the consent order and submitted to the Agency quarterly.

2. Manufacture of the PMN substances (a) according to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA and (b) within the maximum established limits of certain fluorinated impurities of the PMN substances as stated in the consent order.

3. Risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of a modified reproduction/developmental toxicity screening test (OECD Test Guideline 421), an avian reproduction test (OPPTS Test Guideline 850.2300), ready biodegradability test (OPPTS Test Guideline 835.3110), hydrolysis as a function of pH test (OPPTS Test Guideline 835.2110), and indirect photolysis screening test: Sunlight photolysis in waters containing dissolved humic substances (OPPTS Test Guideline 835.5270) would help characterize possible effects of the substances and their degradation products. The consent order does not require the submission of this testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citations: 40 CFR 721.10517 (P–10–485) and 40 CFR 721.10518 (P–11–98).

PMN Number P–11–63

Chemical name: Perfluoroalkyl acrylate copolymer (generic).

CAS number: Not available.

Effective date of section 5(e) consent order: February 23, 2012.

Basis for section 5(e) consent order: The PMN states that the substance will be used as a coating material for uses in textiles and/or paper. EPA has concerns that the PMN substance under some conditions of use could cause lung effects, based on limited data on some perfluorinated compounds. In addition, EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substance. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that the degradation products of the PMN substance will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product of the PMN substance on humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires:

1. Manufacture of the PMN substances (a) according to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA and (b) within the maximum established limits of certain fluorinated impurities of the PMN substances as stated in the consent order.

2. No use of the PMN substance in consumer products with spray applications.

3. Submission of certain fate testing prior to exceeding the confidential production volume limit specified in the consent order.

4. Risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate testing specified in the consent order would help characterize possible effects of the substance and its degradation products. The PMN submitter has agreed not to exceed the confidential production volume limit without performing the following tests which are further specified in the consent order: a combined direct and indirect photolysis with hydrolysis study, a highly modified inherent biodegradability: Zahn-Wellens/EMPA test (OECD Test Guideline 302B), accelerated weathering for textiles with a water component test, and an aerobic and anaerobic transformation in soil test (OECD Test Guideline 307). The consent order does not require submission of the pended testing described in the consent order at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is

modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10519.

PMN Number P–11–160

Chemical name: Acetylated fatty acid glycerides (generic).

CAS number: Not available.

Effective date of section 5(e) consent order: February 27, 2012.

Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a resin. Based on ecological structure activity relationship (EcoSAR) analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb for the PMN in surface waters. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that this substance may present an unreasonable risk of injury to the environment. To protect against this risk, the order requires use of the substance only as described in the order, and submission of certain ecotoxicity testing prior to exceeding the confidential production volume limit specified in the order. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance. The PMN submitter has agreed not to exceed the confidential production volume limit specified in the order without performing these tests.

CFR citation: 40 CFR 721.10520.

PMN Number P–11–181

Chemical name: Fluorosurfactant (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: February 17, 2012.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a surfactant for laboratory use fluid. Based on structure activity relationship (SAR) analysis of test data on analogous high molecular weight polymers, EPA identified concerns for lung toxicity for the PMN substance if respirable droplets are inhaled. In addition, based on SAR analysis of analogous substances, including PFOA and perfluorooctane sulfonate (PFOS), EPA identified concerns for liver toxicity, acute toxicity, developmental and reproductive toxicity, and cancer, when the mean moles of each perfluoro propylene oxide (PPO) unit is less than 5. Further, EPA expected the PMN substance and the perfluoro degradation products to be highly persistent, and the low molecular weight fraction is expected to be mobile and bioaccumulate in the environment. Although there are no ecological concerns for the PMN substance itself, there is high concern for possible environmental effects to mammals and wild birds from the perfluoro degradation products of the PMN substance. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product of the PMN substance in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against this exposure and risk, the consent order requires:

1. Manufacture of the PMN substance (a) according to the chemical composition section of the consent order, including analyzing and reporting to EPA the average number molecular weight at each manufacturing facility at the time of initial commencement and annually thereafter, and (b) where the mean number of moles of each PPO unit must be greater than or equal to 5.

2. Manufacture of the PMN substance at an annual manufacturing and import volume not to exceed the confidential production volume limit stated in the consent order.

3. Risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain health, fate, and physical/chemical property testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10521.

PMN Number P–11–203

Chemical name: Perfluoroalkylethyl methacrylate copolymer with dialkylaminoethylmethacrylate (generic).

CAS number: Not available.

Effective date of section 5(e) consent order: March 13, 2012.

Basis for section 5(e) consent order: The PMN states that the substance will be used as a paper treatment. EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substance. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the

presumed degradation product of the PMN substance in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires submission of certain fate testing prior to September 30, 2014, and risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate testing identified in the consent order would help characterize possible effects of the substance and its degradation products. The PMN submitter has agreed not to manufacture or import the PMN substance after September 30, 2014 without performing a modified SCAS test (OPPTS Test Guideline 835.5045 or OECD Test Guideline 302A), a UV/visible absorption test (OPPTS Test Guideline 830.7050), direct photolysis rate in water by sunlight test (OPPTS Test Guideline 835.2210), a hydrolysis as a function of pH and temperature test (OPPTS Test Guideline 835.3120 or OECD Test Guideline 111); an indirect photolysis screening test: sunlight photolysis in waters containing dissolved humic substances (OPPTS Test Guideline 835.5270), a photolysis on soils study using the Phototransformation of Chemicals on Soil Surfaces OECD Test Guideline 2005 Draft (located in the docket under docket ID number EPA–HQ–OPPT–2012–0450), aerobic and anaerobic transformation in aquatic sediment systems (OECD Test Guideline 308), and an anaerobic biodegradability of organic compounds in digested sludge by measurement of gas production test (OECD Test Guideline 311). These tests are further detailed in the consent order. EPA has determined that the results of certain health testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10522.

PMN Number P–11–247

Chemical name: Perfluoroalkylethyl methacrylate copolymer with hydroxymethyl acrylamide, vinyl chloride and long chain fatty alkyl acrylate (generic).

CAS number: Not available.

Effective date of section 5(e) consent order: March 13, 2012.

Basis for section 5(e) consent order: The PMN states that the PMN substance will be used as a treatment for textiles. EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substance. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as, cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product of the PMN substance on humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires submission of certain fate testing prior to March 31, 2015, and risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate testing identified in the consent order would help characterize possible effects of the substance and its degradation products. The PMN submitter has agreed not to manufacture or import the PMN substance after March 31, 2015 without performing a modified SCAS test (OPPTS Test Guideline 835.5045 or OECD Test Guideline 302A), a UV/visible absorption test (OPPTS Test Guideline 830.7050), direct photolysis rate in water by sunlight test (OPPTS Test Guideline 835.2210), a hydrolysis as a function of pH and temperature test (OPPTS Test Guideline 835.3120 or OECD Test Guideline 111); an indirect photolysis screening test: sunlight photolysis in waters containing dissolved humic substances (OPPTS Test Guideline 835.5270), a photolysis on soils study using the Phototransformation of Chemicals on Soil Surfaces OECD Test Guideline 2005 Draft (located in the docket under docket ID number EPA–HQ–OPPT–2012–0450), aerobic and anaerobic transformation in aquatic sediment systems (OECD Test Guideline 308), and an anaerobic biodegradability of organic compounds in digested sludge by measurement of gas production test (OECD Test Guideline 311). These tests are further detailed in the consent order. EPA has determined that the results of certain health testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and

disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10523.

PMN Number P–11–384

Chemical name: Fluorinated alkylsulfonamidol urethane polymer (generic).

CAS number: Not available.

Effective date of section 5(e) consent order: January 18, 2012.

Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a protective treatment. Based on EPA analysis of the potential content of the polymer, EPA is concerned that some perfluorinated substances could be present and if degraded, could be released into the environment. EPA has concerns that the PMN substance and its degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to various species. These concerns are based on data on analog chemicals, including PFOS and other perfluorinated carboxylates, such as the presumed ultimate perfluorinated degradant of the PMN substance, perfluorobutanesulfonic acid (PFBS). Although some data indicate a different and less toxic toxicological and ecological profile for PFBS than for PFOS and PFOA, EPA believes that, based on the persistence of PFBS, potential intermediate fate products, and the fact that these products may be major substitutes for some uses of PFOS, more information is warranted on the fate and physical/chemical properties of PFBS-derived polymers in the environment. The consent order was issued under TSCA sections 5(e)(1)(A)(i) 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II) based on a finding that this substance may present an unreasonable risk of injury to the environment, the substance may be produced in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against this risk, the order requires submission of certain abiotic fate testing prior to exceeding an aggregate manufacturing and import volume of 150,000 kilograms and submission of certain biotic fate testing prior to exceeding an aggregate manufacturing and import volume of 550,000 kilograms. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The PMN submitter has agreed not to exceed the first production volume limit without performing a highly modified indirect photolysis screening test, and not to exceed the second production volume limit without performing a highly modified aerobic activated sludge biodegradation test and a modified aerobic and anaerobic transformation in sludge-amended to soil test. These tests are further detailed in the consent order. EPA has determined that the results of certain health and environmental effects testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10524.

PMN Numbers P–11–411, P–11–412, P–11–413 and P–11–414

Chemical names: Alkoxy dialkyl aminoalkanol carboxylate (generic).

CAS numbers: Not available.

Basis for action: The PMN states that the generic (non confidential) use of the substances is for contained use in energy production. Based on EcoSAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 17 ppb of the PMN substances in surface waters. As described in the consolidated PMN, releases to surface waters are not expected to exceed 17 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 17 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10525.

PMN Number P–11–557

Chemical name: 2–Propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with C_{18-26}-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate and vinylidene chloride, 2,2'-[1,2-diazenediylbis(1-methylethylidene)bis[4,5-dihydro-1H-imidazole] hydrochloride (1:2)-initiated (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: March 22, 2012.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a water and oil repellant. Based on SAR analysis of test data on analogous high molecular weight polymers, EPA identified concerns for lung effects through lung overload if respirable particles of the intact PMN substances are inhaled. In addition, EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substance. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the

substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires:

1. Manufacture of the PMN substance (a) according to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA and (b) within the maximum established limits of certain fluorinated impurities of the PMN substances as stated in the consent order.

2. Manufacture of the PMN substance at an annual manufacturing and import volume not to exceed the confidential production volume stated in the consent order.

3. No use of the PMN substance in consumer products with spray applications.

4. Risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain health and environmental effects, fate, and physical/chemical property testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The consent order does not require submission of the testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10526.

PMN Number P–11–646

Chemical name: Perfluoroalkylethyl methacrylate copolymer (generic).

CAS number: Not available.

Effective date of section 5(e) consent order: March 23, 2012.

Basis for section 5(e) consent order: The PMN states that the substance will be used as a fabric treatment. EPA identified concerns for the formation of potential incineration or other decomposition products from the PMN substance. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as, cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product of the PMN substance in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to human health and the environment, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires submission of certain fate testing prior to March 31, 2015, and risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate testing identified in the consent order would help characterize possible effects of the substance and its degradation products. The PMN submitter has agreed not to manufacture or import the PMN substance after March 31, 2015 without performing a modified SCAS test (OPPTS Test Guideline 835.5045 or OECD Test Guideline 302A), a UV/visible absorption test (OPPTS Test Guideline 830.7050), direct photolysis rate in water by sunlight test (OPPTS Test Guideline 835.2210), a hydrolysis as a function of pH and temperature test (OPPTS Test Guideline 835.3120 or OECD Test Guideline 111); an indirect photolysis screening test: sunlight photolysis in waters containing dissolved humic substances (OPPTS Test Guideline 835.5270), a photolysis on soils study using the Phototransformation of Chemicals on Soil Surfaces OECD Test Guideline 2005 Draft (located in the docket under docket ID number EPA–HQ–OPPT–2012–0450), aerobic and anaerobic transformation in aquatic sediment systems (OECD Test Guideline 308), and an anaerobic biodegradability of organic compounds in digested sludge by measurement of gas production test (OECD Test Guideline 311). EPA has also determined that the results of certain additional human health and environmental effects testing would help characterize the PMN substance. The consent order does not require submission of the pended testing specified in the consent order at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10527.

PMN Numbers P–12–30, P–12–31, and P–12–32

Chemical names: Modified fluorinated acrylates (generic).

CAS numbers: Not available.

Effective date of section 5(e) consent order: April 18, 2012.

Basis for section 5(e) consent order: The PMN states that the substances will be used as an open, non-dispersive textile finish. EPA has concerns for the formation of potential incineration or other decomposition products from the PMN substances. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, suggesting that, under some conditions, the PMN substances could degrade in the environment. EPA has concerns that these degradation products will persist

in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including PFOA and other perfluorinated carboxylates, which include the presumed environmental degradant of the PMN substances. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to human health and the environment, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these risks, the consent order requires:

1. Monitoring of the effluent waste water stream during manufacture in addition to the requirements of any existing NPDES permit. Data will be collected on the confidential analytes specified in the consent order and submitted to the Agency quarterly.

2. Manufacture of the PMN substances (a) according to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA, and (b) within the maximum established levels of certain fluorinated impurities of the PMN substances as stated in the consent order.

2. Risk notification. If as a result of the test data required, the Company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the Company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of an aerobic and anaerobic transformation in soil test (OECD Test Guideline 307), fish short-term reproduction test (OPPTS Test Guideline 890.1350), ready biodegradability test (OPPTS Test Guideline 835.3110), hydrolysis as a function of pH test (OPPTS Test Guideline 835.2110), and indirect photolysis screening test: sunlight photolysis in waters containing dissolved humic substances (OPPTS Test Guideline 835.5270) would help characterize possible effects of the substance and its degradation products. The consent order does not require the submission of this testing at any specified time or production volume. However, the consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10528.

PMN Number P–12–35

Chemical name: Cobalt iron manganese oxide, carboxylic acid-modified (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a ferrite dispersion ink additive to ensure magnetic performance characteristics. Based on test data on analogous respirable, poorly soluble particulates (subcategory: lithium manganese oxide), EPA identified concerns for lung effects to workers exposed to the PMN substance. EPA also identified concerns for mutagenicity based on the amount of cobalt and manganese in the PMN substance and neurotoxicity for manganese. For the uses described in the PMN, significant exposures to workers or the general population is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that the following may cause serious health effects:

1. Domestic manufacture.

2. Use of the substance other than as described in the PMN.

3. Use in a consumer product.

4. Processing or use of the substance in a solid form.

5. Manufacturing, processing, or use of the PMN substance without an appropriate material safety data sheet that warns to not release to water.

6. Any use of the substance resulting in surface water release.

Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with 60-day holding period; workplace exposure monitoring; characterization of the mobility of the particles in soil using a modified version of the leaching test (OPPTS Test Guideline 835.1240) and/or an adsorption/desorption (batch equilibrium) test (OPPTS Test Guideline 835.1230); a ready biodegradability (OECD Test Guideline 301) to characterize the persistence of the functional groups; and physical-chemical characterization data including particle size distribution by count, surface area, morphology, shape, and size; aggregation and agglomeration states using transmission electron microscopy, scanning-transmission and electron microscopy atomic force microscopy, porosity using mercury intrusion, surface chemistry including elemental composition using electron-energy loss spectroscopy, X-ray photoelectron spectroscopy, auger electron spectroscopy, or atomic force microscopy; surface charge using zetasizer, water solubility (OECD Test Guideline 105), and density of liquids and solids (OECD Test Guideline 109) would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.10529.

PMN Number P–12–87

Chemical name: Acrylate manufacture byproduct distillation residue (generic).

CAS number: Not available.

Basis for action: The PMN states that the uses of the substance are as a viscosity modifier/flow enhancer for crude oil and in boiler fuels as a burn promoter for fuel value. Based on test data on the PMN substance, and EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute

toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10530.

PMN Number P–12–149

Chemical name: Distillation bottoms from manufacture of brominated cycloalkanes (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be for destructive use in bromine recovery. Based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 2 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guidelines 850.1400); a daphnid chronic toxicity study (OPPTS Test Guidelines 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. When testing the PMN substance, if difficulty is encountered in dissolving the chemical in the test media, consult the special consideration for conducting aquatic laboratory studies (OPPTS Test Guideline 850.1000).

CFR citation: 40 CFR 721.10531.

PMN Number P–12–167

Chemical name: Tar, brown coal.

CAS number: 101316–83–0.

Basis for action: The PMN states that the substance will be used for blending existing tar oil with petroleum oil for feed to refineries. EPA has identified health and environmental concerns because the substance may be a persistent, bio-accumulative, and toxic (PBT) chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999) (FRL–6097–7). EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also, based on SAR analysis of test data on analogous polycyclic aromatic hydrocarbons, EPA identified concerns for irritation and possible corrosion to all exposed tissues, solvent neurotoxicity, liver and kidney toxicity, effects to the pancreas and spleen, photosensitization, and oncogenicity. These concerns are for workers exposed via inhalation or dermal contact with the PMN substance. Additionally, based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. For the uses described in the PMN, significant exposures to workers or the general population is unlikely and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk to the human health or the environment. EPA has determined, however, that any predictable or purposeful release containing the PMN substance into the waters of the United States may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the aerobic and anaerobic transformation in aquatic sediment systems test (OECD Test Guideline 308) and the bioconcentration: flow-through fish test (OECD Test Guideline 305) would help characterize the persistent and bioaccumulative attributes of the PMN substance. In addition, the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. When testing the PMN substance, if difficulty is encountered in dissolving the chemical in the test media, consult the special considerations for conducting aquatic laboratory studies (OPPTS Test Guideline 850.1000).

CFR citation: 40 CFR 721.10532.

PMN Number P–12–182

Chemical name: Amine-modified urea-formaldehyde polymer (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a mining chemical. Based on EcoSAR analysis of test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 56 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 56 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 56 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity mitigated by humic acid test (OPPTS Test Guidelines 850.1085); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10533.

PMN Number P–12–260

Chemical name: Brominated aliphatic alcohol (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be for destructive use. Based on EcoSAR analysis of test data on analogous halo-alcohols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 3 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the

PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the special considerations for conducting aquatic laboratory studies (OPPTS Test Guideline 850.1000) be followed.

CFR citation: 40 CFR 721.10534.

PMN Number P–12–275

Chemical name: Phosphonium, tributyltetradecyl-, chloride (1:1).

CAS number: 81741–28–8.

Basis for action: The PMN states that the substance will be used as reactant for the production of proprietary chemicals in the electronics industry. EPA has identified environmental concerns because the substance may be a PBT chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category. EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Additionally, based on EcoSAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 11 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any predictable or purposeful release containing the PMN substance into the waters of the United States may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the aerobic and anaerobic transformation in aquatic sediment systems test (OECD Test Guideline 308) and the bioconcentration: Flow-through fish test (OECD Test Guideline 305) would help characterize the persistent and bioaccumulative attributes of the PMN substance. In addition, EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize environmental effects of the PMN substance. When testing the PMN substance, if difficulty is encountered in dissolving the chemical in the test media, consult the special considerations for conducting aquatic laboratory studies (OPPTS Test Guideline 850.1000).

CFR citation: 40 CFR 721.10535.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 14 of the 25 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit II.).

In the other 11 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is October 15, 2012 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before September 14, 2012.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before September 14, 2012, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Rule

Significant new use designations for a chemical substance are legally established as of the date of publication of this direct final rule August 15, 2012.

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 14 chemical substances and the PMN

submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA concludes that the uses are not ongoing. However, EPA recognizes that prior to the effective date of the rule, when chemical substances identified in this SNUR are added to the TSCA Inventory, other persons may engage in a significant new use as defined in this rule before the effective date of the rule. However, 23 of the 25 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions (per §§ 720.25 and 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

As discussed in the April 24, 1990 SNUR, EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including any extensions expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person meets the conditions of advance compliance under § 721.45(h), the person is considered exempt from the requirements of the SNUR.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines'' or for guidelines that are not currently available on the Web site, EPA has placed a copy of that guideline in the public docket. The Organization for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture, import, or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer, importer, or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI,

manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e., the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture, import, or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2012–0450.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs and, in some cases, TSCA section 5(e) consent orders. 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).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

On February 18, 2012, EPA certified pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUN submitted by any small entity would not cost significantly more than $8300. A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012, certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on 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, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on

Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action 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), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, 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), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. 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, 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 9, 2012.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by adding the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10516	2070–0012
721.10517	2070–0012
721.10518	2070–0012
721.10519	2070–0012
721.10520	2070–0012
721.10521	2070–0012
721.10522	2070–0012
721.10523	2070–0012
721.10524	2070–0012
721.10525	2070–0012
721.10526	2070–0012
721.10527	2070–0012
721.10528	2070–0012
721.10529	2070–0012
721.10530	2070–0012
721.10531	2070–0012
721.10532	2070–0012
721.10533	2070–0012
721.10534	2070–0012
721.10535	2070–0012
* * * * *	

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PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10516 to subpart E to read as follows:

§ 721.10516 Perfluorinated alkylthio betaine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluorinated alkylthio betaine (PMN P–10–405) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the company becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (analysis, reporting, and limitation of maximum impurity levels of certain fluorinated impurities as described in the chemical composition section of the consent order), (q), and (t).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(b)(4) and (c)(4) (N=50 for the specific release waste streams specified in the consent order).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (i), (j), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraphs (a)(2)(ii) and (iv) of this section.

■ 5. Add § 721.10517 to subpart E to read as follows:

§ 721.10517 Alkyl methacrylates, polymer with substituted carbomonocycle, hydroxymethyl acrylamide and fluorinatedalkyl acrylate (generic).

(a) Chemical substances and significant new uses subject to reporting. (1) The chemical substance identified generically as alkyl methacrylates, polymer with substituted carbomonocycle, hydroxymethyl acrylamide and fluorinatedalkyl acrylate (PMN P–10–485) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Monitoring of the effluent waste water stream during manufacture in addition to any existing NPDES permit. Monitoring data will be collected on the confidential analytes and submitted to the Agency quarterly. Analysis, reporting, and limitation of maximum impurity levels of certain fluorinated impurities.).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 6. Add § 721.10518 to subpart E to read as follows:

§ 721.10518 Diethylene glycol, polymer with diisocyanatoalkane, polyethylene glycol monomethyl ether- and fluorinatedalkanol-blocked (generic).

(a) Chemical substances and significant new uses subject to reporting. (1) The chemical substance identified generically as diethylene glycol, polymer with diisocyanatoalkane, polyethylene glycol monomethyl ether- and fluorinatedalkanol-blocked (PMN P–11–48) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Monitoring of the effluent waste water stream during manufacture in addition to any existing NPDES permit. Monitoring data will be collected on the confidential analytes and submitted to the Agency quarterly. Analysis, reporting, and limitation of maximum impurity levels of certain fluorinated impurities.).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 7. Add § 721.10519 to subpart E to read as follows:

§ 721.10519 Perfluoroalkyl acrylate copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkyl acrylate copolymer (PMN P–11–63) is subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), (o)(use in a consumer product that could be spray applied), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 8. Add § 721.10520 to subpart E to read as follows:

§ 721.10520 Acetylated fatty acid glycerides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acetylated fatty acid glycerides (PMN P–11–160) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured) or entrained in a film.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 9. Add § 721.10521 to subpart E to read as follows:

§ 721.10521 Fluorosurfactant (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fluorosurfactant (PMN P–11–181) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (manufacture of the PMN substance according to the chemical composition section of the consent order, including analyzing and reporting to EPA the average number molecular weight at each manufacturing facility at the time of initial commencement and annually thereafter, and where the mean number of moles of each PPO unit must be greater than or equal to 5) and (t).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 10. Add § 721.10522 to subpart E to read as follows:

§ 721.10522 Perfluoroalkylethyl methacrylate copolymer with dialkylaminoethylmethacrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkylethyl methacrylate copolymer with dialkylaminoethylmethacrylate (PMN P–11–203) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must

incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (any amount after September 30, 2014).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 11. Add § 721.10523 to subpart E to read as follows:

§ 721.10523 Perfluoroalkylethyl methacrylate copolymer with hydroxymethyl acrylamide, vinyl chloride and long chain fatty alkyl acrylate (generic).

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified generically as perfluoroalkylethyl methacrylate copolymer with hydroxymethyl acrylamide, vinyl chloride and long chain fatty alkyl acrylate (PMN P–11–247) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (any amount after March 31, 2015).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 12. Add § 721.10524 to subpart E to read as follows:

§ 721.10524 Fluorinated alkylsulfonamidol urethane polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fluorinated alkylsulfonamidol urethane polymer (PMN P–11–384) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (production limits set at 150,000 kilograms and at 550,000 kilograms).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10525 to subpart E to read as follows:

§ 721.10525 Alkoxy dialkyl aminoalkanol carboxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkoxy dialkyl aminoalkanol carboxylate (PMNs P–11–411, P–11–412, P–11–413 and P–11–414) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4)(N = 17).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10526 to subpart E to read as follows:

§ 721.10526 2-Propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with C_{18-26}-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate and vinylidene chloride, 2,2'-[1,2-diazenediylbis(1-methylethylidene)bis[4,5-dihydro-1H-imidazole] hydrochloride (1:2)-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with C_{18-26}-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate and vinylidene chloride, 2,2′-[1,2-diazenediylbis(1-methylethylidene)bis[4,5-dihydro-1H-imidazole] hydrochloride (1:2)-initiated

(PMN P–11–557) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Manufacture of the PMN substance according to the chemical composition section of the consent order, where the company must analyze and report certain starting raw material impurities, and within the maximum established levels of certain fluorinated impurities of the PMN substances), (j) (use in a consumer product that could be spray applied), and (t).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 15. Add § 721.10527 to subpart E to read as follows:

§ 721.10527 Perfluoroalkylethyl methacrylate copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkylethyl methacrylate copolymer (PMN P–11–646) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (any amount after March 31, 2015).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 16. Add § 721.10528 to subpart E to read as follows:

§ 721.10528 Modified fluorinated acrylates (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as modified fluorinated acrylates (PMNs P–12–30, P–12–31, and P–12–32) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided a MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Monitoring of the effluent waste water stream during manufacture in addition to the existing NPDES permit. Monitoring data will be collected on the confidential analytes and submitted to the Agency quarterly. Analysis, reporting, and limitation of maximum impurity levels of certain fluorinated impurities.).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are

applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 17. Add § 721.10529 to subpart E to read as follows:

§ 721.10529 Cobalt iron manganese oxide, carboxylic acid-modified (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as cobalt iron manganese oxide, carboxylic acid-modified (PMN P–12–35) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(c) and (g) (do not release to water).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (j) (ferrite dispersion ink additive to ensure magnetic performance characteristics), (o), (v)(2), and (x)(2).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add § 721.10530 to subpart E to read as follows:

§ 721.10530 Acrylate manufacture byproduct distillation residue (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance is identified generically as acrylate manufacture byproduct distillation residue (PMN P–12–87) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance,

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add § 721.10531 to subpart E to read as follows:

§ 721.10531 Distillation bottoms from manufacture of brominated cycloalkanes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as distillation bottoms from manufacture of brominated cycloalkanes (PMN P–12–149) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N =2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.10532 to subpart E to read as follows:

§ 721.10532 Tar, brown coal.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as tar, brown coal (PMN P–12–167, CAS No. 101316–83–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Record keeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. Add § 721.10533 to subpart E to read as follows:

§ 721.10533 Amine-modified urea-formaldehyde polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as amine-modified urea-formaldehyde polymer (PMN P–12–182) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 56).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. Add § 721.10534 to subpart E to read as follows:

§ 721.10534 Brominated aliphatic alcohol (generic).

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified generically as brominated aliphatic alcohol (PMN P–12–260) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. Add § 721.10535 to subpart E to read as follows:

§ 721.10535 Phosphonium, tributyltetradecyl-, chloride (1:1).

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified as phosphonium, tributyltetradecyl-, chloride (1:1) (PMN P–12–275; CAS No. 81741–28–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Record keeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2012–20039 Filed 8–14–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R08–OAR–2012–0479; FRL–9710–4]

Approval and Promulgation of Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nations), ND

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to promulgate a Reservation-specific Federal Implementation Plan in order to regulate emissions from oil and natural gas production facilities located on the Fort Berthold Indian Reservation located in North Dakota. The Federal Implementation Plan includes basic air quality regulations for the protection of communities in and adjacent to the Fort Berthold Indian Reservation. The Federal Implementation Plan requires owners and operators of oil and natural gas production facilities to reduce emissions of volatile organic compounds emanating from well completions, recompletions, and production and storage operations. This Federal Implementation Plan will be implemented by EPA, or a delegated Tribal Authority, until replaced by a Tribal Implementation Plan. EPA is proposing a Reservation-specific Federal Implementation Plan concurrently with this final rule.

DATES: This rule is effective in the CFR on August 15, 2012. This rule is effective with actual notice by EPA to the owners and operators for purposes of enforcement beginning at 5 p.m. (eastern daylight time) on August 3, 2012.

Public Hearing: EPA will hold a public hearing on the following date: September 12, 2012. The hearing will start at 1 p.m. local time and continue until 4 p.m. or until everyone has had a chance to speak. Additionally, an evening session will be held from 6 p.m. until 8 p.m. The hearing will be held at the 4 Bears Casino & Lodge, 202 Frontage Rd, New Town, ND 58763, (701) 627–4018.

ADDRESSES:

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following locations: Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129; and Environmental Division, Three Affiliated Tribes, 204 West Main, New Town, North Dakota 58763–9404. EPA requests that if at all possible, you contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deirdre Rothery, U. S. Environmental Protection Agency, Region 8, Air Program, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6431, *rothery.deirdre@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The initials *APA* mean or refer to the Administrative Procedure Act.

(ii) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(iii) The initials *BTU* mean or refer to British Thermal Unit.

(iv) The initials *CAFOs* mean or refer to Consent Agreement Final Orders.

(v) The initials *CDPHE* mean or refer to Colorado Department of Public Health and Environment Air Pollution Control Division.

(vi) The initials *CO* mean or refer to carbon monoxide.

(vii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(viii) The words Reservation or the initials *FBIR* mean or refer to the Fort Berthold Indian Reservation.

(ix) The initials *FIP* mean or refer to Federal Implementation Plan.

(x) The initials *GOR* mean or refer to gas-to-oil ratio.

(xi) The initials *LACT* mean or refer to lease automatic custody transfer.

(xii) The initials *MDEQ* mean or refer to Montana Department of Environmental Quality.

(xiii) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(xiv) The initials *NAICS* mean or refer to the North American Industry Classification System.

(xv) The initials *NDDoH* mean or refer to the North Dakota Department of Health.

(xvi) The initials *NDIC* mean or refer to the North Dakota Industrial Commission.

(xvii) The initials *NESHAP* mean or refer to National Emission Standards for Hazardous Air Pollutants.

(xviii) The initials *NMED* mean or refer to New Mexico Environment Department Air Quality Bureau.

(xix) The initials NO_X mean or refer to nitrogen oxides.

(xx) The initials NO_2 mean or refer to nitrogen dioxide.

(xxi) The initials *NSPS* mean or refer to New Source Performance Standards.

(xxii) The initials *NSR* mean or refer to new source review.

(xxiii) The initials *ODEQ* mean or refer to Oklahoma Department of Environmental Quality Air Quality Division.

(xxiv) The initials *PM* mean or refer to particulate matter.

(xxv) The initials *PSD* mean or refer to prevention of significant deterioration.

(xxvi) The initials *PTE* mean or refer to potential to emit.

(xxvii) The initials *RCT* mean or refer to Railroad Commission of Texas, Oil and Gas Division.

(xxviii) The initials *SCADA* mean or refer to Supervisory Control and Data Acquisition.

(xxix) The initials *SIP* mean or refer to State Implementation Plan.

(xxx) The initials SO_2 mean or refer to sulfur dioxide.

(xxxi) The initials *TAR* mean or refer to Tribal Authority Rule.
(xxxii) The initials *TAS* mean or refer to treatment as state.
(xxxiii) The initials *TIP* mean or refer to Tribal Implementation Plan.
(xxxiv) The initials *UDEQ* mean or refer to Utah Department of Environmental Quality.
(xxxv) The initials *VOC* mean or refer to volatile organic compound(s).
(xxxvi) The initials *VRU* mean or refer to vapor recovery unit.
(xxxvii) The initials *WDEQ* mean or refer to Wyoming Department of Environmental Quality Air Quality Division.

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I. Justification for This Final Rule

A. Overview

In today's action, we are promulgating a Reservation-specific Federal Implementation Plan (FIP or rule) to establish enforceable control requirements for reducing volatile organic compound (VOC) emissions from oil and natural gas production activities on the Fort Berthold Indian Reservation (FBIR) in North Dakota. Specifically, we are issuing this rule to require owners and operators of oil and natural gas production facilities producing from the Bakken Pool to reduce emissions of VOCs emanating from well completions, recompletions, and production and storage operations. As explained in more detail in Section III, promulgating these Federal regulations addresses an important initial step to fill a regulatory gap with regard to controlling VOC emissions from oil and natural gas operations on the FBIR. There is no other Federal rule, including the recently finalized New Source Performance Standard (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Oil and Gas Sector (NSPS OOOO and NESHAP HH), that fills this gap for the particular geologic formations that exist on the FBIR. Therefore, this rule is necessary to level the playing field, and provide the public on the FBIR the same air quality protections as the public outside the FBIR. In addition, owners and operators of oil and natural gas operations on the FBIR are provided the same benefits that owners and operators of oil and natural gas operations off the Reservation are provided by the North Dakota Department of Health (NDDoH) regulations and North Dakota Industrial Commission (NDIC) regulations in terms of effectively limiting potential to emit (PTE).[1]

B. Rationale for the Final Rule

EPA is issuing this action as a final rule. As explained in Section III., the final rule requires owners and operators of oil and natural gas production facilities on the FBIR to reduce emissions of VOC for specific types of equipment. This final rule will take effect promptly. It will be effective in the CFR on August 15, 2012. It will also be effective, with actual notice by EPA to the owners and operators, for purposes of enforcement beginning at 5 p.m. (eastern daylight time) on August 3, 2012. This final rule is also time-limited. It will be effective only until the date that EPA promulgates a final rule based on its proposal for a Reservation-specific FIP to regulate emissions from oil and natural gas production facilities located on the FBIR and that final rule takes effect. EPA is proposing a Reservation-specific FIP concurrently with this final rule. As explained in detail below, EPA finds that compelling circumstances warrant the promulgation of this final rule.

A final rule is effective with actual notice upon signature by the EPA without an opportunity for public comment. Under APA section 553, a Federal agency generally must provide for public notice and comment prior to finalizing an agency rule. However, this obligation is excused, under APA section 553(b)(3)(B), ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' While the good cause exception is to be narrowly construed, *Utility Solid Waste Activities Group* v. *Environmental Protection Agency,* 236 F.3d 749, 754 (D.C. Cir. 2001), it is also ''an important safety valve to be used where delay would do real harm.'' *U.S. Steel Corp.* v. *U.S. Environmental Protection Agency,* 595 F.2d 207, 214 (5th Cir. 1979). Notice and comment are impracticable where ''an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required.'' *Utility Solid Waste Activities Group,* 236 F.3d at 754. Notice and comment are contrary to the public interest where ''the interest of the public would be defeated by any requirement of advance notice.'' *Id.* at 755.

A brief explanation of the circumstances is helpful to understand why Notice and comment here would be both contrary to the public interest and impracticable and therefore why there is good cause to implement this final rule while the agency conducts a notice and comment rulemaking for the permanent rule. The need to address VOC emissions from coproduced natural gas from oil and natural gas production sources on the FBIR was first brought to EPA's attention approximately 12 months ago, following publication of the Review of New Sources and Modifications in Indian Country or Federal Tribal NSR Rule, promulgated on July 1, 2011, at 40 CFR 49.151 (*see* 76 FR 38748). At that time, a significant number of entities engaged in oil and natural gas production operations on the FBIR informed EPA that the emissions of regulated air pollutants, including volatile organic compounds (VOCs), from oil and natural gas production facilities were significantly larger than they had previously understood. These emissions created a public health and safety hazard and were sufficiently large that hundreds of individual facilities would potentially be required to obtain major source PSD permits unless they were able to obtain legal and practicably enforceable emission limits on the facilities' potential-to-emit.

In August 2011, EPA and the operators entered into consent agreement final orders (CAFOs), which established control requirements that restricted emissions from the oil and natural gas production facilities subject to those agreements to below major source thresholds and allowed the

[1] Depending on the emissions characteristics of a particular well, compliance with the requirements of the FIP may or may not limit the well's PTE to below the major source thresholds such that the well is not subject to major source prevention of significant (PSD) permitting and/or to national emission standards for hazardous air pollutants (NESHAP) requirements.

operators to continue to operate pending issuance of appropriate permits.

In late August 2011, the EPA Region 8 initiated a process to develop, propose and issue permits to the hundreds of sources on the FBIR (both existing and proposed new wells) and to develop a FIP. At that time, EPA lacked detailed information to develop permits (*e.g.,* information about the facilities, emissions, and possible emission controls) and therefore, hosted numerous meetings from August through November 2011 to collect the necessary information and develop complete permit applications and draft permit language.[2] The EPA drafted and proposed the first batch of permits in March 2012, [3] and explained in our April 10, 2012 letter to Chairman Hall that ''[t]he comment period for these permits will end on April 23, 2012, at which time we will consider comments and finalize these permits,'' noting that ''these completed permits will form the basis for the FIP.'' While we had developed an example permit to provide predictability and a framework for permitting, it was clear that each permit would need to be developed on a case-by-case basis using information submitted in each application.

We initially planned to issue all of the necessary permits before August 26, 2012, the earliest expiration date of the CAFOs. However, in May 2012, the true extent of the significant workload associated with developing and finalizing permits for more than 600 existing and new oil and natural gas production facilities became apparent. It became clear that, due to the extraordinary number of permits that needed to be issued, the need to tailor each of those permits to comport with the information in the permit application and the short timeframe remaining to complete those tasks, it would not be possible to issue all, or even a significant portion of, the final permits by August 26, 2012. Moreover, given the rapid pace of oil and gas development on the FBIR, there are likely numerous additional sources that will each need a permit in addition to sources EPA is aware of at this time. We therefore determined that the only way to ameliorate the situation in a timely manner was through this rulemaking action. We contemplated developing the FIP in addition to issuing the individual permits, but determined that promulgating the FIP should be our top priority once we realized that we could not issue all of the necessary permits in a timely manner.

Key safety provisions of the final rule require either collection and high efficiency flaring (combustion) of coproduced natural gas or that the well(s) be connected to a natural gas gathering line so that coproduced natural gas can be sold or used for another beneficial purpose. Given the accelerated development in this area and the nature of the oil and gas extracted, these requirements are necessary for both safety and protection of public health from exposure to air pollution and will avoid fire hazards and protect the public from hazardous conditions. Specifically, the requirements further a number of important goals in that regard. First, as discussed in Section III.C., VOC emissions from the natural gas that is co-produced with oil extracted from the formations are generally greater than such emissions from activities in other oil bearing formations, due to the characteristics of the produced oil. The FIP requirements for owners and operators of the oil and natural gas production facilities to reduce emissions of VOCs emanating from well completions, recompletions and production and storage operations will significantly reduce VOC emissions thereby ensuring that public health and the environment are protected. Second, the rule will result in immediate reductions in fire risks and improvements in air quality as a result of control of emissions from both new and existing oil and gas operations. Accordingly, as a result of the unique characteristics of the formations at issue, immediate application of the FIP requirements to both new and existing oil and natural gas operations is necessary to ensure that public health and the environment, continue to be protected once consent agreement final orders (CAFOs) with EPA expire.

The requirements of the FIP also serve to minimize regulatory burden in a number of ways. This rule ensures that ongoing oil and gas operations (including modifications), and new operations, can occur uninterrupted in a manner consistent with the Clean Air Act (CAA), thus protecting the economic interest of both the companies and Tribes involved and the local communities. The oil and natural gas production companies operating on the FBIR entered into CAFOs with EPA which allowed them to continue existing operations and begin new ones without first complying with major source prevention of significant deterioration (PSD) new source review (NSR) requirements if applicable, which can be a very lengthy and resource-intensive process. These CAFOs are further discussed in Section III.G. The CAFOs, which contain emissions control and other requirements that are consistent with those in the rule adopted today, have been in place since August 2011 and will expire beginning on August 26, 2012,[4] a date which is rapidly approaching. In the absence of this rule, hundreds of new and existing oil and natural gas production sources on the FBIR that are subject to these CAFOs would be unable to continue to operate, construct or modify in compliance with CAA requirements without first obtaining a permit from EPA because they will have no legally and practicably enforceable requirements in place controlling VOC emissions, thus significantly disrupting ongoing economic activities and the benefits those activities bring to the communities of the Reservation.

As a result, without this final rule there will be a mixture of circumstances that will increase potential threats to human health and the environment while simultaneously impeding oil and gas development. This is because of the

[2] Resolving the challenges on the FBIR has been a top priority for EPA. The Agency has dedicated enormous resources to resolve these challenges at the Regional and National offices for nearly a year and continues to do so. EPA's efforts have included the following activities.

In late August 2011, the EPA Region 8 air permit and enforcement programs hosted a Fort Berthold Oil Production Minor NSR Permitting Process Meeting with the oil producers. Representatives from the MHA Nation were invited and attended in person and by phone. Discussions included the anticipated permitting timeline for permit applications submitted by the oil producers. Between August 23 and September 1, 2011, a draft model synthetic minor permit was sent by EPA to the meeting attendees and the Tribes in preparation for the next meeting on September 1, 2011. Then, on September 1, 2011, Region 8 hosted a permitting workshop. Representatives from the various oil producers and the MHA Nation were invited and attended. Representatives of the North Dakota Dept. of Health also participated by phone. The minor NSR permitting process was discussed, as well as questions that the companies submitted ahead of time. The group began discussions on the draft model permit and set up a workshop specifically to delve into the specific permit conditions for the following week. On September 7 and 8, 2011, EPA hosted a two-day follow-up permitting workshop. All previous meeting attendees were invited, including the MHA Nation. Participants included the oil producers and their consultants. North Dakota Department of Health representatives were also on the phone. At this meeting the group went through the draft model permit and discussed the proposed conditions and appropriate edits. Also discussed was what would constitute a complete application (administrative and technical) and the various methods of PTE calculation proposed by the companies in attendance. The EPA Region 8 hosted an additional meeting on November 30, 2011 to discuss the revised example permit, and representatives from the various oil producers and the MHA Nation were invited and attended.

[3] The draft permits that underwent a public review and comment period are available online at: *http://www.epa.gov/region8/air/permitting/pubcomment.html.*

[4] The FBIR CAFOs are included in the docket for this rule.

mix of current CAA obligations that currently apply to these wells. While many sources would first need to obtain a PSD permit to construct or would need to resolve ongoing violations to continue to operate, other sources could operate without obtaining a permit. Accordingly, sources that need to resolve permitting obligations would be delayed in construction or operation (impeding development) while those without permitting obligations would operate uncontrolled as the final rule requirements would not be in place.

In summary, this rule serves the necessary function of ensuring that a regulation is in place to control emissions of VOCs by these sources. These provisions contain legally and practicably enforceable requirements to use control measures to reduce VOC emissions such that those reductions can then be considered in calculating a source's PTE. In most cases, consideration of these emission reductions in calculating a source's PTE VOCs will result in a PTE that is below the regulatory threshold so that the source will not face a long delay in its ability to continue to operate, construct or modify. The public interest would certainly be hindered if EPA did not act now to ensure that these important public health protections are in place and that economic progress is not impeded by a lack of regulations controlling VOC emissions.

Finally, this rule is important in that while not identical to, the rule is consistent with regulations approved into North Dakota's SIP [5] under the authority of the NDDoH and regulations under the authority of the NDIC,[6] which were established for similar purposes. Accordingly, this rule ensures that consistent requirements apply to activities both inside of and within the FBIR.

The good cause exception also applies here because of the impracticability of notice and comment. EPA initially did not recognize the sheer magnitude of the volume of permit applications that it would need to process in a short time period to avoid economic disruption on the Reservation. Now that it fully comprehends the enormity of the task, EPA has determined that it would be unable to timely process more than 600 permit applications, specified to be submitted as part of the CAFOs between EPA and the oil and natural gas owners and operators by August 2012. Because of our inability to process these permits, and because of lateness at which we became fully aware of the full scope of the burden, EPA thus has had insufficient time to seek public comment before acting on the rule promulgated today.

While we have determined that notice and comment are both contrary to the public interest and impracticable, we note that the public has had several opportunities to learn about, and even comment on, the substantive requirements contained in this interim rule. The substance of many provisions in the final rule are similar to the requirements contained in the six permits for individual oil and gas production facilities on the FBIR that EPA proposed earlier this year. We received comments from the public and the sources on those proposed permits and we have taken those comments into consideration in developing the FIP requirements. The substantive requirements of the FIP are also similar to the conditions in the CAFOs under which the oil and natural gas production sources have been operating for nearly a year, and the public had notice of the CAFOs, which were posted on EPA's Internet site for public review.[7] Furthermore, the public has an additional, full opportunity to comment on the permanent rule that EPA is concurrently proposing today, which mirrors, and will replace this interim rule. By issuing this rule as a final rule, paired with a comment period on the proposal for more permanent action, EPA is providing as much opportunity for notice and comment as possible on the issues presented by this rule. EPA will expeditiously and fully, consider any comments received on the proposed rule, and once we have completed our deliberative process, will make any necessary revisions in taking final action on the proposed rule.

For the reasons discussed above, EPA finds both that there is good cause to forego notice and comment for this interim rule, and that there is good cause for this rule to take immediate effect and to take effect as described above, for those sources that receive actual notice for purposes of enforcement. Since this is not a major rule under the Congressional Review Act (CRA), the 60-day delay in effective date required for major rules under the CRA does not apply.

II. Proposed Rulemaking

We are also simultaneously publishing a parallel proposed rulemaking which seeks comment on information found within this final rule. Note that Docket Number EPA–R08–OAR–2012–0479 is being used for both the final rule and the parallel proposed rule.

III. Background

A. Today's Action

In today's action, we are promulgating a Reservation-specific FIP to establish enforceable control requirements for reducing VOC emissions from oil and natural gas production activities on the FBIR in North Dakota. Specifically, we are issuing this rule to require owners and operators of oil and natural gas production facilities producing from the Bakken Pool [8] to reduce emissions of VOCs emanating from well completions, recompletions, and production and storage operations. Oil and natural gas production facilities may also contain other VOC-emitting units that include, but are not limited to, pumps, compressors, pneumatic devices, dehydrators, and engines. This rule does not contain requirements for, or otherwise apply to, those types of equipment. If we determine at a later date that there is a need for legally and practicably enforceable control of VOC emissions from additional equipment at these oil and natural gas production facilities, or for legally and practicably enforceable control of additional regulated NSR pollutant emissions, we may propose additional FIPs or propose supplements to this FIP.

B. Purpose of the Rule

As noted above, promulgating these Federal regulations addresses an important initial step to fill a regulatory gap with regard to controlling VOC emissions from oil and natural gas operations on the FBIR. There is no other Federal rule, including the recently finalized NSPS and NESHAPs for the Oil and Gas Sector (NSPS OOOO and NESHAP HH),[9] that fills this gap for

[5] North Dakota Century Code (NDCC) (Chapter 23–25 Air Pollution Control); Air Pollution Control Rules (Article 33–15) Chapter 33–15–07 Control of Organic Compound Emissions, and Chapter 33–15–20–04 Control of Emissions from Oil and Gas Well Production Facilities. North Dakota Legislative Branch. Available online at: *http://www.legis.nd.gov/information/acdata/html/33-15.html*. Accessed May 29, 2012. Within EPA approved SIP.

[6] NDCC (Chapter 38–08 Control of Oil and Gas Resources); Article 38–08–06.4. Flaring of Gas Restricted—Imposition of Tax—Payment of Royalties—Industrial Commission Authority; and Article 43–02–03–28 Safety Regulation. Available online at: *https://www.dmr.nd.gov/oilgas/rules/rulebook.pdf*. Accessed July 5, 2012. State only rule.

[7] EPA Administrative Enforcement Dockets, available at: *http://yosemite.epa.gov/oa/rhc/epaadmin.nsf*.

[8] The Bakken Pool is defined as a compilation of crude oil formations consisting of Bakken, Sanish and Three Forks formations.

[9] The requirements in NSPS OOOO and revised NESHAP HH were finalized on April 17, 2012, but not yet promulgated and can be found at *http://www.epa.gov/airquality/oilandgas/actions.html*,

Continued

the particular geologic formations that exist on the FBIR. This is in contrast to oil and natural gas operations off the Reservation which are governed by the NDDoH regulations and NDIC regulations previously discussed. As a result of these regulations, oil and natural gas operators in NDDoH jurisdiction are provided mechanisms for establishing legally and practicably enforceable control requirements that reduce VOC emissions and allow them, in most cases, to forgo time consuming and costly preconstruction permitting requirements before being able to start operations while helping to protect air quality and prevent fires, thus addressing the two concerns that we noted above have justified this final rule.

What we are providing in the way of regulations in the FIP, and the impact that it will have on permitting is generally consistent with the approach that we have approved of in the areas surrounding the FBIR. Owners and operators of oil and natural gas operations in the NDDoH jurisdiction producing from the Bakken Pool are potentially subject to the North Dakota preconstruction permitting requirements found in the North Dakota Air Pollution Control Rules (''North Dakota Rules'') at Chapter 33–15–14 (Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate) and Chapter 33–15–15 (Prevention of Significant Deterioration of Air Quality) if uncontrolled emissions are greater than the permitting thresholds. However, all of the owners and operators are also subject to the North Dakota Rules for the operation of oil and natural gas production operations in the State of North Dakota. The regulations found at Chapter 33–15–07 (Control of Organic Compound Emissions) provide legally and practicably enforceable control requirements and VOC emission reductions when applicable. Additionally, all of the owners and operators are subject to the NDIC regulations for well completions found at Chapter 38–08 Control of Oil and Gas Resources. In many cases, owners and operators complying with these additional North Dakota Rules and NDIC regulations, and following the NDDoH guidance (Bakken Pool Guidance) [10] do not have to obtain preconstruction permits from the NDDoH and can begin construction in a timelier manner.

Similar to the owners and operators of oil and natural gas operations producing from the Bakken Pool in NDDoH jurisdiction, the owners and operators of oil and natural gas operations producing from the Bakken Pool on the FBIR are potentially subject to the Federal preconstruction permitting requirements found in the Federal rules at 40 CFR 52.21 (Prevention of Significant Deterioration of Air Quality), and 40 CFR 49.151 through 49.161 (Federal Tribal NSR Rule). However, on the FBIR only NSPS OOOO and NESHAP HH provide legally and practicably enforceable VOC control requirements outside of the Federal pre-construction permitting requirements. Further, NSPS OOOO only applies to new and modified facilities and only to the oil storage tanks being utilized in the Bakken Pool operations. Thus, most owners and operators of oil and natural gas activities producing in the Bakken Pool must obtain preconstruction permits before production can begin, or if they are not obligated to obtain a permit face no control obligations whatsoever.

This rule will fill this regulatory gap. Consistent with the regulatory structure that exists off the FBIR, and NSPS OOOO, this rule requires VOC control requirements and emissions reductions, monitoring, recordkeeping and reporting with regard to well completions, recompletions, and production and storage operations. This rule will also, to the extent practicable, minimize the construction permitting program implementation burdens upon us and the regulated community while establishing requirements that are unambiguous and legally and practicably enforceable.

However, this rule will not eliminate any potential permitting requirements for oil and natural gas production facilities, but in many cases it will impose legally and practicably enforceable requirements that will lower PTE to a level that will allow the operators to construct without being required to obtain a PSD or Federal preconstruction permit under the Federal Tribal NSR Rule for Indian country. Specifically, where compliance with the requirements of this rule results in PTE VOCs from all pollution-emitting sources at the facility that are less than the thresholds in the PSD and Federal Tribal NSR rules, the source would not trigger permitting requirements and therefore may avoid PSD and minor source preconstruction permitting altogether. To comply with the CAA and avoid PSD or minor source preconstruction permitting altogether, a facility must calculate its PTE VOCs from all pollution-emitting sources at the facility and verify that it is less than the threshold in the PSD and Federal Tribal NSR rules. While we believe that VOC is the pollutant most likely to be emitted in quantities sufficient to require permitting, the facility may not avoid the PSD and Federal Tribal NSR permitting requirements if its emissions of any other regulated NSR pollutant are high enough to trigger PSD requirements.

Included in the docket for this rule are copies of the NDDoH rules and guidance and the NDIC regulations that we considered in this process, as well as a technical support document explaining the requirements as compared to these requirements.

C. Development of the Rule

We developed this rule in consultation with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation. As part of this consultation we evaluated the oil and natural gas activities and sources of VOC emissions that could impact air resources on the Reservation and the differences in the VOC emission reduction requirements for those facilities operating on the FBIR compared to those facilities operating in NDDoH jurisdiction. We also held a meeting with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nations on June 13, 2012.

To develop this rule, we first determined that oil and natural gas production on the FBIR from the Bakken Pool was becoming increasingly prevalent and that information regarding the nature of the fluids produced from the Bakken Pool indicated significant emissions of VOC. We accomplished this step by reviewing information provided by the NDDoH and a host of oil and natural gas operators already producing in the Bakken Pool.[11]

In order to develop appropriate requirements for the control of emissions from the production operations in the Bakken Pool, we studied the nature of the hydrocarbon liquids being produced and existing operations currently in practice. An oil well produces predominantly crude oil,

until such time that the final rule is published in the **Federal Register**.

[10] *Bakken Pool Oil and Gas Production Facilities Air Pollution Control Permitting & Compliance Guidance,* NDDoH Air Quality Division, May 2, 2011. This guidance document was developed by the Bakken VOC Task Force. The Bakken VOC Task Force was a collaboration between the NDDoH and the owners and operators of oil and gas operations producing from the Bakken Pool.

[11] The information reviewed was contained in synthetic minor NSR applications submitted to EPA, which are included in the docket for this rule.

with some natural gas dissolved in it. Each crude oil reservoir has a combination of chemical and physical qualities which makes it unique. Some crude oil types are ''heavy'' (high viscosity and gravity containing very little associated natural gas) and some ''light'' (low viscosity and gravity containing high amounts of associated natural gas). The crude oil from the Bakken Pool is a light crude oil. It contains a higher amount of lighter hydrocarbon components than is seen in heavy crude oil, and therefore has greater potential to produce natural gas in addition to oil. Because of this characteristic, the production of crude oil from the Bakken Pool wells is similar to the production of natural gas liquids from natural gas wells. Natural gas liquids contain lighter end hydrocarbons such as ethane, propane, butane, and pentane, and methane gas. In addition, methods used to extract the hydrocarbons from both natural gas wells and the Bakken Pool wells produce hydrocarbon liquids that also contain water. Therefore, similar to natural gas well production, the production methods in the Bakken Pool involve the separation of the produced liquid into hydrocarbon liquids (oil), natural gas and water.

The oil/natural gas/water emulsion being produced from each well is transported up the wellbore using an electric lifting unit, when required. The emulsion from the wells producing to this facility is transported through 2-phase separators (separators) which are an inherent component of the pipeline. The number of separators on any one production pipeline can vary from one to several. These separators reduce the pressure of the oil/natural gas/water emulsion to initiate the separation of the natural gases from the liquids. The natural gases and liquids are then sent to a 3-phase separator (heater-treater). The heater-treater reduces the pressure closer to ambient pressure and heats the leftover emulsion using a flame-arrested line heater (the heater-treater burner). The combination of higher temperatures and lower pressures allows for additional separation of the natural gas/oil/water phases from each other because of differences in densities.

Following the heater-treater, the produced oil and water are routed to storage tanks. The recovered natural gas is transferred from the heater-treater to the sales natural gas pipeline or to an emissions control unit when a natural gas sales pipeline is not available or the pipeline has a limited capacity. The oil is temporarily stored in these on-site storage tanks prior to being transferred either to tanker trucks or to a lease automatic custody transfer (LACT) unit for conveyance to a refining process plant. Separated water is temporarily stored in the on-site storage tanks prior to being loaded into tanker trucks for transport and disposal.

In addition to the natural gas recovered from the extracted wellhead fluids, low pressure natural gas is also collected from off-gassing that occurs from the storage of the produced oil and water in the on-site tanks at the facilities. This low pressure natural gas is collected via a vent line from the tanks and is either routed to an enclosed combustor, utility flare or pit flare for combustion, or is routed to a vapor recovery unit (VRU) to be injected into a natural gas sales pipeline for conveyance to a natural gas plant. In the event that pipeline injection of recoverable natural gas is temporarily infeasible and no enclosed combustor or utility flare is operational onsite, the natural gas may temporarily be routed through a closed-vent system to a pit flare.

We further identified, in the information provided, that the most prevalent sources of VOC emissions associated with oil and natural gas production come from well completions, recompletions, and production and storage operations. During well completions and recompletions there is a period of flowback of oil, natural gas, and water from newly drilled wells in order to expel drilling and reservoir fluids which vents considerable VOC emissions to the atmosphere. Large amounts of VOCs are also emitted during production when the reservoir fluids are separated into oil, natural gas and water under high pressure using heat. Finally, the transfer and storage of the produced oil and water after separation can be a source of VOC emissions if vented to the atmosphere. In other words, the separated oil and water are both under high pressure and still contain some dissolved natural gas. When the separated oil and water are subjected to atmospheric pressure during transfer to storage tanks, the dissolved natural gas comes out of the liquid. Unless a natural gas sales pipeline is available and is used to receive the evolved natural gas, it becomes a significant source of VOC emissions. Due to the high levels of VOC emissions from these specific operations, we established VOC control and emission reduction requirements in this rule for completion and recompletion operations, heater-treater systems associated with production operations, and storage tanks associated with oil and water storage operations.

Because of the experience that already existed in the Bakken Pool, we consulted with the owners and operators that are currently producing from the Bakken Pool on the FBIR and in NDDoH jurisdiction with regard to the production practices already in place. The practices currently in place are primarily due to product recovery or safety concerns and demonstrate compliance with the applicable NDIC regulations for flaring of co-produced natural gas and safety that address those concerns. These consultations provided us not only with information on the production on and off the Reservation, but also provided us with information on the existing phased approach to controlling practices occurring both from well completion and recompletions, through production operations, and ending with storage and loading operations and an appropriate timeline for installation of the controls. Components of this rule are based on these practices that are already in place off the FBIR.

In addition, we evaluated the North Dakota regulations to help identify appropriate requirements for construction and operation of the regulated equipment and the requirements for controlling VOC emissions from this equipment. The North Dakota Rules at Chapter 33–15–07 provide requirements for the construction and operation of units that separate volatile organic liquids from water, and the control of VOC emissions from such units. Specifically, Chapter 33–15–07 requires that any equipment processing, treating, storing or handling volatile organic liquids must be equipped with covers (in the case of tanks), closed vent systems and control devices, such as VRUs, enclosed combustors, or flares. Chapter 33–15–07 refers to the Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems at 40 CFR 60.690 for the control requirements and the requirements are appropriate to crude oil production operations. Chapter 33–15–07 requires the use of submerged pipe filling during storage operations to limit the evolution of natural gas from the oil and water. We determined that the VOC emission reduction requirements during the separation of the oil, natural gas, and water in this rule were relevant and appropriate as a basis for this rule. The North Dakota Rules at Chapter 33–15–20 provide requirements for the construction and operation of oil and natural gas production equipment and the control of VOC emissions from this equipment. Chapter 33–15–20 includes

requirements for storage tanks, separators and heater-treaters. While the North Dakota Rule only applies to oil or natural gas well production operations which emit sulfur or sulfur compounds to the atmosphere, we determined that the construction and control requirements were relevant and appropriate as a basis for this rule.

We also reviewed the NDIC regulations and the Bakken Pool Guidance. The NDIC regulations found in the Control of Oil and Gas Resources at Chapter 38–08 require natural gas from the heater-treaters to be routed to a natural gas gathering pipeline as soon as practicable. When a pipeline is not available, heater-treater natural gas is required to be routed to a control system or device. The Bakken Pool Guidance details the air pollution control requirements of oil and natural gas operations producing from the Bakken Pool and provides an approach that may be used by owners and operators of oil and natural gas operations producing from the Bakken Pool to demonstrate compliance with the applicable North Dakota Rules. VOC control requirements have been established within this guidance for tank emissions and heater-treater systems and much of the control equipment requirements and monitoring requirements in this rule were adapted from this guidance. Control of VOC emissions from other sources such as dehydration units, pneumatic controllers, pneumatic pumps, truck loading, etc. are also included in this guidance; however, we did not evaluate those components of oil and natural gas production operations. NDDoH identifies acceptable control systems that may be used by the owners and operators. These systems include: a ground pit flare for tank and heater-treater emissions with an assumed 90.0 percent VOC destruction efficiency; a VRU for tank emissions, designed and operated to reduce the mass content of VOC emission by at least 99.0 percent; and an enclosed combustor or utility flare for tank and heater-treater emissions designed and operated to reduce the mass content of VOC emission by at least 98.0 percent. Heater-treater natural gas must be routed to a natural gas gathering pipeline as soon as practicable. In addition, to VOC control requirements, the guidance provides extensive operating and monitoring requirements for the controls. According to the owners and operators that are producing from the Bakken Pool on the FBIR, they are already voluntarily following this guidance in the FBIR. Therefore, we determined that the VOC emission reduction requirements in this document were relevant and appropriate as a basis for establishing monitoring, recordkeeping and reporting requirements necessary for enforceability of this rule.

We also reviewed NSPS OOOO, which provides standards for oil and natural gas production from natural gas wells. However, with the exception of storage tanks and pneumatic controls, none of the production operations from the oil wells in the Bakken Pool that are covered by this rule are covered by NSPS OOOO. While this standard does not regulate the completion, recompletion, or production operations for the operations producing from the Bakken Pool, the common characteristics between natural gas production and the Bakken Pool production and the regulatory requirements specific to completion and recompletion, provided insight into feasible control requirements for these operations. In addition, the monitoring, recordkeeping and reporting requirements for production and storage operations were reviewed, and for necessary conditions to ensure legal and practicable enforceability were included in this rule. Some of the enhancements to the enforceability of the VOC reductions in this rule are derived from this standard.

Although we view the most relevant regulatory analogue to those operations that are in NDDoH's jurisdiction and producing from the Bakken Pool, we also reviewed other state oil and natural gas production-related regulations for areas that are similar to North Dakota in industry, meteorology, or air quality concerns to ensure the proposed requirements are legally and practicably enforceable, as well as reasonably achievable, because the technologies are being commonly used and regulated.

The other state air pollution agencies' rules and/or guidance that we reviewed included: Montana Department of Environmental Quality (MDEQ),[12] Wyoming Department of Environmental Quality Air Quality Division (WDEQ),[13] Colorado Department of Public Health and Environment Air Pollution Control Division (CDPHE)[14] and the Utah Department of Environmental Quality (UDEQ).[15] We also reviewed the regulations for oil and natural gas production facilities under the Texas Administrative Code, implemented by the Railroad Commission of Texas, Oil and Gas Division (RCT),[16] the New Mexico Environment Department Air Quality Bureau (NMED),[17] and the Oklahoma Department of Environmental Quality Air Quality Division (ODEQ).[18] However, we determined that it was not relevant to review state and local rules that are intended to address non-VOC pollutant emissions, nonattainment area requirements or specific localized air quality concerns unless such concerns are also present on the FBIR or control equipment requirements apply to the same emission units this rule seeks to address. Copies of all the state and local agency rules that we considered in this process and other supporting documentation are included in the docket for this rule.

Regarding state regulations and guidance for VOC destruction efficiency and monitoring of enclosed combustors and utility flares, the rule requirements

[12] MDEQ. Chapter 8 Air Quality Subchapter 16 Emission Control Requirements for Oil and Gas Well Facilities Operating Prior to Issuance of a Montana Air Quality Permit. Available online at: *http://www.deq.mt.gov/dir/legal/chapters/CH08-16.pdf.* Accessed May 29, 2012. State only rule.

[13] WDEQ Air Quality Division. Oil and Gas Production Facilities Chapter 6, Section 2 Permitting Guidance. Available online at: *http://deq.state.wy.us/aqd/Oil%20and%20Gas/March%202010%20FINAL%20O&G%20GUIDANCE.pdf.* Accessed May 29, 2012. State only guidance.

[14] Colorado Department of Health and Environment Air Pollution Control Division. Air Quality Control Commission Regulation Number 7—Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides) 5–CCR 1001–9. Available online at: *http://www.cdphe.state.co.us/regulations/airregs/5CCR1001-9.pdf.* Accessed May 29, 2012. State only rule.

[15] Utah Administrative Code, Rule R307–327 Ozone Nonattainment and Maintenance Areas—Petroleum Liquid Storage, and Rule R649–3 Drilling and Operating Practices. Utah Division of Administrative Rules. Available online at: *http://www.rules.utah.gov/publicat/code.htm.* Accessed May 29, 2012. State only rule.

[16] Texas Administrative Code, Title 16 Economic Regulation, Part 1 Railroad Commission of Texas, Chapter 3 Oil and Gas Division. Utah Texas Secretary of State. Available online at: *http://www.sos.state.tx.us/tac/.* Accessed May 29, 2012. State only rule.

[17] New Mexico Administrative Code, Title 20 Environmental Protection, Chapter 2 Air Quality, Part 38 Hydrocarbon Storage Facilities and Part 61 Smoke and Visible Emissions. New Mexico Commission of Public Records, New Mexico Register. Available online at: *http://www.nmcpr.state.nm.us/nmac/_title20/T20C002.htm.* Accessed May 29, 2012. State only rule.

[18] Oklahoma Administrative Code, Title 252 Department of Environmental Quality, Chapter 100 Air Pollution Control, Subchapter 37 Control of Volatile Organic Compounds. Oklahoma Secretary of State—Office of Administrative Rules. Available online at: *http://www.sos.ok.gov/oar/online/viewCode.aspx.* Accessed May 29, 2012. EPA approved SIP sections include: 252:100–37–1, 252:200–37–3, 252:100–37–4, 252:100–37–5, 252:100–37–15, 252:100–37–16, 252:100–37–26, 252:100–37–35, 252:100–37–36, 252:100–37–37, 252:100–37–41, and 252:100–37–42; State only rule sections include: 252:100–37–2, 252:100–37–17, 252:100–37–18, 252:100–37–25, and 252:100–37–38[Revoked].

are generally consistent with all state requirements for enclosed combustors and utility flares.

When reviewing state regulations or guidance for produced oil and water storage tanks, we focused on those that might apply to the tank sizes that are typically constructed at oil and natural gas production facilities on the FBIR, primarily tanks with a storage capacity of 500 bbl each or less (approximately 21,000 gallons). The requirements for construction and emission control of produced oil and water storage tanks are fairly consistent with all state regulations and guidance reviewed, although there are varying degrees of *de minimis* natural gas throughput, storage capacities, or annual flashing emissions below which the requirements do not apply or the control equipment may be removed. The WDEQ requires 98 percent VOC reduction for tanks with a PTE greater than 10 tons per year (tpy) within 60 days of the first date of production, compared to ninety (90) days in this rule. The WDEQ also allows control equipment removal if flashing emissions decline to and are reasonably expected to remain below 8 tpy. We do not provide any *de minimis* throughput or storage capacities below which the requirements in this rule do not apply; however, as discussed previously, we allow owners or operators to use 90.0 percent control equipment after one year after the first date of production if the uncontrolled PTE VOCs emissions from the aggregate of all produced oil storage tanks and any produced water storage tanks interconnected with the produced oil storage tanks declines to less than 20 tpy.

D. Area and Facilities Covered by the FIP

This rule will apply to any person who owns or operates an existing (constructed or modified on or after August 12, 2007), new, or modified oil and natural gas production facility [19] producing from the Bakken Pool and located on the FBIR as set forth in 40 CFR Part 49, Subpart 141—Reservation-Specific FIP for Oil & Natural Gas Production Facilities; FBIR. A more detailed description of the Reservation is provided below in Section IV.

This rulemaking is a step in addressing concerns that have been raised about the potential impacts due to increasing oil and natural gas development on the FBIR. If in the future, we become aware of air quality or permitting burden related to oil and natural gas production for other Reservations or areas of Indian Country, using our authority described in Section V. of this notice, we may propose other FIPs that are deemed necessary or appropriate.

E. Effect on Permitting of Facilities

This rule is not a permitting program. It therefore does not impose or exempt the facilities from any Federal CAA permitting requirements, including the PSD preconstruction permitting requirements at 40 CFR § 52.21 or Federal Tribal NSR Rule permitting requirements for minor sources at 40 CFR 49.151. The purpose of this rule is to provide legal and practical enforceability for the use of VOC emission controls that are already being used voluntarily by the industry and for VOC emissions reductions from those controls. Provided that the facilities are in compliance with the new rule, they may take into account the enforceable VOC emission reductions from the required controls they use when calculating their PTE for determining applicability of the permitting requirements, to the extent that the effect those controls would have on VOC emissions is legally and practicably enforceable.

Regardless of this rule, some facilities' PTE VOCs or any other regulated NSR pollutant may exceed the applicability thresholds for PSD or Federal Tribal NSR Rule permitting even after applying the legally and practicably enforceable emission reductions provided in this rule. In such cases, the owners or operators of these facilities are required to apply for and obtain the appropriate permits.

F. Registration Requirements

This rule does not exempt facilities located on the FBIR from the registration requirements of the Federal Tribal NSR Rule, promulgated on July 1, 2011. Nor does this rule impose any additional registration requirements. Again, the purpose of this rule is to provide legal and practical enforceability for the use of VOC emission controls that are already being used as an industry standard and for VOC emissions reductions from those controls. Provided that the facilities are in compliance with the provisions of this rule, facilities may include the enforceable VOC emission reductions resulting from the controls required in this rule when calculating their PTE, to the extent that the effect those controls would have on VOC emissions is legally and practicably enforceable.

If the PTE VOCs or any other regulated NSR pollutant is less than the major source thresholds in 40 CFR 52.21, but equal to or greater than the thresholds in the Federal Tribal NSR Rule, then registration is required of these facilities (40 CFR 49.160). Those facilities that must obtain a PSD permit pursuant to 40 CFR 52.21 or wish to obtain a preconstruction permit pursuant to 40 CFR 49.151 of the Federal Tribal NSR Rule, in addition to meeting the requirements of this rule, are exempt from this registration requirement.

G. Applicability to New and Existing and Modified Facilities

This rule applies to each owner or operator constructing or operating an oil and natural gas production facility that is located on the FBIR and producing from the Bakken Pool with one or more oil and natural gas wells, any one of which a well completion or recompletion operation is/was initiated on or after August 12, 2007.

For the purposes of this rule, a well completion means the process that allows for the flowback of oil and natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank. A well completion operation means any oil and natural gas well completion with hydraulic fracturing occurring at an oil and natural gas production facility. The completion date is considered the date that construction at an oil and natural gas production facility has commenced. A well recompletion operation means any oil and natural gas well completion with hydraulic refracturing occurring at an oil and natural gas production facility. The recompletion date is considered the date that a modification has occurred at an oil and natural gas production facility. The reason we selected the initiation of completions operations as the date for defining a new facility is that owners and operators use drill rigs prior to initial completion operations and this equipment is not considered a stationary source. In addition, it is not certain during the drilling operations whether a well will be a producing well. Hence it is not known whether an oil and natural gas production facility will be constructed to support that well. The outcome of a completion operation provides the well owners and operators information necessary to determine whether an oil and gas production

[19] For the purposes of this rule, an oil and gas production facility consists of all the air pollution emitting units and activities located on or integrally connected to one or more oil and gas wells that are necessary for production and separation of reservoir fluids, temporary storage of produced and produced water, and preparation of the produced oil, produced water, and produced gas for transport off-site. Additionally, August 12, 2007 is the earliest well completion date identified in the CAFOs.

facility will be constructed. Requiring compliance with this rule upon recompletion of any one well at a facility is consistent with NSPS OOOO. According to the final NSPS OOOO notice, a completion operation associated with refracturing is considered a modification under CAA section 111(a), because physical change occurs to the well resulting in emissions increases during the recompletion operation (for the purposes of this rule the process of refracturing is defined as a recompletion).

In determining the appropriate effective date and the well completion dates for this rule, we evaluated the purpose of the rule, the gaps in regulations, NSPS OOOO and the requirements and stipulations of CAFOs finalized between us and select operators on the FBIR in late August 2011 and amended, in some cases, between then and July 2012. The August 12, 2007, date is the earliest well completion date identified in the CAFOs. These orders established control requirements during the life of the orders for facilities operating on the FBIR by these companies who voluntarily entered into the agreement with us. One goal of this FIP for existing oil and natural gas production facilities is to provide a CAA compliance mechanism for those companies with CAFOs, prior to their expiration, which will occur between August 26, 2012 and August 31, 2012. Copies of all of the CAFOs can be found in the docket for the rule.

H. Attainment Status

All counties in North Dakota that coincide with the FBIR are designated as unclassifiable/attainment for all criteria pollutants under the CAA. *See* 40 CFR 81.335.

Current air quality conditions in the region of the FBIR and in western North Dakota are good, with measured ambient ozone [20] and nitrogen dioxide (NO_2) concentrations substantially lower than the current National Ambient Air Quality Standards (NAAQS) of 75 parts per billion (ppb) for 8-hour average ozone and 100 ppb for the 1-hour average NO_2. The state of North Dakota operates three air quality monitor sites in western North Dakota to characterize regional background air quality. At the Dunn Center monitoring site located, approximately 20 miles southwest of the of the FBIR, the current design values for the ozone and NO_2 NAAQS are 55 ppb and 11 ppb, respectively.

[20] VOC and NO_X are precursors to ozone.

We evaluated the impacts of changes in VOC and nitrogen oxides (NO_X) emissions from enclosed combustors and flares used for control of VOC emissions at oil and natural gas production facilities on the FBIR as part of the technical analysis for this rule. Emissions categories that are substantially controlled by this rule include VOC and NO_X.

Expected potential emissions of sulfur dioxide (SO_2) and particulate matter (PM) pollutants from enclosed combustors and flares used for control of VOC emissions at well pads are estimated to be below the Federal Tribal NSR rule permitting thresholds, and are therefore expected to have insignificant impacts on the NAAQS for these pollutants. Expected potential emissions of carbon monoxide (CO) from enclosed combustors and flares used for control of VOC emissions at well pads are expected to have an insignificant impact on the CO NAAQS because of the level and form of the CO standard in comparison to the emissions.

This rule establishes legally and practicably enforceable VOC emission reductions that reflect reductions that facilities are already routinely achieving through the installation and operation of control equipment for health, safety and market purposes. In addition, this rule does not exempt these facilities from other potentially applicable regulatory or permitting requirements. Therefore, we believe that air quality in this area will not be adversely impacted by this action.

Supporting air quality information is discussed in the Technical Support Document for this rule, found in the rule docket.

I. Benefits and Costs

Produced natural gas and natural gas emissions resulting from oil and natural gas production from the Bakken Pool underlying the FBIR have a high VOC content. Typically, the natural gases associated with the produced oil would be captured as product and injected directly into a natural gas sales pipeline. However, this is a relatively new field and while the natural gas sales pipelines are being developed, they are minimally available at this time. Currently, most produced natural gas and natural gas emissions from oil and natural gas production operations on the FBIR are routed to a combustion device such as a pit flare, utility flare, or enclosed combustor.

Uncontrolled emissions of VOC from operations at an oil and natural gas production facility consisting of a single well and associated production and storage operations were estimated to average approximately 2,165 tons per year (tpy). Of this total, approximately 1,610 tpy of VOC results from produced natural gas emissions from the heater-treater and 555 tpy of VOC is emitted from the produced oil and water storage tanks. This rule requires that emissions from the heater-treater and the storage tanks be routed to a combustion device. We estimate that, on average, the control requirements in this rule will reduce VOC emissions from an oil and natural gas production facility by approximately 2,090 tpy per well.[21]

The costs of the control equipment required by this rule depend, in part, on the number of wells associated with each oil and natural gas production facility. Generally, as the number of wells located at oil and natural gas production facilities increase, the volume of oil and natural gas production and associated emissions also increase. Multiple wells at an oil and natural gas production facility can often share control equipment if there is sufficient capacity to handle the additional produced natural gas and natural gas emissions; thus, the costs of the control equipment per well potentially decreases at oil and natural gas production facilities that consist of multiple wells. The Bureau of Land Management (BLM) has estimated that future development in the area of North Dakota encompassing the FBIR is likely to feature an average of 1.5 wells per facility.[22] Based on information from synthetic minor permit applications and environmental assessments conducted by the Bureau of Indian Affairs,[23] we believe a value of two wells per facility provides a conservative estimate of well density for future development on the FBIR.

We calculated the total annual cost for a two-well facility utilizing a pit flare, utility flare, and two enclosed combustors as control equipment. For this operating scenario, we have

[21] The Technical Support Document includes a more detailed explanation of benefits and costs. It can be found in the docket for the final rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov* (hereinafter referred to as TSD).

[22] October 2, 2009 Bureau of Land Management (BLM) report titled ''Reasonable Foreseeable Development Scenario for Oil and Gas Activities on Bureau Managed Lands in the North Dakota Study Area.'' This report was supplemented on February 25, 2011 with the document titled ''Revised Activity and Surface Disturbance Projections for the Reasonable Foreseeable Development Scenario for Oil and Gas Activities on Bureau Managed Lands in the North Dakota Study Area''. Both documents are included in the docket for this rule and are publicly available at the following Web site: *http://www.blm.gov/mt/st/en/fo/north_dakota_field/rmp/RFD.html.*

[23] See TSD at Section 4. Reasonably Foreseeable Development.

estimated that the total annual cost of compliance with this rule would be approximately $52,000 per facility. Using the estimated average of 4,180 tpy VOC reduction from a facility consisting of two wells and associated production and storage operations, we calculated the cost effectiveness of this rule as less than $15 per ton VOC reduced.

Based on the reasonably foreseeable development in the 2011 BLM supplemental report, we estimate that a maximum of 1,000 facilities may be developed on the FBIR by 2029. Applying a maximum total annual cost impact for a two-well facility of approximately $52,000, the maximum annual cost of compliance with this rule on the oil and natural gas industry is estimated to be approximately $50 million. However, we believe this is a conservative estimate and that actual annual costs would be much lower due to factors such as increased facility well density, standard industry practice to use VOC control equipment, and anticipated pipeline infrastructure development, which is explained further in the technical support document for this rule.

IV. The Fort Berthold Indian Reservation

The Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nations are a federally-recognized Indian tribe organized under a Constitution and By-Laws ratified by the Tribes on May 15, 1936 and approved by the Secretary of the Interior on June 29, 1936 (with relevant amendments to the Constitution and By-Laws approved by the Department of the Interior on March 11, 1985). *See* 75 FR 60813 (October 1, 2010); Constitution and By-Laws of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nations. The FBIR was established pursuant to the Treaty of Fort Laramie of 1851 and addressed in subsequent agreements and Executive Orders, including the Agreement at Fort Berthold, 1866, and Executive Orders in 1868, 1870 and 1880. As described in the Tribes' Constitution and By-Laws (and as approved by the Secretary of the Interior), the FBIR currently includes all lands within the exterior boundaries of the Reservation, which is defined by the Act of March 3, 1891 (26 Statute 1032) and which includes all lands added to the Reservation by Executive Order of June 17, 1892.

Pursuant to CAA section 301(d), 42 U.S.C. 7601(d), we are authorized to treat eligible Indian tribes in the same manner as states (TAS) for purposes of implementing CAA provisions over their entire Reservation and over any other areas within their jurisdiction. *See* 63 FR 7254–57 (February 12, 1998) (explaining that CAA section 301(d) includes a delegation of authority from Congress to eligible Indian tribes to implement CAA programs over all air resources within the exterior boundaries of their Reservations). The Three Affiliated Tribes have not applied for TAS for the purpose of administering a Tribal Implementation Plan (TIP) under the CAA. There is thus currently no EPA-approved plan implementing the functions and provisions of this FIP on the FBIR. The FIP the EPA is promulgating today fills this regulatory gap and applies to all lands on the FBIR, which is defined by the Act of March 3, 1891 (26 Statute 1032) and which includes all lands added to the Reservation by Executive Order of June 17, 1892.

V. EPA's Authority To Promulgate a FIP

Section 301(d) of the CAA, 42 U.S.C. 7601(d), directs us to promulgate regulations specifying the provisions of the Act for which it is appropriate to treat Indian tribes in the same manner as states. Pursuant to this statutory directive, EPA promulgated regulations entitled, ''Indian Tribes: Air Quality Planning and Management'' (TAR) 63 FR 7254 (February 12, 1998). Our regulations delineate the CAA provisions for which it is appropriate to treat tribes in the same manner as a state. *See* 40 CFR 49.3, 49.4. Among those provisions for which we determined such treatment was inappropriate are CAA section 110(a)(1) (State Implementation Plan (SIP) submittal and implementation deadlines) and CAA section 110(c)(1) (directing EPA to promulgate a Federal Implementation Plan (FIP) ''within 2 years'' after we find that a state has failed to submit a required plan, or has submitted an incomplete plan, or within 2 years after we disapproved all or a portion of a plan). *See* 40 CFR 49.4(a), (d); 63 FR at 7262–66 (February 12, 1998).

The TAR preamble clarified that by including CAA section 110(c)(1) on the § 49.4 list, ''EPA is not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country. In the absence of an express statutory requirement, EPA may act to protect air quality pursuant to its ''gap-filling'' authority under the Act as a whole. *See, e.g.* CAA section 301(a).'' 63 FR at 7265 (February 12, 1998). The preamble confirmed that ''EPA will continue to be subject to the basic requirement to issue a FIP for affected tribal areas within some reasonable time.'' *Id.* (referencing § 49.11(a) which provides that the Agency will promulgate a FIP to protect tribal air quality within a reasonable time if tribal efforts do not result in adoption and approval of tribal plans or program).[24]

The preamble to the TAR set forth our view articulated in the proposed rule that, based on the ''general purpose and scope of the CAA, the requirements of which apply nationally, and on the specific language of sections 301(a) and 301(d)(4), Congress intended to give to the Agency broad authority to protect tribal air resources.'' *Id.* at 7262. It further discussed our intent to ''use its authority under the CAA 'to protect air quality throughout Indian country' by directly implementing the Act's requirements in instances where tribes choose not to develop a program, fail to adopt an adequate program or fail to adequately implement an air program.'' *Id.*

The NDDoH, the CAA permitting authority for areas outside of Indian country, including outside of the FBIR, has promulgated rules to control emissions from oil and natural gas production facilities. Since there is not currently an approved FIP specifically covering the reduction of VOC emissions related to natural gas emissions from oil and natural gas production facilities on the FBIR, a regulatory gap exists with regard to such facilities operating within the exterior boundaries of the Reservation. This FIP will establish legally and practicably enforceable requirements to control and reduce VOC emissions. Therefore, in this rule, we determined that it is necessary and appropriate to exercise our discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a FIP to remedy an existing regulatory gap under the Act with respect to the FBIR.

VI. Summary of FIP Provisions

A. Applicability

This rule applies to oil and natural gas facilities producing from the Bakken Pool that are constructed and operating on the FBIR in North Dakota on or after August 12, 2007. Specifically, this rule applies to facilities on the FBIR within the Crude Petroleum and Natural Gas Extraction Industry, North American

[24] Section 49.11(a) states that the Agency, ''[s]hall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 301(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.'' 40 CFR 49.11(a).

Industry Classification System (NAICS) Code 211111.

B. Compliance Schedule

Compliance with the rule is required no later than November 13, 2012 or upon initiation of completion or recompletion operations, whichever is later. Upon signature by the Administrator, we will post this rule on our Internet site (*http://www.epa.gov/region8/air/fbirfip.html*) and notify the owners and operators and the Tribes.

C. Provisions for Delegation of Administration to the Tribes

The provisions in § 49.141 establish the steps by which the Three Affiliated Tribes may request delegation to assist us with the administration of this rule and the process by which the Regional Administrator of EPA Region 8 may delegate to the Tribes the authority to assist with such administration of this rule. As described in the regulatory provisions, any such delegation will be accomplished through a delegation of authority agreement between the Regional Administrator and the Tribes. This section provides for administrative delegation of this federal rule and does not affect the eligibility criteria under CAA section 301(d) and 40 CFR 49.6 for TAS should the Tribes decide to seek such treatment for the purpose of administering their own EPA-approved program under Tribal law. Administrative delegation is a separate process from TAS under the TAR. Under the TAR, Indian tribes seek EPA-approval of their eligibility to run CAA programs under their own laws. The Three Affiliated Tribes would not need to seek TAS under the TAR for purposes of requesting to assist us with administration of this rule through a delegation of authority agreement. In the event such an agreement is reached, the rule would continue to operate under federal authority throughout the FBIR, and the Tribes would assist us with administration of the rule to the extent specified in the agreement.

D. General Provisions

The provisions in § 49.142 General Provisions provide: (1) Definitions that apply to this rule; (2) assurance that we will maintain its authority to require testing, monitoring, recordkeeping, and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance; and (3) assurance that nothing in the rule will preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a facility would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

E. Construction and Operational Control Measures

The provisions in § 49.143 Construction and Operational Control Measures provide requirements to reduce VOC emissions during well completion and recompletion operations. The owner or operator must route all casinghead natural gas emissions associated with completion and recompletion operations to a utility flare or a pit flare capable of reducing the mass content of VOCs in the natural gas vented to it by at least 90.0 percent. We note that the well completion and recompletion control requirements to use pit flares or utility flares that have the capability to reduce the mass content of VOC in the natural gas emissions routed to them by at least 90.0 percent by weight are the minimum level of control that would be allowed under this rule. Owners and operators may also choose to perform reduced emission completions and recompletions,[25] which would exceed the 90.0 percent VOC emission reduction requirement. This section also requires the control of production and storage operations and imposes a timeline for installation of the controls on these operations. The owner or operator is required to reduce the mass content of VOC emissions from natural gas during oil and natural gas production and storage operations by at least 90.0 percent on the first date of production. Within ninety (90) days of the first date of production, we require the owner or operator to route the natural gas from the production and storage operations through a closed-vent system to a utility flare or equivalent combustion device capable of reducing the mass content of VOC in the natural gas vented to the device by at least 98.0 percent. The owner or operator also has the option to design their production and storage operations to recover the natural gas as product and inject it into a natural gas gathering pipeline system for sale or other beneficial purpose. For those owners or operators that choose to capture the natural gas as product rather than a pollutant to be controlled, the natural gas may temporarily be routed through a closed-vent system to an enclosed combustor, utility flare or pit flare in instances where injection of the product into the pipeline is temporarily infeasible. In these situations, the pit flare is considered an emergency standby unit used for unplanned flare events such as temporarily limited pipeline capacity, equipment breakdown and/or other upsets that are beyond a producer's control and the pit flare is used to safely burn the natural gas product that could otherwise pose a potential risk to workers, the community, or the environment. The owner or operator, however, must limit use of the pit flare in these instances to 500 hours of operation in any consecutive 12-month period. This limit on the hours of operation of the pit flare in such situations provides a balance of air quality, safety and environmental protection, to address public concerns expressed on the proposed synthetic minor NSR permits with the use of pit flares, and flexibility for the operators, to address claims that continuous injection into a natural gas sales pipeline may not be possible at all times.

The rule requires the owner or operator to route all standing, working, breathing and flashing losses from the produced oil storage tanks and any produced water storage tanks interconnected with the produced oil storage tanks through a closed vent system to either an operating system designed to recover and inject the natural gas emissions into a natural gas gathering pipeline system for sale or other beneficial use, or to an enclosed combustor or utility flare capable of reducing the mass content of VOC in the natural gas emissions vented to the device by at least 98.0 percent. We note that while NSPS OOOO requires 95% VOC reduction of emissions from storage tanks, owners and operators of oil and natural gas production facilities on the FBIR have indicated that a 98% VOC destruction efficiency in the Bakken Pool Guidance is achievable and committed in their synthetic minor NSR applications to reduce the mass content of VOC emissions routed to the enclosed combustors or utility flares used for storage tank control by at least 98.0% by weight. Since oil and natural gas production on the FBIR has higher VOC content than typical natural gas production and the overall BTU value is generally higher, this should result in more efficient VOC destruction. Therefore, we believe that a requirement of 98.0% reduction of VOC emissions during continued production operations is appropriate. However, to prevent duplicative federal requirements for

[25] U.S. Environmental Protection Agency. Lessons Learned from Natural Gas STAR Partners: Reduced Emissions Completions for Hydraulically Fractured Natural Gas Wells. Office of Air and Radiation: Natural Gas Star Program. Washington, DC. Available at: *http://epa.gov/gasstar/documents/reduced_emissions_completions.pdf.* Accessed July 26, 2012.

owners and operators of storage tanks on the FBIR subject to both this rule and NSPS OOOO, storage tanks subject to and controlled under the requirements specified in 40 CFR part 60, subpart OOOO are considered to meet the storage tank control requirements of this rule. No further requirements apply for such storage tanks under this rule. In addition, like the Bakken Pool Guidance, the rule provides that if the uncontrolled PTE VOCs from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period, then the owner or operator may use a utility flare or enclosed combustor that is capable of reducing the mass content of VOC in the natural gas emissions vented to the device by only 90.0 percent upon written approval by the EPA.[26]

The requirements to use pit flares, enclosed combustors, and utility flares are based on requirements in the North Dakota Rules at Chapters 33–15–07 and 33–15–20, and the Bakken Pool Guidance. These control devices must be operated under specific conditions as specified in § 49.144 Control Equipment Requirements and § 49.145 Monitoring Requirements. The VOC destruction efficiencies of 90.0 and 98.0 percent are the same efficiencies required in the Bakken Pool Guidance.[27]

F. Control Equipment Requirements

The provisions in § 49.144 Control Equipment Requirements require the use of covers on all produced oil and water storage tanks and the use of closed-vent systems with all VOC capture and control equipment. These requirements are derived from the North Dakota Rules at Chapter 33–15–07. Section 49.144 also specifies construction and operational requirements for the covers and closed-vent systems. The construction and operational requirements of the covers and closed-vent systems are based on the NSPS OOOO requirements and are intended to provide legal and practical enforceability. In addition, § 49.144 requires specific construction and operational requirements of pit flares, enclosed combustors, and utility flares. These requirements are derived from the Bakken Pool Guidance and have been enhanced where necessary to provide legal and practical enforceability.

The provisions in § 49.144 require that each owner and operator equip the openings on each produced oil storage tank and each produced water storage tank that is interconnected with produced oil storage tanks with a cover that ensures that natural gas emissions are efficiently routed through a closed-vent system to a vapor recovery system, an enclosed combustor, or a utility flare. Each cover and all openings on the cover (*e.g.,* access hatches, sampling ports, and gauge wells) must form a continuous barrier over the entire surface area of the produced oil and produced water in the storage tank. Each cover opening must be secured in a closed, sealed position (*e.g.,* covered by a gasketed lid or cap) whenever material is in the tank on which the cover is installed except during those times when it is necessary to use an opening as follows: (1) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit); or (2) to inspect or sample the material in the unit; or to inspect, maintain, repair, or replace equipment located inside the unit. These requirements are consistent with the requirements for storage tanks under NSPS OOOO and will ensure that the requirements apply to any storage tanks that are not subject to NSPS OOOO.

Each owner and operator is required to use closed-vent systems to collect and route natural gas emissions to the respective VOC control devices. All vent lines, connections, fittings, valves, relief valves, or any other appurtenance employed to contain and collect gases, and transport them to the VOC control equipment must be maintained and operated properly during any time the control equipment is operating and must be designed to operate with no detectable natural gas emissions. If a closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the natural gas, from entering the VOC control devices, the owner or operator must meet one of the following options for each bypass device: (1) At the inlet to the bypass device properly install, calibrate, maintain, and operate a natural gas flow indicator capable of taking periodic readings and sounding an alarm when the bypass device is open such that the natural gas is being, or could be, diverted away from the control device and into the atmosphere; or (2) secure the bypass device valve in the non-diverting position using a car-seal or a lock-and-key type configuration. These requirements are consistent with the requirements for storage tanks under NSPS OOOO and will ensure that the requirements apply to any storage tanks that are not subject to NSPS OOOO.

Each owner or operator is required to follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions from each enclosed combustor or utility flare. Each enclosed combustor must have the capacity to reduce the mass content of the VOC in the natural gas routed to it by at least 98.0 percent for the minimum and maximum natural gas volumetric flow rate and British Thermal Unit (BTU) content routed to it. We note that the NSPS OOOO requires owners and operators to demonstrate that enclosed combustors and utility flares achieve the required VOC reduction by conducting performance tests. Those units that have been tested by the manufacturer in accordance with specific requirements in the rule, or that are designed and operated in accordance with applicable requirements in 40 CFR 60.18(b), satisfy the requirements of performance testing by the owner or operator. For the purposes of this rule, we require that all utility flares installed per this rule meet the requirements in 40 CFR 60.18(b), and all enclosed combustors installed per this rule must be tested according to the NSPS OOOO performance testing requirements. Until such time that compliance is required with the storage vessel requirements in the NSPS OOOO standard, however, the owner or operators can demonstrate compliance using methods specified in this rule.

We determined that certain work practice and operational requirements are also necessary for the practical enforceability of the VOC emission reduction requirement that the enclosed combustors or utility flares must achieve. Flares and combustors must be operated within specific parameters to effectively destroy VOC emissions. This was discussed in great detail in the preamble and technical support

[26] If the owner or operator receives written approval for a new method, the owner or operator must calculate potential to emit based on the new EPA-approved method.

[27] Based on our consultation with the owners and operators producing from the Bakken Pool, in addition to these particular provisions we also identified for regulating emissions from well completions and recompletions. These control operations are already being performed during these operations for product recovery or safety purposes. These consultations, provided us not only with information on the production practices occurring both on and off the Reservation, but it also provided us with information on the existing phased approach to controlling emissions from well completion and recompletions, through production operations, and ending with storage and loading operations and an appropriate timeline for installation of the controls. Those components in this section are based on these practices that are already in place.

documents to the proposed and final NSPS OOOO [15]. Therefore, each owner or operator must ensure that each enclosed combustor or utility flare is: (1) Operated at all times that natural gas is routed to it; (2) operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device); (3) equipped with a flash-back flame arrestor; (4) equipped with a continuous burning pilot flame and thermocouple, or equipped with an electronically controlled automatic ignition system; (5) equipped with a malfunction alarm and remote notification system to detect if the pilot flame fails while natural gas is being routed through the device; (6) equipped with a continuous recording device, such as a chart recorder, data logger or similar device, or connected to a Supervisory Control and Data Acquisition (SCADA) system, to monitor and document proper operation of the enclosed combustor or utility flare; (7) maintained in a leak free condition; and (8) operated with no visible smoke emissions. These requirements are consistent with Bakken Pool Guidance.

Section 49.144 requires that each owner or operator limit the use of pit flares to: the control natural gas emissions during well completion operations; the control VOC emissions in the event the natural gas that is being recovered for sale or other beneficial purpose must be diverted to an emergency control device because injection into the pipeline is temporarily infeasible and the enclosed combustor or utility flare installed at the oil and natural gas production facility is not operational; or use when total uncontrolled PTE VOCs from all produced oil storage tanks and any produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility have declined to less than, and are reasonably expected to stay below, 20 tons in any consecutive 12-month period. Each pit flare must be operated to reduce the mass content of VOC in the natural gas routed to it by at least 90 percent and must be operated with no visible smoke emissions.[28] Each pit flare must be equipped with an electronically controlled automatic ignition system with malfunction alarm and remote notification system if the pilot flame fails. Each pit flare must be visually inspected for the presence of a pilot flame any time natural gas is being routed to it and if the pilot flame fails, it must be relit as soon as safely possible and the automatic ignition system must be repaired or replaced before the pit flare is used again.

As North Dakota has done in the Bakken Pool Guidance, § 49.144 allows owners or operators of oil and natural gas production facilities to use control devices other than an enclosed combustor or utility flare, provided they are capable of achieving at least a 98.0 percent VOC destruction efficiency and upon our written approval. This provision will allow for owner or operators to take advantage of technological advances in VOC emission control for the oil and natural gas production industry and will provide us with valuable information on any new control technologies.

G. Monitoring Requirements

Section 49.145 Monitoring Requirements requires each owner or operator conduct certain monitoring that we determined is necessary for the practical enforceability of the VOC emission reduction requirements, including but not limited to: (1) Monitoring of the hours of operation of each pit flare used to control VOC emissions in the event the natural gas that is being recovered for sale or other beneficial purpose must be diverted to an emergency control device because injection into the pipeline is temporarily infeasible and the enclosed combustor or utility flare installed at the oil and natural gas production facility is not operational; (2) Monitoring of the number of barrels of oil produced at the facility each time the oil is unloaded from the produced oil storage tanks; (3) Monitoring of the volume of natural gas from the heater-treater sent to each enclosed combustor, utility flare, and pit flare at all times; (4) Monitoring of the volume of standing, working, breathing, and flashing losses from the produced oil and produced water storage tanks sent to each vapor recovery system, enclosed combustor, utility flare, and pit flare at all times; (5) Directly measuring, or calculating using EPA approved models, various parameters (i.e., product throughput, enclosed combustor flame presence, temperature, etc.) related to the proper operation of emissions units and required control devices to assure compliance with the emissions reduction requirements and operational limitations; and (6) Visibility monitoring for detecting visible smoke from enclosed combustors, utility flares, and pit flares.

These requirements are derived from the Bakken Pool Guidance in conjunction with NSPS OOOO. The monitoring, recordkeeping and reporting requirements for the covers, close-vent systems, pit flares, enclosed combustors, and utility flares are based, in part, on the requirements in the Bakken Pool Guidance. Specifically, our review and determination that these requirements are appropriate, as well as the Bakken Pool Guidance provides the basis for monitoring the flares and enclosed combustors. The monitoring of the covers and closed-vent systems, in addition to the recordkeeping and reporting requirements are based on the NSPS OOOO requirements for these units and are intended to provide legal and practical enforceability.

H. Recordkeeping Requirements

Section 49.146 Record Keeping Requirements requires that each owner or operator of an oil and natural gas production facility keep specific records to be made available upon our request, in lieu of voluminous reporting requirements. The records that must be kept include, but are not limited to, all required measurements, monitoring, and deviations or exceedances of rule requirements and corrective actions taken, as well as any manufacturer specifications and guarantees or engineering analyses. These record keeping requirements were derived independently of the North Dakota Rules and Bakken Pool Guidance and provide legal and practical enforceability to the control and emission reduction requirements of this rule.

I. Reporting Requirements

Section 49.147 Reporting Requirements requires that each owner or operator of an oil and natural gas production facility prepare and submit an annual report, beginning one year after this rule becomes effective covering the period for the previous calendar year. The report must include a summary of required records identifying each oil and natural gas production well completion or recompletion operation for each facility conducted during the reporting period, an identification of the first date of production for each oil and natural gas production well at each facility that commenced operation during the reporting period, and a summary of deviations or exceedances of any requirements of the FIP and the corrective measures taken. Additionally,

[28] Owners and operators of oil and natural gas production facilities on the FBIR have indicated that a 90.0% VOC destruction efficiency in the Bakken Pool Guidance is achievable using a pit flare and committed in their synthetic minor NSR applications to reduce the mass content of VOC emissions routed to a pit flare by at least 90.0% by weight.

a report must be submitted for any performance test we require.

We decided not to require owners or operators to register their oil and natural gas production facilities, because the Federal Tribal NSR Rule at 40 CFR 49.151 already requires registration of existing minor sources and such a requirement in this rule would be redundant.

These reporting requirements were derived independently of the North Dakota Rules and Bakken Pool Guidance and provide legal and practical enforceability to the control and emission reduction requirements of this rule.

VII. Statutory and Executive Order

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

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.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of 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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule will not have a significant economic impact on a substantial number of small entities due to the reduced regulatory requirement, and thus the regulatory burden, to obtain Federal CAA permits that this rule provides. We continue to be interested in the potential impacts of this rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, Section 205 of UMRA allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under Section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, we determined that this rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any one year. In addition, this rule does not contain a significant federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

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, we 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 we consult with State and local officials early in the process of developing regulations. We 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 regulations.

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 regulates under the CAA certain stationary sources in Indian country that are not subject to approved CAA programs of the State of North Dakota. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between us and State and local governments, we specifically solicit comment on this rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires us to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

Under Section 5(b) of Executive Order 13175, we may not issue a regulation that has Tribal 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 Tribal governments, or we consult with Tribal officials early in the process of developing the proposed regulation. Under Section 5(c) of Executive Order 13175, we may not issue a regulation that has Tribal implications and that preempts Tribal law, unless the Agency consults with Tribal officials early in the process of developing the proposed regulation.

We concluded that this final rule will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. These regulations would affect the FBIR community by filling a gap in air quality regulations and thus creating a level of air quality protection not previously provided under the CAA. The gap-filling approach used in this rule would create Federal requirements similar to those that are already in place in areas adjacent to the Reservation covered by the proposal. Finally, although Tribal governments are encouraged to partner with us on the implementation of these regulations, they are not required to do so. Since this final rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law, the requirements of Sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, the EPA consulted with Tribal officials and representatives of the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nations early in the process of developing this regulation to permit them to have meaningful and timely input into its development.

Tribal consultation with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation was first initiated on February 17, 2012 when we mailed a letter inviting the Tribes to consult on the first group of synthetic minor permits being issued on the Reservation under the Tribal NSR Rule. Then, on March 29, 2012, EPA senior management and the Chairman of the Tribes along with other government officials met via conference call to discuss the proposed FIP to be developed for the FBIR. We formally invited the Tribes to consult about the FIP in a letter dated April 10, 2012 to Chairman Tex Hall, of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation Council.

We again met with members of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation Council on June 13, 2012 in New Town to consult and receive input from the Tribes as we developed the FIP. In attendance from the Council were the vice Chairman and two council members. The Tribes' legal counsel was also in attendance. The purpose of the consultation was twofold: (1) Update the Tribes on EPA's efforts to develop the FIP so that the air quality on the FBIR is protected and oil and natural gas development continues; and (2) discuss the Tribes' preferences regarding involvement in the FIP process. We provided information on our plan to prepare a FIP to ensure air quality protection while preventing delays in oil and natural gas production. EPA solicited the Tribes' input on the FIP development. The Council members present at the consultation meeting indicated that they strongly desired the FIP rule to be consistent with North Dakota's requirements for oil and natural gas production facilities in order to keep a level playing field for development and continue uninterrupted development of a key economic resource for the Tribe. The Council members expressed interest in the future delegation of the FIP so that the Tribes can implement the rule in place of EPA. The Council members also expressed interest in providing the Tribes' assistance in setting up a public hearing for the rule.

As noted above, the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nations have indicated preliminary interest in seeking administrative delegation of the Tribal NSR rule to assist us with administration of that rule. We will continue to work with the Tribes if administrative delegation is something the Tribes decide to pursue.

Information containing the consultation process is contained in the docket for this rule.

For purposes of the proposed rule, EPA specifically solicits additional comments on the proposed action from tribal officials.

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

EPA interprets E.O. 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 E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes. In addition, this rule requires control and reduction of emissions of VOCs, which will have a beneficial effect on children's health by reducing air pollution.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action 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 us 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 us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority, low income and indigenous populations because it is in compliance with the National Ambient Air Quality Standards and provides environmental protection for all affected populations including any minority, low income, and indigenous populations.

K. 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and the rule is effective in the CFR August 15, 2012. This rule is effective with actual notice for purposes of enforcement beginning at 5 p.m. (Eastern Daylight Time) on August 3, 2012. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 1, 2012.

Lisa P. Jackson,

Administrator.

40 CFR part 49 is amended as follows:

PART 49—[AMENDED]

■ 1. The authority citation for part 49 continues to read as follows:

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

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

Subpart C—General Federal Implementation Plan Provisions

■ 2. Add §§ 49.140 through 49.147 and an undesignated center heading to appear immediately before the newly added § 49.140 to read as follows:

Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations) in EPA Region 8

§ 49.140 Introduction.

(a) *What is the purpose of §§ 49.140 through 49.147?* Sections 49.140 through 49.147 establish legally and practicably enforceable requirements to control and reduce VOC emissions from well completion operations, well recompletion operations, production operations, and storage operations at existing, new and modified oil and natural gas production facilities.

(b) *Am I subject to §§ 49.140 through 49.147?* Sections 49.140 through 49.147 apply to each owner or operator constructing or operating an oil and natural gas production facility producing from the Bakken Pool with one or more oil and natural gas wells, for any one of which completion or recompletion operations are/were performed on or after August 12, 2007, that is located on the Fort Berthold Indian Reservation, which is defined by the Act of March 3, 1891 (26 Statute 1032) and which includes all lands added to the Reservation by Executive Order of June 17, 1892 (the ''Fort Berthold Indian Reservation'').

(c) *When must I comply with §§ 49.140 through 49.147?* Compliance with *§§ 49.140 through 49.147* is required no later than November 13, 2012 or upon initiation of completion or recompletion operations, whichever is later.

§ 49.141 Delegation of authority of administration to the tribes.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to the Mandan, Hidatsa and Arikara Nations the authority to assist the EPA with administration of this Federal implementation plan (FIP). This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 49.6 for treatment in the same manner as a State.

(b) *How does the Tribe request delegation?* In order to be delegated authority to assist us with administration of this FIP, the authorized representative of the Mandan, Hidatsa and Arikara Nations must submit a request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Includes a statement by the Mandan, Hidatsa and Arikara Nations' legal counsel (or equivalent official) that includes the following information:

(i) A statement that the Mandan, Hidatsa and Arikara Nations are an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the Mandan, Hidatsa and Arikara Nations are currently carrying out substantial governmental duties and powers over a defined area and that meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Mandan, Hidatsa and Arikara Nations that provide adequate authority to carry out the aspects of the rule for which delegation is requested.

(3) Demonstrates that the Mandan, Hidatsa and Arikara Nations have, or will have, adequate resources to carry out the aspects of the rule for which delegation is requested.

(c) *How is the delegation of administration accomplished?* (1) A Delegation of Authority Agreement will set forth the terms and conditions of the delegation, will specify the rule and provisions that the Mandan, Hidatsa and Arikara Nations shall be authorized to implement on behalf of the EPA, and shall be entered into by the Regional Administrator and the Mandan, Hidatsa and Arikara Nations. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Mandan, Hidatsa and Arikara Nations have signed the Agreement. Once the

delegation becomes effective, the Mandan, Hidatsa and Arikara Nations will be responsible, to the extent specified in the Agreement, for assisting us with administration of the FIP and shall act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term ''Regional Administrator''' found throughout the FIP is to remain the EPA Regional Administrator and when it is intended to refer to the ''Mandan, Hidatsa and Arikara Nations,'' instead.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Mandan, Hidatsa and Arikara Nations.

(d*) How will any delegation of authority agreement be publicized?* The Regional Administrator shall publish a notice in the **Federal Register** informing the public of any delegation of authority agreement with the Mandan, Hidatsa and Arikara Nations to assist us with administration of all or a portion of the FIP and will identify such delegation in the FIP. The Regional Administrator shall also publish an announcement of the delegation of authority agreement in local newspapers.

§ 49.142 General provisions.

(a) *Definitions.* As used in §§ 49.140 through 49.147, all terms not defined herein shall have the meaning given them in the Act, in subpart A and subpart OOOO of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.151. The following terms shall have the specific meanings given them.

(1) *Bakken Pool* means Oil produced from the Bakken, Three Forks, and Sanish Formations.

(2) *Breathing losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during storage.

(3*) Casinghead natural gas* means the associated natural gas that naturally dissolves out of reservoir fluids during well completion operations and recompletion operations due to the pressure relief that occurs as the reservoir fluids travel up the well casinghead.

(4) *Closed vent system* means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport natural gas from a piece or pieces of equipment to a control device or back to a process.

(5) *Enclosed combustor* means a thermal oxidation system with an enclosed combustion chamber that maintains a limited constant temperature by controlling fuel and combustion air.

(6) *Existing facility* means an oil and natural gas production facility that begins actual construction prior to the effective date of the ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations)''.

(7) *Flashing losses* means natural gas emissions resulting from the presence of dissolved natural gas in the produced oil and the produced water, both of which are under high pressure, that occurs as the produced oil and produced water is transferred to storage tanks or other vessels that are at atmospheric pressure.

(8) *Modified facility* means a facility which has undergone the addition, completion, or recompletion of one or more oil and natural gas wells, and/or the addition of any associated equipment necessary for production and storage operations at an existing facility.

(9) *New facility* means an oil and natural gas production facility that begins actual construction after the effective date of the ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations)''.

(10) *Oil* means hydrocarbon liquids.

(11) *Oil and natural gas production facility* means all of the air pollution emitting units and activities located on or integrally connected to one or more oil and natural gas wells that are necessary for production operations and storage operations.

(12) *Oil and natural gas well* means a single well that extracts subsurface reservoir fluids containing a mixture of oil, natural gas, and water.

(13) *Owner or operator* means any person who owns, leases, operates, controls, or supervises an oil and natural gas production facility.

(14) *Permit to construct or construction permit* means a permit issued by the Regional Administrator pursuant to 40 CFR 49.151, 52.10 or 52.21, or a permit issued by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51, subpart I, authorizing the construction or modification of a stationary source.

(15) *Permit to operate or operating permit* means a permit issued by the Regional Administrator pursuant to 40 CFR part 71, or by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51 or 40 CFR part 70, authorizing the operation of a stationary source.

(16) *Pit flare* means an ignition device, installed horizontally or vertically and used in oil and natural gas production operations to combust produced natural gas and natural gas emissions.

(17) *Produced natural gas* means natural gas that is separated from extracted reservoir fluids during production operations.

(18) *Produced oil* means oil that is separated from extracted reservoir fluids during production operations.

(19) *Produced oil storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced oil.

(20) *Produced water* means water that is separated from extracted reservoir fluids during production operations.

(21) *Produced water storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced water.

(22) *Production operations* means the extraction and separation of reservoir fluids from an oil and natural gas well, using separators and heater-treater systems. A separator is a pressurized vessel designed to separate reservoir fluids into their constituent components of oil, natural gas and water. A heater-treater is a unit that heats the reservoir fluid to break oil/water emulsions and to reduce the oil viscosity. The water is then typically removed by using gravity to allow the water to separate from the oil.

(23) *Regional Administrator* means the Regional Administrator of EPA Region 8 or an authorized representative of the Regional Administrator.

(24) *Standing losses* means natural gas emissions from fixed roof tanks as a result of evaporative losses during storage.

(25) *Storage operations* means the transfer of produced oil and produced water to storage tanks, the filling of the storage tanks, the storage of the produced oil and produced water in the storage tanks, and the draining of the produced oil and produced water from the storage tanks.

(26) *Supervisory Control and Data Acquisition (SCADA) system* generally refers to industrial control computer systems that monitor and control

industrial infrastructure or facility-based processes.

(27) *Utility flare* means thermal oxidation system using an open (without enclosure) flame. An enclosed combustor as defined in §§ 49.140 through 49.147 is not considered a flare.

(28) *Visible Smoke emissions* means a pollutant generated by thermal oxidation in a flare or enclosed combustor and occurring immediately downstream of the flame. Visible smoke occurring within, but not downstream of, the flame, is not considered to constitute visible smoke emissions.

(29) *Well completion* means the process that allows for the flowback of oil and natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

(30) *Well completion operation* means any oil and natural gas well completion using hydraulic fracturing occurring at an oil and natural gas production facility.

(31) *Well recompletion operation* means any oil and natural gas well completion using hydraulic refracturing occurring at an oil and natural gas production facility.

(32) *Working losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during filling and emptying operations.

(b) *Requirement for testing.* The Regional Administrator may require that an owner or operator of an oil and natural gas production facility demonstrate compliance with the requirements of the ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations)'' by performing a source test and submitting the test results to the Regional Administrator. Nothing in the ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations)'' limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, an owner or operator of an oil and natural gas production facility subject to the ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations)'' to demonstrate compliance by performing testing, even where the facility does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations)'' precludes the Regional Administrator from requiring monitoring, recordkeeping and reporting, including monitoring, recordkeeping and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting reports or establishing whether or not an owner or operator of an oil and natural gas production facility has violated or is in violation of any requirement, nothing in the ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nations)'' shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a facility would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

§ 49.143 Construction and operational control measures.

(a) Each owner or operator must operate and maintain all liquid and gas collection, storage, processing and handling operations, regardless of size, so as to minimize leakage of natural gas emissions to the atmosphere.

(b) During all oil and natural gas well completion operations or recompletion operations at an oil and natural gas production facility and prior to the first date of production of each oil and natural gas well, each owner or operator must, at a minimum, route all casinghead natural gas to a utility flare or a pit flare capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in § 49.144 and § 49.145.

(c) Beginning with the first date of production from any one oil and natural gas well at an oil and natural gas production facility, each owner or operator must, at a minimum, route all natural gas emissions from production operations and storage operations to a control device capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in § 49.144 and § 49.145.

(d) Within ninety (90) days of the first date of production from any oil and natural gas well at an oil and natural gas production facility, each owner or operator must:

(1) Route the produced natural gas from the production operations through a closed-vent system to:

(i) An operating system designed to recover and inject all the produced natural gas into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) A utility flare or equivalent combustion device capable of reducing the mass content of VOC in the produced natural gas vented to the device by at least 98.0 percent or greater and operated as specified in § 49.144 and § 49.145.

(2) Route all standing, working, breathing, and flashing losses from the produced oil storage tanks and any produced water storage tank interconnected with the produced oil storage tanks through a closed-vent system to:

(i) An operating system designed to recover and inject the natural gas emissions into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) An enclosed combustor or utility flare capable of reducing the mass content of VOC in the natural gas emissions vented to the device by at least 98.0 percent or greater and operated as specified in § 49.144(c) and § 49.145.

(iii) If the uncontrolled potential to emit VOCs from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period, then, upon written approval by the EPA the owner or operator may use a pit flare, an enclosed combustor or a utility flare that is capable of reducing the mass content of VOC in the natural gas emissions from the storage tanks vented to the device by only 90.0 percent.

(e) In the event that pipeline injection of all or part of the natural gas collected in an operating system designed to recover and inject natural gas becomes temporarily infeasible and there is no operational enclosed combustor or utility flare at the facility, the owner or operator must route the natural gas that cannot be injected through a closed-vent system to a pit flare operated as specified in § 49.144 and § 49.145.

(f) Produced oil storage tanks and any produced water storage tanks interconnected with produced oil storage tanks subject to and controlled under the requirements specified in 40 CFR part 60, subpart OOOO are considered to meet the requirements of

§ 49.143(d)(2). No further requirements apply for such storage tanks under § 49.143(d)(2).

§ 49.144 Control equipment requirements.

(a) *Covers.* Each owner or operator must equip all openings on each produced oil storage tank and produced water storage tank interconnected with produced oil storage tanks with a cover to ensure that all natural gas emissions are efficiently being routed through a closed-vent system to a vapor recovery system, an enclosed combustor, a utility flare, or a pit flare.

(1) Each cover and all openings on the cover (*e.g.,* access hatches, sampling ports, pressure relief valves (PRV), and gauge wells) shall form a continuous impermeable barrier over the entire surface area of the produced oil and produced water in the storage tank.

(2) Each cover opening shall be secured in a closed, sealed position (*e.g.,* covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit; or

(iii) To inspect, maintain, repair, or replace equipment located inside the unit.

(3) Each thief hatch cover shall be weighted and properly seated.

(4) Each PRV shall be set to release at a pressure that will ensure that natural gas emissions are routed through the closed-vent system to the vapor recovery system, the enclosed combustor, or the utility flare under normal operating conditions.

(b) *Closed-vent systems.* Each owner or operator must meet the following requirements for closed-vent systems:

(1) Each closed-vent system must route all produced natural gas and natural gas emissions from production and storage operations to the natural gas sales pipeline or the control devices required by paragraph (a) of this section.

(2) All vent lines, connections, fittings, valves, relief valves, or any other appurtenance employed to contain and collect natural gas, vapor, and fumes and transport them to a natural gas sales pipeline and any VOC control equipment must be maintained and operated properly at all times.

(3) Each closed-vent system must be designed to operate with no detectable natural gas emissions.

(4) If any closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the natural gas emissions, from entering a natural gas sales pipeline and/or any control devices, the owner or operator must meet one of the following requirements for each bypass device:

(i) At the inlet to the bypass device that could divert the natural gas emissions away from a natural gas sales pipeline or a control device and into the atmosphere, properly install, calibrate, maintain, and operate a natural gas flow indicator that is capable of taking continuous readings and sounding an alarm when the bypass device is open such that natural gas emissions are being, or could be, diverted away from a natural gas sales pipeline or a control device and into the atmosphere;

(ii) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration;

(iii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements applicable to bypass devices.

(c) *Enclosed combustors and utility flares.* Each owner or operator must meet the following requirements for enclosed combustors and utility flares:

(1) For each enclosed combustor or utility flare, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions;

(2) For each enclosed combustor or utility flare, the owner or operator must ensure there is sufficient capacity to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to the device;

(3) Each enclosed combustor or utility flare must be operated to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent;

(4) The owner or operator must ensure that each utility flare is designed and operated in accordance with the requirements of 40 CFR 60.18(b) for such flares.

(5) The owner or operator must ensure that each enclosed combustor is:

(i) A model demonstrated by a manufacturer to the meet the VOC destruction efficiency requirements of §§ 49.140 through 49.147 using the procedure specified in 40 CFR part 60, subpart OOOO at § 60.5413(d) by the due date of the first annual report as specified in § 49.147(b); or

(ii) Demonstrated to meet the VOC destruction efficiency requirements of §§ 49.140 through 49.147 using EPA approved performance test methods specified in 40 CFR part 60, subpart OOOO at § 60.5413(b) by the due date of the first annual report as specified in § 49.147(b); or

(iii) Until such time that 40 CFR part 60, subpart OOOO is promulgated, demonstrated to meet the VOC destruction efficiency requirements of §§ 49.140 through 49.147 by using the EPA approved performance test methods specified in 40 CFR part 63, subpart HH at § 63.772(e)(1)(i) through (iii) for hazardous air pollutants, by the due date of the first annual report as specified in § 49.147(b).

(6) The owner or operator must ensure that each enclosed combustor and utility flare is:

(i) Operated properly at all times that natural gas is routed to it;

(ii) Operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device);

(iii) Equipped with a flash-back flame arrestor;

(iv) Equipped with one of the following:

(A) A continuous burning pilot flame, a thermocouple, and a malfunction alarm and remote notification system if the pilot flame fails.

(B) An electronically controlled auto-ignition system with a malfunction alarm and remote notification system if the pilot flame fails while produced natural gas or natural gas emissions are flowing to the enclosed combustor or utility flare;

(v) Equipped with a continuous recording device, such as a chart recorder, data logger or similar device, or connected to a Supervisory Control and Data Acquisition (SCADA) system, to monitor and document proper operation of the enclosed combustor or utility flare;

(vi) Maintained in a leak-free condition; and

(vii) Operated with no visible smoke emissions.

(d) *Pit Flares.* Each owner or operator must meet the following requirements for pit flares:

(1) The owner or operator must develop written operating instructions, operating procedures and maintenance schedules to ensure good air pollution control practices for minimizing emissions from the pit flare based on the site-specific design.

(2) The owner or operator must only use a pit flare for the following operations:

(i) To control produced natural gas and natural gas emissions during well completion operations or recompletion operations;

(ii) To control natural gas emissions in the event that natural gas recovered for pipeline injection must be diverted to an emergency control device because injection is temporarily infeasible and the enclosed combustor or utility flare installed at the oil and natural gas production facility is not operational. Use of the pit flare for this situation is limited to a maximum of 500 hours in any twelve (12) consecutive months during periods when pipeline injection has become temporarily infeasible and no enclosed combustor or utility flare installed at the facility is operational; or

(iii) Control of standing, working, breathing, and flashing losses from the produced oil storage tanks and any produced water storage tank interconnected with the produced oil storage tanks if the uncontrolled potential VOC emissions from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period.

(3) The owner or operator must only use the pit flare under the following conditions and limitations:

(i) The pit flare is operated to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 90.0 percent;

(ii) The pit flare is operated in accordance with the site-specific written operating instructions, operating procedures, and maintenance schedules to ensure good air pollution control practices for minimizing emissions;

(iii) The pit flare is operated with no visible smoke emissions;

(iv) The pit flare is equipped with an electronically controlled auto-ignition system with a malfunction alarm and remote notification system if the pilot flame fails;

(v) The pit flare is visually inspected for the presence of a pilot flame anytime produced natural gas or natural gas emissions are being routed to it. Should the pilot flame fail, the flame must be relit as soon as safely possible and the electronically controlled auto-ignition system must be repaired or replaced before the pit flare is utilized again; and

(vi) The owner or operator does not deposit or cause to be deposited into a flare pit any oil field fluids or oil and natural gas wastes other than those designed to go to the pit flare.

(e) *Other Control Devices.* Upon written approval by the EPA, the owner or operator may use control devices other than those listed above that are capable of reducing the mass content of VOC in the natural gas routed to it by at least 98.0 percent, provided that:

(1) In operating such control devices, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions; and

(2) The owner or operator must ensure there is sufficient capacity to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to such other control devices by at least 98.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to each device.

(3) The owner or operator must operate such a control device to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent.

§ 49.145 Monitoring requirements.

(a) Each owner and operator must measure the barrels of oil produced at the oil and natural gas production facility each time the oil is unloaded from the produced oil storage tanks using the methodologies of tank gauging or positive displacement metering system, as appropriate, as established by the US Department of the Interior's Bureau of Land Management at 43 CFR part 3160, in the ''Onshore Oil and Gas Operations; Federal and Indian Oil & Gas Leases; Onshore Oil and Gas Order No. 4; Measurement of Oil.''

(b) Each owner or operator must monitor the hours that each pit flare is operated to control natural gas emissions in the event that natural gas recovered for pipeline injection must be diverted to an emergency control device because injection is temporarily infeasible and the enclosed combustor or utility flare installed at the oil and natural gas production facility is not operational.

(c) Each owner or operator must monitor the volume of produced natural gas sent to each enclosed combustor, utility flare, and pit flare at all times. Methods to measure the volume include, but are not limited to, direct measurement and gas-to-oil ratio (GOR) laboratory analyses.

(d) Each owner or operator must monitor the volume of standing, working, breathing, and flashing losses from the produced oil and produced water storage tanks sent to each vapor recovery system, enclosed combustor, utility flare, and pit flare at all times. Methods to measure the volume include, but are not limited to, direct measurement or GOR laboratory analyses.

(e) Each owner or operator must perform quarterly visual inspections of tank thief hatches, covers, seals, PRVs, and closed vent systems to ensure proper condition and functioning and repair any damaged equipment. The quarterly inspections must be performed while the produced oil and produced water storage tanks are being filled.

(f) Each owner or operator must perform quarterly visual inspections of the peak pressure and vacuum values in each closed vent system and control system for the produced oil and produced water storage tanks to ensure that the pressure and vacuum relief set-points are not being exceeded in a way that has resulted, or may result, in venting and possible damage to equipment. The quarterly inspections must be performed while the produced oil and produced water storage tanks are being filled.

(g) Each owner or operator must monitor the operation of each enclosed combustor, utility flare, and pit flare to confirm proper operation as follows:

(1) Continuously monitor the enclosed combustor, utility flare, and pit flare operation, using a malfunction alarm and remote notification system for failures, and checking the system for proper operation whenever an operator is on site, at a minimum quarterly;

(2) Continuously monitor all variable operational parameters specified in the written operating instructions and procedures;

(3) Using EPA Reference Method 22 of 40 CFR part 60, Appendix A, confirm that no visible smoke emissions are present, except for periods not to exceed a total of 2 minutes during any hour, during operation of any enclosed combustor, utility flare, or pit flare whenever an operator is on site; at a minimum quarterly. The observation period shall be 1 hour; and

(4) Respond to any observation of improper monitoring equipment operation or any pilot flame failure alarm and ensure the monitoring equipment is returned to proper operation and/or the pilot flame is relit as soon as practicable and safely possible after an observation or an alarm sounds.

(h) Where sufficient to meet the monitoring and recordkeeping requirements in § 49.145 and § 49.146, the owner or operator may use a

Supervisory Control and Data Acquisition (SCADA) system to monitor and record the required data in §§ 49.140 through 49.147.

§ 49.146 Recordkeeping requirements.

(a) Each owner or operator must maintain the following records:

(1) The measured barrels of oil produced at the oil and natural gas production facility each time the oil is unloaded from the produced oil storage tanks;

(2) The volume of produced natural gas sent to each enclosed combustor, utility flare, and pit flare at all times;

(3) The volume of natural gas emissions from the produced oil storage tanks and produced water storage tanks sent to each enclosed combustor, utility flare, and pit flare at all times;

(4) For each oil and natural gas well completion operation and recompletion operation at an oil and natural gas production facility:

(i) Records identifying each oil and natural gas well completion operation and recompletion operation for each oil and natural gas production facility; and

(ii) The latitude and longitude location of the oil and natural gas well; the date, time, and duration of flowback from the oil and natural gas well; the date, time, and duration of any venting of produced natural gas from the oil and natural gas well; and specific reasons for each instance of venting in lieu of capture or combustion. The duration must be specified in hours.

(5) For each enclosed combustor, utility flare, and pit flare at an oil and natural gas production facility:

(i) Written, site-specific designs, operating instructions, operating procedures and maintenance schedules;

(ii) Records of all required monitoring of operations;

(iii) Records of any deviations from the operating parameters specified by the written site-specific designs, operating instructions, and operating procedures. The records must include the enclosed combustor, utility flare, or pit flare's total operating time during which a deviation occurred, the date, time and length of time that deviations occurred, and the corrective actions taken and any preventative measures adopted to operate the device within that operating parameter;

(iv) Records of any instances in which the pilot flame is not present or the monitoring equipment is not functioning in the enclosed combustor, the utility flare, or the pit flare, the date and times of the occurrence, the corrective actions taken, and any preventative measures adopted to prevent recurrence of the occurrence;

(v) Records of any instances in which a recording device installed to record data from the enclosed combustor, utility flare, or pit flare is not operational; and

(vi) Records of any time periods in which visible smoke emissions are observed emanating from the enclosed combustor, utility flare, or pit flare.

(6) For each pit flare at an oil and natural gas production facility, a demonstration of compliance with the use restrictions set forth in § 49.144(d)(2)(ii) is made by keeping records in a log book, or similar recording system, during each period of time that the pit flare is operating. The records must contain the following information:

(i) Date and time the pit flare was started up and subsequently shut down;

(ii) Total hours operated when pipeline injection was temporarily infeasible for the current calendar month plus the previous consecutive eleven (11) calendar months; and

(iii) Brief descriptions of the justification for each period of operation.

(7) Records of any instances in which any closed-vent system or control device was bypassed or down, the reason for each incident, its duration, and the corrective actions taken and any preventative measures adopted to avoid such bypasses or downtimes; and

(8) Documentation of all produced oil storage tank and produced water storage tank inspections required in § 49.145(d) and (e). All inspection records must include, at a minimum, the following information:

(i) The date of the inspection;

(ii) The findings of the inspection;

(iii) Any adjustments or repairs made as a result of the inspections, and the date of the adjustment or repair; and

(iv) The inspector's name and signature.

(b) Each owner or operator must keep all records required by this section onsite at the facility or at the location that has day-to-day operational control over the facility and must make the records available to the EPA upon request.

(c) Each owner or operator must retain all records required by this section for a period of at least five (5) years from the date the record was created.

§ 49.147 Notification and reporting requirements.

(a) Each owner or operator must submit any documents required under this section to: U.S. Environmental Protection Agency, Region 8 Office of Enforcement, Compliance & Environmental Justice, Air Toxics and Technical Enforcement Program, 8ENF–AT, 1595 Wynkoop Street, Denver, Colorado 80202. Documents may be submitted electronically to *r8airreport@epa.gov.*

(b) Each owner and operator must submit an annual report containing the information specified in paragraphs (b)(1) through (4) of this section. The annual report must cover the period for the previous calendar year. The initial annual report is due 1 year after the first date of production for the first oil and natural gas well at each oil and natural gas production facility or 1 year after August 15, 2012, whichever is later. Subsequent annual reports are due on the same date each year as the initial annual report. If you own or operate more than one oil and natural gas production facility, you may submit one report for multiple oil and natural gas production facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (4) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. The EPA may approve a common schedule on which reports required by §§ 49.140 through 49.147 may be submitted as long as the schedule does not extend the reporting period.

(1) The company name and the address of the oil and natural gas production facility or facilities.

(2) An identification of each oil and natural gas production facility being included in the annual report.

(3) The beginning and ending dates of the reporting period.

(4) For each oil and natural gas production facility, the information in paragraphs (b)(4)(i) through (iii) of this section.

(i) A summary of all required records identifying each oil and natural gas well completion or recompletion operation for each oil and natural gas production facility conducted during the reporting period;

(ii) An identification of the first date of production for each oil and natural gas well at each oil and natural gas production facility that commenced production during the reporting period; and

(iii) A summary of cases where construction or operation was not performed in compliance with the requirements specified in § 49.143, § 49.144, or § 49.145 for each oil and natural gas well at each oil and natural gas production facility, and the corrective measures taken.

[FR Doc. 2012–19698 Filed 8–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0324; FRL–9349–6]

Flutriafol; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of flutriafol in or on cotton, undelinted seed; cotton, meal; cotton, refined oil; and cotton gin byproducts. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cotton. This regulation establishes a maximum permissible level for residues of flutriafol in or on cotton commodities. The time-limited tolerances expire on December 31, 2014.

DATES: This regulation is effective August 15, 2012. Objections and requests for hearings must be received on or before October 15, 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–2012–0324, 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: Debra Rate, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 306–0309; email address: *rate.debra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 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 section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 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–2012–0324 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 October 15, 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–2012–0324, 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. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for combined residues of flutriafol, its metabolites and degradates, in or on cotton, undelinted seed at 0.35 parts per million (ppm); cotton, meal at 0.5 ppm; cotton, refined oil at 0.5 ppm; and cotton gin byproducts at 0.50 ppm. These time-limited tolerances expire on December 31, 2014.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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 * * *.''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Flutriafol on Cotton and FFDCA Tolerances

This is the first section 18 request received for the use of flutriafol on cotton. Texas had the worst one-year, 2011, drought since 1895 (Huber, 2011). Under the drought conditions cotton root rot fungus flourished on stressed cotton plants to reduce yields and produce more fungal inoculums that will remain viable for 5–8 years in the soil. The submitted information showed that in 2011, cotton growers suffered 30–66 percent yield losses in fields infested with cotton root rot. Fields infested with cotton root rot disease last year are expected to have even heavier losses this year unless the pest is effectively mitigated.

In Texas, approximately 12% of 2.4 million acres of cotton are infested with the root rot fungus. In 2012, yield losses are expected to be like 2011 or higher without the use of flutriafol. The severe drought condition of 2011 was a non-routine event that stressed cotton plants. The drought stressed cotton is more susceptible to the root rot fungus which causes high yield losses and build-up of fungal inoculums in soil. The drought condition and elevated pest pressure are likely to continue to cause severe yield losses in the 2012 growing season resulting in significant economic losses.

After having reviewed the submission, EPA determined that an emergency condition exists for this State, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of flutriafol on cotton for control of cotton root rot, caused by the fungus *Phymatotrichum omnivorum* in Texas.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of flutriafol in or on cotton. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without advance notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although these time-limited tolerances expire on December 31, 2014, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cotton, undelinted seed; cotton, meal; cotton, refined oil and cotton, gin byproducts after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether flutriafol meets FIFRA's registration requirements for use on cotton or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of flutriafol by a State for special local needs under FIFRA section 24(c). Nor do these tolerances by themselves serve as the authority for persons in any State other than Texas to use this pesticide on cotton absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for flutriafol, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

Consistent with 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 expected as a result of this emergency exemption request and the time-limited tolerances for combined residues of flutriafol, its metabolites and degradates, in or on cotton, undelinted seed at 0.35 ppm; cotton, meal at 0.5 ppm; cotton, refined oil at 0.5 ppm and cotton, gin byproducts at 0.5 ppm.

On November 9, 2011, the Agency published a final rule (76 FR 69643) (FRL–9325–6) establishing tolerances for residues of flutriafol, ((±)-[alpha]-(2-fluorophenyl)-[alpha]-(4-fluorophenyl)-1H-1,2,4-triazole-1-ethanol, in or on multiple commodities. Since the publication of that final rule, the Agency has conducted risk assessments evaluating the use of flutriafol on cotton under section 18 of FIFRA. These new risk assessments have not identified any changes to the hazard data, hazard characterization or end-points relied upon in the November 9, 2011, tolerance rule. The additional exposures and risks associated with residues resulting from the section 18 use on cotton are negligible and do not significantly change the previous acute and chronic aggregate risk. Therefore, establishing the time-limited tolerances on the cotton commodities will not change the most recent aggregate risks resulting from the use of flutriafol, as discussed in the November 9, 2011 **Federal Register**. Refer to the November 9, 2011 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety.

Based on the risk assessments and findings discussed in the final rule published in the **Federal Register** of November 9, 2011, as well as recent documents in the current docket, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to flutriafol residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology (gas chromatography/Nitrogen/Phosphorus detector (NPD) for tolerances and method ICIA AM00306 for ruminant liver) 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, Canada, and Mexico have not established MRLs for flutriafol in or on cotton commodities.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of flutriafol, [(±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1 H -1,2,4-triazole-1-ethanol], including its metabolites and degradates, in or on cotton, undelinted seed at 0.35 ppm; cotton, meal at 0.5 ppm; cotton, refined oil at 0.5 ppm; and cotton, gin byproducts at 0.5 ppm. These tolerances expire on December 31, 2014.

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA sections 408(e) and 408(l)(6). 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 in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances 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).

VIII. 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: August 3, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.629 is amended by revising paragraph (b) to read as follows:

§ 180.629 Flutriafol; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of flutriafol, [(±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1 H -1,2,4-triazole-1-ethanol], including its metabolites and degradates in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration date
Cotton, gin byproducts	0.5	12/31/14
Cotton, meal	0.5	12/31/14
Cotton, refined oil	0.5	12/31/14
Cotton, undelinted seed	0.35	12/31/14

* * * * *

[FR Doc. 2012–19987 Filed 8–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0657; FRL–9356–9]

S-Metolachlor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of S-metolachlor in or on beet, garden, leaves, cilantro, leaves and coriander, seed. Interregional Research Project Number 4 requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 15, 2012. Objections and requests for hearings must be received on or before October 15, 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–2011–0657, is available at *http://www.regulations.gov* or 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: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; email address: *jackson.sidney@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–2011–0657 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 October 15, 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–2011–0657, 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 Tolerance

In the **Federal Register** of September 7, 2011 (76 FR 55329) (FRL–8886–7), 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 1E7898) by Interregional Research Project Number 4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.368 be amended by establishing tolerances for residues of the herbicide S-metolachlor, S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-[2-ethyl-6-methylphenyl)amino]-1-propanol and 4-[2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, in or on cilantro, leaves, fresh at 8.0 parts per million (ppm) cilantro, leaves, dried at 8.0 ppm, coriander, seed at 0.13 ppm and beet, garden, leaves at 1.8 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.*

EPA received one comment to the Notice of Filing. That comment is addressed in Unit IV.C.

Based upon review of the data supporting the petition, EPA corrected the crop definition for ''cilantro'' to ''coriander'' and removed proposed tolerances for fresh and dried cilantro leaves. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the

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

Consistent with 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 S-metolachlor including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with S-metolachlor follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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.

S-Metolachlor exhibits low acute toxicity via oral, inhalation, and dermal routes of exposure. It causes slight eye irritation, and is non-irritating dermally, but is a dermal sensitizer. In subchronic (metolachlor and S-metolachlor) and chronic (metolachlor) toxicity studies in dogs and rats decreased body weight and body weight gain were the most commonly observed effects. No systemic toxicity was observed when metolachlor was administered dermally. No neurotoxicity studies with metolachlor or S-metolachlor are available. However, there was no evidence of neurotoxic effects in the available toxicity studies. Prenatal developmental studies in the rat and rabbit with both metolachlor and S-metolachlor revealed no evidence of a qualitative or quantitative susceptibility in fetal animals. A 2-generation reproduction study with metolachlor in rats showed no evidence of parental or reproductive toxicity. There are no residual uncertainties with regard to pre- and/or postnatal toxicity. Metolachlor has been evaluated for carcinogenic effects in the mouse and the rat. Metolachlor did not cause an increase in tumors of any kind in mice. In rats, metolachlor caused an increase in benign liver tumors in rats but this increase was seen only at the highest dose tested and was statistically significant compared to controls only in females. There was no evidence of mutagenic or cytogenetic effects *in vivo* or *in vitro.* Based on this evidence, EPA has concluded that metolachlor does not have a common mechanism of carcinogenicity with acetochlor and alachlor which are structurally similar. Taking into account the qualitatively weak evidence on carcinogenic effects and the fact that the increase in benign tumors in female rats occurs at a dose 1,500 times the chronic reference dose (cRfD), EPA has concluded that the cRfD is protective of any potential cancer effect.

Specific information on the studies received and the nature of the adverse effects caused by S-metolachlor 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 entitled, ''S-Metolachlor. Human Health Risk Assessment for the Section 3 Requests for Use on Coriander (Cilantro) and Garden Beet Leaves,'' p. 13 in docket ID number EPA–HQ–OPP–2011–0657.

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 S-metolachlor used for human risk assessment is discussed in Unit III. of the final rule published in the **Federal Register** of September 17, 2010 (75 FR 56899) (FRL–8842–3).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to S-metolachlor, EPA considered exposure under the petitioned-for tolerances as well as all existing metolachlor and S-metolachlor tolerances in 40 CFR 180.368. EPA assessed dietary exposures from S-metolachlor in food as follows:

Both the acute and chronic analyses assume tolerance-level residues on all crops with established, pending, or proposed tolerances for metolachlor and/or S-metolachlor. In cases where separate tolerance listings occur for both metolachlor and S-metolachlor on the same commodity, the higher value of the two is used in the analyses.

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 S-metolachlor. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA) Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), 1994–1996 and 1998. As to residue levels in food, EPA assumed tolerance level residues for all uses, 100 percent crop treated (PCT) for all commodities and default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's Nationwide CSFII, 1994–1996 and 1998. As to residue levels in food, EPA assumed tolerance level residues for all uses, 100 PCT for all commodities and default processing factors.

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 determine 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 S-metolachlor. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for S-metolachlor. Tolerance level residues and 100 PCT were assumed for all food commodities with existing tolerances, and default processing factors.

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

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) Screening Concentration in Ground Water (SCI–GROW) models and the USGA National Water-Quality Assessment (NAWQA) Program monitoring data, the Agency calculated conservative estimated drinking water concentrations (EDWCs) of S-metolachlor and metolachlor originating from ground water and surface water. EDWCs for metolachlor and metolachlor were calculated for both the parent compound and the ethanesulfonic acid (ESA) and oxanilic acid (OA) degradates. The environmental fate data have been bridged from the racemic mixture (50:50) of metolachlor to the newer isomer (88:12) S-metolachlor, based on similarities in environmental fate behavior. Tier I and Tier II screening models were employed for this assessment. For surface water, PRZM/EXAMS and FIRST Version1.1.1 models were used to estimate drinking water concentrations for the parent S-metolachlor and the ESA and OA degradates, respectively. The SCI–GROW model was used to predict the maximum acute and chronic concentrations present in shallow groundwater. Current NAWQA monitoring data were also used to determine EDWCs. Based on monitoring and modeling data, total EDWCs for peak and average surface water respectively are 219 ppb (78 ppb parent + 48 ppb metolachlor ESA+ 94 ppb metolachlor OA) and 119 ppb (18 ppb parent + 34 ppb metolachlor ESA+ 67 ppb metolachlor OA). Groundwater EDWCs (peak and average) are 126 ppb (33 ppb parent + 64 ppb metolachlor ESA+ 30 ppb metolachlor OA).y67

For acute exposures are estimated to be 219 ppb for surface water and 126 ppb for ground water.

For chronic exposures for non-cancer assessments are estimated to be 110 ppb for surface water and 126 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 219 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment (cancer and non-cancer), the water concentration of value 126 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).

S-Metolachlor is currently registered for the following uses that could result in residential exposures: Residential lawns or turf by professional applicators. Pennant MAGNUM\TM (EPA Reg. No. 100–950) is labeled for use on commercial (sod farm) and residential warm-season turf grasses and other non-crop land including golf courses, sports fields, and ornamental gardens. Since Pennant MAGNUM\TM is not registered for homeowner purchase or use (i.e., used by professional/commercial applicators), the only potential short-term residential risk scenario anticipated is post-application hand-to-mouth exposure of children playing on treated lawns. S-metolachlor incidental oral exposure is assumed to include hand-to-mouth exposure, object-to-mouth exposure and exposure through incidental ingestion of soil. Small children are the population group of concern. Although the type of site that S-metolachlor may be used on varies from golf courses to ornamental gardens, the scenario chosen for risk assessment (residential turf use) represents what the Agency considers the likely upper-end of possible exposure.

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.''

Other than metolachlor, EPA has not found S-metolachlor to share a common mechanism of toxicity with any other substances, and S-metolachlor does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that S-metolachlor 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.* No increase in susceptibility was seen in developmental toxicity studies in rat and rabbit or reproductive toxicity studies in the rat. Toxicity to offspring was observed at dose levels the same or greater than those causing maternal or

parental toxicity. Based on the results of developmental and reproductive toxicity studies, there is not a concern for increased qualitative and/or quantitative susceptibility following *in utero* exposure to metolachlor or S-metolachlor.

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 S-metolachlor is complete, except for an immunotoxicity and acute and subchronic neurotoxicity studies required under the amendments to the data requirements. However, based on the results of the available toxicity studies, there is no evidence of immunotoxicity or neurotoxicity. Thus, EPA does not expect these data to change the existing POD for risk assessment.

ii. There is no indication that S-metolachlor 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 S-metolachlor causes an increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

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

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to S-metolachlor will occupy 1.5% of the aPAD for all infants < 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to S-metolachlor from food and water will utilize 11.6% of the cPAD for all infants < 1 year 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 S-metolachlor 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).

S-metolachlor 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 S-metolachlor. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures including incidental oral exposure from all possible sources: Combined hand-to-mouth, object-to-mouth, and soil ingestion oral exposure result in an aggregate MOE of 860. Because EPA's level of concern for S-metolachlor 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). An intermediate-term adverse effect was identified; however, S-metolachlor is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the PODs used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for S-metolachlor.

5. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A. of this document, EPA has concluded that the chronic RfD is protective of cancer effects, and, as shown above, the chronic risk assessment indicated that aggregate exposure to S-metolachlor does not pose a risk of concern.

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 S-metolachlor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (gas chromatography with nitrogen phosphorous detector (GC/NPD) method (Method I) for determining residues in/on crop commodities and a gas chromatography with mass spectroscopy detector (GC/MSD) method (Method II) for determining residues in livestock commodities) are available to enforce the tolerance expression. IR–4 and Syngenta have proposed a high pressure liquid chromatography with mass spectroscopy/mass spectroscopy (HPLC/MS/MS) enantiomer-specific method for the enforcement of the proposed tolerances, Method 1848–01. The method uses a chiral HPLC column to separate out the S-enantiomers (SYN506357 and SYN508500) of the hydrolysis products CGA–37913 and CGA–49751. This method has been determined to be adequate for enforcement purposes.

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.

Neither Codex, Canada, or Mexico has established or proposed maximum residue limits (MRLs) for S-metolachlor on cilantro or garden beet leaves.

C. Response to Comments

In the one comment received, the commenter objected to EPA approving use of this chemical and asked that EPA ban further use of this ''toxic chemical.'' The commenter went on to state that there are several toxic effects attributed to this chemical including evidence of carcinogenicity. The Agency understands the commenter's concerns and recognizes that some individuals believe that certain pesticide chemicals should not be permitted in our food. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances have demonstrated that the pesticide meets the safety standard imposed by that statute. When new or amended tolerances are requested for residues of a pesticide in food or feed, the Agency, as is required by section 408 of the FFDCA, estimates the risk of the potential exposure to these residues. The Agency has concluded after this assessment, which includes the consideration of long-term animal studies with metolachlor and S-metolachlor, that there is a reasonable certainty that no harm will result from aggregate (food, water and non-dietary) human exposure to S-metolachlor and that, accordingly, the tolerances that will be established by this rule are ''safe.'' That assessment included a consideration of S-metolachlor's carcinogenic potential. As discussed in Unit III.A., EPA concluded that any potential cancer risk from S-metolachlor is addressed by the chronic risk assessment. That risk assessment showed no risks of concern.

D. Revisions to Petitioned-For Tolerances

The Agency does not differentiate between dry and fresh cilantro leaves. Therefore, the Agency is modifying the tolerance proposal and establishing a tolerance for S-metolachlor residues on cilantro, leaves.

V. Conclusion

Therefore, tolerances are established for residues of S-metolachlor in or on beet, garden, leaves at 1.8 ppm, cilantro, leaves at 8.0 ppm, and coriander, seed at 0.13 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: August 8, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.368 is amended by alphabetically adding the following commodities to the table in paragraph (a)(2) to read as follows:

§ 180.368 S-metolachlor; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Beet, garden, leaves	1.8

Commodity	Parts per million
* * * * *	
Cilantro, leaves	8.0
Coriander, seed	0.13
* * * * *	

[FR Doc. 2012–20034 Filed 8–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0395; FRL–9357–5]

Fludioxonil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil in or on multiple commodities which are identified and discussed later in this document, associated with pesticide petition (PP) 1E7853 and PP 1E7870. This regulation additionally revises several established tolerances, and removes several established permanent and time-limited tolerances. Interregional Research Project Number 4 (IR–4) and Syngenta Crop Protection, LLC, requested the tolerances associated with PP 1E7853 and PP 1E7870, respectively, under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 15, 2012. Objections and requests for hearings must be received on or before October 15, 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–2011–0395, 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: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: *nollen.laura@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–2011–0395 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 October 15, 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–2011–0395, by one of the following methods:

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0395 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 1E7853, by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.516 be amended by establishing tolerances for residues of the fungicide fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1-*H*-pyrrole-3-carbonitrile), in or on acerola at 5.0 parts per million (ppm); atemoya at 20 ppm; biriba at 20 ppm; cherimoya at 20 ppm; custard apple at 20 ppm; feijoa at 5.0 ppm; guava at 5.0 ppm; ilama at 20 ppm; jaboticaba at 5.0 ppm; passionfruit at 5.0 ppm; soursop at 20 ppm; starfruit at 5.0 ppm; sugar apple at

20 ppm; wax jambu at 5.0 ppm; ginseng at 3.0 ppm; onion, bulb subgroup 3–07A at 0.2 ppm; onion, green subgroup 3–07B at 7.0 ppm; caneberry subgroup 13–07A at 5.0 ppm; bushberry subgroup 13–07B at 2.0 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.0 ppm; berry, low growing, subgroup 13–07G, except cranberry at 2.0 ppm; vegetable, fruiting, group 8–10, except tomato at 0.7 ppm; fruit, citrus, group 10–10 at 10 ppm; fruit, pome, group 11–10 at 5.0 ppm; leafy greens subgroup 4A at 30 ppm; potato at 6.0 ppm; pineapple at 8.0 ppm; and dragon fruit at 1.0 ppm.

That notice additionally requested to amend established tolerances of fludioxonil in or on avocado from 0.45 ppm to 5.0 ppm; sapote, black from 0.45 ppm to 5.0 ppm; canistel from 0.45 ppm to 5.0 ppm; sapote, mamey from 0.45 ppm to 5.0 ppm; mango from 0.45 ppm to 5.0 ppm; papaya from 0.45 ppm to 5.0 ppm; sapodilla from 0.45 ppm to 5.0 ppm; star apple from 0.45 ppm to 5.0 ppm; longan from 1.0 ppm to 20 ppm; lychee from 1.0 ppm to 20 ppm; pulasan from 1.0 ppm to 20 ppm; rambutan from 1.0 ppm to 20 ppm; Spanish lime from 1.0 ppm to 20 ppm; and tomato from 0.50 ppm to 3.0 ppm. Upon approval of the aforementioned tolerances, the petition finally requested to amend 40 CFR 180.516 by removing the established tolerances for residues of fludioxonil in or on the following raw agricultural commodities: Onion, bulb at 0.2 ppm; onion, green at 7.0 ppm; caneberry subgroup 13A at 5.0 ppm; bushberry subgroup 13B at 2.0 ppm; Juneberry at 2.0 ppm; lingonberry at 2.0 ppm; salal at 2.0 ppm; grape at 1.0 ppm; strawberry at 2.0 ppm; vegetable, fruiting, group 8 at 0.01 ppm; tomatillo at 0.50 ppm; fruit, citrus, group 10 at 10 ppm; fruit, pome, group 11 at 5.0 ppm; and leafy greens subgroup 4A, except spinach at 30 ppm. That notice referenced a summary of the petition prepared on behalf of IR–4 by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In the **Federal Register** of May 2, 2012 (77 FR 25954) (FRL–9346–1), 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 1E7853) by IR–4, that requested that 40 CFR 180.516 be amended by establishing tolerances for residues of the fungicide fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1-*H*-pyrrole-3-carbonitrile), in or on the commodities requested in the **Federal Register** of July 20, 2011, with one change. This petition requested to establish a tolerance for residues of fludioxonil in or on vegetable, tuberous and corm, subgroup 1C at 6.0 ppm. This request superseded the previous request to establish a tolerance in or on potato at 6.0 ppm, as potato is the representative commodity of crop subgroup 1C. The May 2, 2012 petition additionally requested that EPA remove the established tolerance in or on vegetable, tuberous and corm, subgroup 1D at 3.5 ppm, as the tolerance will be superseded by the vegetable, tuberous and corm, subgroup 1C tolerance. That notice referenced a summary of the petition prepared on behalf of IR–4 by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received to this notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Additionally, in the **Federal Register** of April 4, 2012 (77 FR 20334) (FRL–9340–4), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346(d)(3), announcing the filing of PP 1E7870 by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27409. The petition requested that 40 CFR 180.516 be amended by establishing a tolerance for residues of the fungicide fludioxonil in or on leafy petioles subgroup 04B at 14 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received to this notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petitions, EPA has revised the proposed tolerance levels and/or has revised the commodity definitions for several commodities. Additionally, EPA has removed several established tolerances and has determined that tolerances should be established in or on several livestock commodities. Finally, the Agency has revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with 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 fludioxonil including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fludioxonil 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.

Fludioxonil is of low acute toxicity and is not a dermal sensitizer. For subchronic and chronic toxicity, the primary effects in the mouse and rat were similar and included decreased body weight and food consumption associated with clinical pathological and histopathological effects in the liver and kidney. In the subchronic dog study, diarrhea was the most sensitive indicator of toxicity. In contrast, in the chronic toxicity study in dogs, decreased body-weight gain in females was the most sensitive indicator of toxicity. Liver toxicity was observed in both dog studies at higher doses.

Fludioxonil is not developmentally toxic in rabbits. In a rat developmental toxicity study at the highest dose tested (HDT), fludioxonil caused an increase in fetal incidence and litter incidence of dilated renal pelvis in the presence of maternal toxicity. There was no quantitative or qualitative evidence of increased susceptibility to rats and rabbits following *in utero* exposure. There was also no quantitative or

qualitative evidence of increased susceptibility to rats following postnatal exposure and there was no evidence of immunotoxicity when tested up to including the limit dose.

EPA determined that fludioxonil poses a negligible cancer risk. This conclusion was based on the fact that cancer studies with fludioxonil only showed marginal evidence of cancer in one sex of one species. There was no evidence of carcinogenicity in mice when tested up to the limited dose 7,000 ppm. There was no evidence of carcinogenicity in male rats, but there was a statistically significant increase, both trend and pairwise, of combined hepatocellular tumors in female rats. The pairwise increase for combined tumors was significant at p = 0.03, which is not a strong indication of a positive effect. Further, statistical significance was only found when liver adenomas were combined with liver carcinomas. Finally, the increase in these tumors was within, but at the high end, of the historical controls. Fludioxonil was not mutagenic in the tests for gene mutations. However, based on the induction of polyploidy in the *in vitro* Chinese hamster ovary cell cytogenetic assay and the suggestive evidence of micronuclei induction in rat hepatocytes *in vivo,* additional mutagenicity testing was performed in three studies specifically designed to address the concerns regarding aneuploidy. The results of these assays were negative for aneuploidy activity.

Specific information on the studies received and the nature of the adverse effects caused by fludioxonil 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: ''Fludioxonil. Tolerance Petitions for Residues in/on Ginseng, Leafy Petioles Crop Subgroup 4B, Pineapple (post-harvest treatment), Tuberous and Corm Vegetable Subgroup 1C, Tropical Fruit (post-harvest treatment), Bulb Onion Subgroup 3–07A, Green Onion subgroup 3–07B, Caneberry Subgroup 13–07A, Bushberry Subgroup 13–07B, Small Fruit Vine Climbing Subgroup 13–07F (except fuzzy kiwifruit), Low-Growing Berry Subgroup 13–07G (except cranberry), Fruiting Vegetable Group 8–10 (except tomato), Citrus Fruit Group 10–10, Pome Fruit Group 11–10, Leafy Vegetable (except *Brassica*) Subgroup 04A, Dragon Fruit, and Tomato (post-harvest treatment). Human-Health Risk Assessment.'' pp. 40–42 in docket ID number EPA–HQ–OPP–2011–0395.

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 fludioxonil used for human risk assessment is shown in the Table of this unit.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 100 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 1 mg/kg/day. aPAD = 1 mg/kg/day	Prenatal developmental toxicity in rats LOAEL = 1,000 mg/kg/day based on the increased incidence of fetuses and litters with dilated renal pelvis and dilated ureter in rat developmental study.
Acute dietary (General population including infants and children).	There were no appropriate toxicological effects attributable to a single exposure (dose) observed in available oral toxicity studies, including maternal toxicity in the developmental toxicity studies. Therefore, a dose and endpoint were not identified for this risk assessment.		
Chronic dietary (All populations)	NOAEL= 3.3 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.033 mg/kg/day. cPAD = 0.033 mg/kg/day	Chronic toxicity in dogs LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs during weeks 1–52 of one-year dog feeding study.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUDIOXONIL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Incidental oral short-term (1 to 30 days)	NOAEL= 10 mg/kg/ day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100.	Rabbit developmental study LOAEL = 100 mg/kg/day based on decreased weight gain during dosing period.
Incidental oral intermediate-term (1 to 6 months).	NOAEL= 3.3 mg/ kg/day. UF_A= 10X UF_H= 10X FQPA SF = 1X	LOC for MOE = 100.	Chronic toxicity in dogs LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs during weeks 1–52 of one-year dog feeding study.
Inhalation short-term (1 to 30 days)	Inhalation (or oral) study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10X UF_H = 10X FQPA SF = 10X	LOC for MOE = 1000.	Rabbit developmental study LOAEL = 100 mg/kg/day based on decreased weight gain during dosing period.
Cancer (Oral, dermal, inhalation)	Poses no greater than a negligible cancer risk.		

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 (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. 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 fludioxonil, EPA considered exposure under the petitioned-for tolerances as well as all existing fludioxonil tolerances in 40 CFR 180.516. EPA assessed dietary exposures from fludioxonil 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 fludioxonil for females 13–49 years old (i.e., females of child-bearing age). 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 assumed tolerance-level residues, 100 percent crop treated (PCT) estimates, and DEEM™ ver. 7.81 default processing factors. There were no appropriate toxicological effects attributable to a single exposure for the general population; therefore, these population subgroups were not included in this assessment.

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 assumed tolerance-level residues for most commodities, with the exception of the following commodities for which anticipated residues were used: Celery, pineapple, potato, spinach, apple, grapefruit, lemon, lime, orange, pear, tomato, head lettuce, leaf lettuce, fresh parsley, brassica leafy vegetables group 5, grape, cherry, peach, and plum. The anticipated residues were estimated from field trial and processing study data for the chronic analysis. The chronic dietary exposure assessment also incorporated 100 PCT estimates and DEEM™ ver. 7.81 default processing factors, with the exception of citrus fruit juice (1X), apple juice (1X), grape juice (0.42X), raisin (1.65X), potato commodities (1X), and tomato commodities (1X), except dried tomato (14.3X). These processing factors are based upon crop-specific processing study data.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fludioxonil poses a negligible cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue information.* 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 fludioxonil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fludioxonil. 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 fludioxonil for surface water are expected to be 83.8 parts per billion (ppb) for acute exposures and 38.5 ppb for chronic exposures. The EDWCs of fludioxonil for ground water are expected to be 0.2 ppb for acute and chronic exposures.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 83.8 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 38.5 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). Fludioxonil is currently registered for the following uses that could result in residential exposures: Parks, golf courses, athletic fields, residential lawns, ornamentals, and greenhouses. In addition to the conventional uses of fludioxonil in residential areas, there are also antimicrobial uses. However, residential turf uses of fludioxonil are expected to result in the highest potential exposure of all registered residential uses of fludioxonil and, therefore, were assessed.

EPA assessed residential exposure using the following assumptions: Short-term inhalation for residential handler exposure scenarios, including mixing/loading/applying fludioxonil. Residential handler exposures were considered to be short-term only due to the infrequent use patterns associated with homeowner products. Additionally, EPA assessed potential short- and intermediate-term postapplication exposures to toddlers (children 1–2 years old) resulting from physical activities on turf. These included incidental oral exposures from hand-to-mouth, object-to-mouth, and incidental soil ingestion. 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 fludioxonil to share a common mechanism of toxicity with any other substances, and fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fludioxonil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The fludioxonil toxicity database includes developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats. In the rat developmental study, there was an increase in the number of fetuses and litters with dilated renal pelvis and dilated ureter at the limit dose (1,000 mg/kg/day); maternal toxicity occurred at the same dose and was manifested as a reduction in corrected body-weight gain, indicating that there is no quantitative susceptibility for these fetal effects. In the rabbit developmental study, no developmental toxicity was seen up to the HDT. Maternal toxicity was demonstrated at that dose. In the 2-generation rat reproduction study, offspring toxicity was seen at the same dose that produced parental toxicity. The parental toxicity was manifested as increased clinical signs, decreased body weight, body weight gain and food consumption. Offspring toxicity was manifested as decreased weight gain in pups. Parental and offspring toxicity were comparable; therefore, it was concluded that there is no increased susceptibility in the 2-generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for risks other than those related to inhalation exposure. EPA is retaining the 10X FQPA safety factor for risks from inhalation exposure. That decision is based on the following findings:

i. The toxicity database for fludioxonil is complete except for a 90-day inhalation study. The point of departure for assessing risk from inhalation exposure is being extrapolated from an oral study. The uncertainty associated with this extrapolation requires the retention of the 10X FQPA SF for these exposures.

ii. The only potential indicator of neurotoxicity in the fludioxonil toxicity database was convulsions noted in mice following handling at high doses. The convulsions were considered to be agonal in nature. Therefore, EPA has determined that there is no need for a developmental neurotoxicity study or an additional safety factor to account for neurotoxicity.

iii. There is no evidence that fludioxonil results in increased susceptibility in *in utero* rabbits in the prenatal developmental study or in young rats in the 2-generation reproduction study. In the rat developmental toxicity study, fetal effects were noted at the limit dose in the presence of maternal toxicity. However, EPA determined that the degree of concern is low for the noted fetal effects because the effects were observed at the same doses as maternal effects, and there is a clear NOAEL established which was used in endpoint selection.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary assessment for females 13–49 years old was unrefined, assuming 100 PCT and tolerance-level

residues, and the chronic dietary exposure assessment assumed 100 PCT and used tolerance-level residues or made use of average residues derived from crop field trial studies. The chronic assessment also assumed DEEM default or other processing factors based on reliable processing data. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fludioxonil in drinking water. EPA used similarly conservative assumptions to assess short- and intermediate-term postapplication exposure resulting from incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fludioxonil.

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. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fludioxonil will occupy 16% of the aPAD for females 13–49 years old, the population group identified as having a potential acute exposure to fludioxonil.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fludioxonil from food and water will utilize 68% 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 fludioxonil 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). Fludioxonil 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 fludioxonil.

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 an aggregate MOE of 310 for children 1–2 years old. Because EPA's level of concern for fludioxonil is a MOE of 100 or below, this MOE is not of concern.

Because the short-term oral and inhalation risks were estimated using the same oral POD, these routes of exposure could be combined for the adult short-term exposure assessment. However, because the level of concern for oral and inhalation routes of exposure are not the same (an MOE of <100 defines the level of concern for incidental oral risk while inhalation risk is defined by an MOE of <1,000) an aggregate risk index (ARI) was required to estimate aggregate risk for adults. Only adults are assumed to be exposed to a combination of oral and inhalation exposures because inhalation exposures for fludioxonil may occur only as to those who apply the pesticide. EPA identifies ARIs at or below one as a risk estimate of concern. The short-term aggregate ARI exposure estimates to fludioxonil residues for adults are 9.5 for the general population and 11 for adults 50 years and older.

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). Fludioxonil 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 fludioxonil.

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 105 for children 1–2 years old. Because EPA's level of concern for fludioxonil is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the data summarized in Unit III.A., EPA has concluded that fludioxonil poses a negligible cancer risk to humans. Therefore, fludioxonil is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate high-performance liquid chromatography/ultraviolet light detector (HPLC/UV) methods (Syngenta Methods AG–597 and AG–597B) are available for enforcing tolerances for residues of fludioxonil in or on plant commodities. An adequate liquid chromatography, tandem mass spectrometry (LC–MS/MS) method (Analytical Method GRM025.03A) is available for enforcing tolerances for residues of fludioxonil in or on livestock commodities.

The methods 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.

There are no Codex MRLs established for the following tolerances associated with these petitions: Ginseng; tropical fruit commodities; onion, green, subgroup 3–07B; leaf petioles crop subgroup 4B; and fat of cattle, goat, horse, and sheep. The following United States tolerances being established by this action are harmonized with comparable Codex MRLs: Caneberry subgroup 13–07A at 5.0 ppm; bushberry subgroup 13–07B at 2.0 ppm; and fruit, pome, group 11–10 at 5.0 ppm; onion, bulb, subgroup 3–07A at 0.50 ppm; fruit, small vine climbing, except fuzzy

kiwifruit, subgroup 13–07F at 2.0 ppm; and berry, low growing, subgroup 13–07G, except cranberry at 3.0 ppm.

The following United States tolerances being established by this action cannot be harmonized with the comparable Codex MRL: Tomato; leafy greens subgroup 4A; vegetable, tuberous and corm, subgroup 1C; fruit, citrus, group 10–10; and fruit, pome, group 11–10. The residue data and use patterns in the United States for these commodities support a higher tolerance value than what is established by Codex. The Codex has proposed, though has not yet approved, MRLs on citrus fruits at 10 ppm and pome fruits at 5.0 ppm that would result in harmonization with the United States for these commodities.

Finally, EPA is establishing a tolerance on vegetable, fruiting, group 8–10, except tomato that is not harmonized with Codex MRLs on eggplant at 0.3 ppm or sweet peppers at 1 ppm, which are members of the fruiting vegetable crop group. The United States tolerance was established as the result of a joint review of residue field trial data with Canada's Pest Management Regulatory Agency (PMRA). Based on the EPA and PMRA review of the data supporting the petition, the resulting tolerance for vegetable, fruiting, group 8–10, except tomato is 0.5 ppm. This tolerance cannot be harmonized with the Codex MRLs on eggplant at 0.3 ppm and sweet peppers at 1 ppm since the MRLs are established for two individual members of the fruiting vegetable crop group at different levels.

C. Response to Comments

EPA received one comment to the notice of filing for PP 1E7870, which requested additional information about the nature of the residue and the adverse effects noted from exposure to fludioxonil. A summary of information about the nature of the residue and the adverse effects from fludioxonil was available to the commenter in the docket at the time of the notice of filing. That information, as well as specific information on the nature of the residue, including physical and chemical characteristics, and the adverse effects caused by fludioxonil from the toxicity studies can be found in the supporting and related material at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2011–0395.

Additionally, the Agency received one comment to the May 2, 2012 notice of filing for PP 1E7853. The commenter raised concerns about the proposal to increase an existing tolerance for fludioxonil 5–10 times the current level and further stated that EPA would need to amend the protocol and develop a completely new method. In response to these concerns, EPA notes that the appropriate residue field trial data to support the amended use pattern for a post-harvest use was submitted to the Agency. From the risk assessment for the action, which included review of the field trial data supporting petitioned-for tolerance amendments, EPA has determined that the tolerance levels to be established by the Agency are appropriate and safe.

D. Revisions to Petitioned-For Tolerances

Based on the data supporting the petitions, EPA revised the proposed tolerances on several commodities, as follows: Ginseng from 3.0 ppm to 4.0 ppm; vegetable, fruiting, group 8–10, except tomato from 0.7 ppm to 0.50 ppm; tomato from 3.0 ppm to 5.0 ppm; pineapple from 8.0 ppm to 20 ppm; and leaf petioles crop subgroup 4B from 14 ppm to 15 ppm. Upon review of the data supporting the petitions, EPA also determined that several tolerances should be established on livestock commodities, as follows: Milk at 0.01 ppm; cattle, goat, horse, and sheep meat at 0.01 ppm; meat byproducts of cattle, goat, horse, and sheep at 0.05 ppm; and fat of cattle, goat, horse, and sheep at 0.05 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data using the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures.

Additionally, EPA revised the onion, bulb, subgroup 3–07A from 0.20 ppm to 0.50 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F from 1.0 ppm to 2.0 ppm; and berry, low growing, subgroup 13–07G, except cranberry from 2.0 ppm to 3.0 ppm, in order to align with the Codex MRLs associated with these tolerances.

EPA also removed the established tolerance in or on vegetable, leafy, except brassica, group 4 at 0.01 ppm, as it will be superseded by tolerances on leafy greens subgroup 4A at 30 ppm and leaf petioles subgroup 4B at 15 ppm. Similarly, EPA removed the established tolerance on vegetable, bulb, group 3 at 0.02 ppm, as the tolerance will be superseded by tolerances on bulb onion subgroup 3–07A at 0.50 ppm and green onion subgroup 3–07B at 7.0 ppm. In order to clarify the established vegetable, root and tuber, group 1 tolerance at 0.02 ppm, the Agency revised the entry to beet, sugar at 0.02 ppm. This change has been made because all other commodity members currently in crop group 1 will be superseded by tolerances in or on vegetable, root, except sugar beet, subgroup 1B at 0.75 ppm and vegetable, tuberous and corm, subgroup 1C at 6.0 ppm. EPA also revised the proposed commodity definitions to reflect the correct designation for fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F and dragon fruit.

Finally, the Agency has revised the tolerance expression to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of fludioxonil not specifically mentioned; and

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1 *H*-pyrrole-3-carbonitrile), in or on guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 5.0 ppm; sugar apple, atemoya, custard apple, cherimoya, ilama, soursop and biriba at 20 ppm; ginseng at 4.0 ppm; onion, bulb, subgroup 3–07A at 0.50 ppm; onion, green, subgroup 3–07B at 7.0 ppm; caneberry subgroup 13–07A at 5.0 ppm; bushberry subgroup 13–07B at 2.0 ppm; fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit at 2.0 ppm; berry, low growing, subgroup 13–07G, except cranberry at 3.0 ppm; vegetable, fruiting, group 8–10, except tomato at 0.50 ppm; fruit, citrus, group 10–10 at 10 ppm; fruit, pome, group 11–10 at 5.0 ppm; leafy greens subgroup 4A at 30 ppm; vegetable, tuberous and corm, subgroup 1C at 6.0 ppm; pineapple at 20; dragon fruit at 1.0 ppm; and leaf petioles subgroup 4B at 15 ppm. This regulation additionally amends established tolerances of fludioxonil in or on avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple from 0.45 ppm to 5.0 ppm; longan, lychee, pulasan, rambutan, and Spanish lime from 1.0 ppm to 20 ppm; and tomato from 0.50 ppm to 5.0 ppm.

Tolerances are established for residues of fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1-*H*-pyrrole-3-carbonitrile), and its metabolites converted to 2,2-difluoro-1,3-benzodioxole-4-carboxylic acid, calculated as the stoichiometric equivalent of fludioxonil, in or on milk at 0.01 ppm; cattle, meat byproducts at 0.05 ppm; cattle, meat at 0.01 ppm; cattle, fat at 0.05 ppm; goat, meat byproducts at 0.05 ppm; goat, meat at 0.01 ppm; goat, fat at 0.05 ppm; horse, meat byproducts at 0.05 ppm; horse,

meat at 0.01 ppm; horse, fat at 0.05 ppm; sheep, meat byproducts at 0.05 ppm; sheep, meat at 0.01 ppm; and sheep, fat at 0.05 ppm.

This regulation additionally removes established tolerances in or on onion, bulb; onion, green; caneberry subgroup 13A; bushberry subgroup 13B; Juneberry; lingonberry; salal; grape; strawberry; vegetable, fruiting group 8; tomatillo; fruit, citrus, group 10; fruit, pome, group 11; leafy green subgroup 4A, except spinach; vegetable, tuberous and corm, except potato, subgroup 1D; vegetable, leafy, except brassica, group 4; and vegetable, bulb, group 3. This regulation also removes the time-limited tolerances in or on starfruit and pineapple. Finally, this regulation revises the established tolerance on vegetable, root and tuber, group 1 at 0.02 ppm to beet, sugar at 0.02 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: August 3, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.516 is amended by revising paragraphs (a) and (b) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide fludioxonil, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1-*H*-pyrrole-3-carbonitrile).

Commodity	Parts per million
Acerola	5.0
Animal feed, nongrass, group 18	0.01
Atemoya	20
Avocado	5.0
Bean, dry	0.4
Bean, succulent	0.4
Beet, sugar, roots	0.02
Berry, low growing, subgroup 13–07G, except cranberry	3.0
Biriba	20
Brassica, head and stem, subgroup 5A	2.0
Brassica, leafy greens, subgroup 5B	10
Bushberry subgroup 13–07B	2.0
Caneberry subgroup 13–07A	5.0
Canistel	5.0
Cherimoya	20
Citrus, oil	500
Cotton, gin byproducts	0.05
Cotton, undelinted seed	0.05
Custard apple	20
Dragon fruit	1.0
Feijoa	5.0
Flax, seed	0.05
Fruit, citrus, group 10–10	10
Fruit, pome, group 11–10	5.0
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	2.0
Fruit, stone, group 12	5.0
Ginseng	4.0
Grain, cereal, group 15	0.02
Grain, cereal, forage, fodder, and straw, group 16	0.01
Grass, forage, fodder and hay, group 17	0.01
Guava	5.0
Herb subgroup 19A, dried leaves	65
Herb subgroup 19A, fresh leaves	10
Ilama	20
Jaboticaba	5.0
Kiwifruit, fuzzy	20
Leaf petioles subgroup 4B	15
Leafy greens subgroup 4A	30
Longan	20
Lychee	20
Mango	5.0
Melon subgroup 9A	0.03
Onion, bulb, subgroup 3–07A	0.50
Onion, green, subgroup 3–07B	7.0
Papaya	5.0

Commodity	Parts per million
Passionfruit	5.0
Peanut	0.01
Peanut, hay	0.01
Pineapple	20
Pistachio	0.10
Pomegranate	5.0
Pulasan	20
Rambutan	20
Rapeseed, forage	0.01
Rapeseed, seed	0.01
Safflower, seed	0.01
Sapodilla	5.0
Sapote, black	5.0
Sapote, mamey	5.0
Soursop	20
Spanish lime	20
Spice subgroup 19B	0.02
Star apple	5.0
Starfruit	5.0
Sugar apple	20
Sunflower, seed	0.01
Tomato	5.0
Turnip, greens	10
Vegetable, cucurbit, group 9	0.45
Vegetable, foliage of legume, group 7	0.01
Vegetable, fruiting, group 8–10, except tomato	0.50
Vegetable, leaves of root and tuber, group 2	30
Vegetable, legume, group 6	0.01
Vegetable, root, except sugar beet, subgroup 1B	0.75
Vegetable, tuberous and corm, subgroup 1C	6.0
Watercress	7.0
Wax jambu	5.0
Yam, true, tuber	8.0

(2) Tolerances are established for residues of the fungicide fludioxonil, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the sum of fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1-*H*-pyrrole-3-carbonitrile), and its metabolites converted to 2,2-difluoro-l,3-benzodioxole-4-carboxylic acid, calculated as the stoichiometric equivalent of fludioxonil.

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.01
Cattle, meat byproducts	0.05
Goat, fat	0.05
Goat, meat	0.01
Goat, meat byproducts	0.05
Horse, fat	0.05
Horse, meat	0.01
Horse, meat byproducts	0.05
Milk	0.01
Sheep, fat	0.05
Sheep, meat	0.01
Sheep, meat byproducts	0.05

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

* * * * *

[FR Doc. 2012–19988 Filed 8–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XC153

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; White Hake Trimester Total Allowable Catch Area Closure for the Common Pool Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the White Hake Trimester Total Allowable Catch (TAC) Area to all common pool vessels fishing with trawl gear, sink gillnet gear, or longline/hook gear for the remainder of Trimester 1, through August 31, 2012. This action is necessary to prevent the common pool fishery from exceeding its Trimester 1 TAC or its annual catch limit for white hake. This rule is expected to slow the catch rate of white hake in the common pool fishery for the remainder of Trimester 1.

DATES: Effective August 15, 2012, through 2400 hours, August 31, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, 978–281–9257, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the NE multispecies fishery are found at 50 CFR part 648, subpart F. Beginning in fishing year (FY) 2012, the common pool's annual catch limit for each stock is apportioned into trimester total allowable catches (TACs). The regulations at § 648.82(n) require the Regional Administrator to close the Trimester TAC Area for a stock when available information supports a determination that 90 percent of the Trimester TAC is projected to be caught. The Trimester TAC Area for a stock will close to all common pool vessels fishing with gear capable of catching that stock for the remainder of the trimester. Any overages of a trimester TAC will be deducted from Trimester 3, and any overages of the common pool's annual catch limit will be deducted from the common pool's catch limit the following fishing year. Any uncaught portion of the Trimester 1 and Trimester 2 TAC will be carried over into the next trimester. Any uncaught portion of the common pool's annual catch limit may not be carried over into the following fishing year.

The FY 2012 common pool catch limit for white hake is 26 mt (57,320 lb). The Trimester 1 (May 1 through August 31) TAC is 10 mt (22,046 lb). Based on the best available data which includes vessel trip reports (VTRs), dealer reported landings, and vessel monitoring system (VMS) information, NMFS projected that 90 percent of the Trimester 1 TAC for white hake had been harvested on August 4, 2012. Therefore, Effective August 15, 2012, the White Hake Trimester TAC Area is closed for the remainder of Trimester 1, through August 31, 2012, to all common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear. The White Hake Trimester TAC Area will reopen to common pool vessels fishing with trawl, sink gillnet, and longline/hook gear at the beginning of Trimester 2, at 0001 hours, September 1, 2012.

Classification

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This action closes the White Hake Trimester TAC Area for common pool vessels fishing with trawl gear, sink gillnet gear, and longling/hook gear through August 31, 2012. The regulations at § 648.82 require this action to ensure that the common pool fishery does not exceed its catch limits for white hake in fishing year 2012. The catch data indicating that 90 percent of the Trimester 1 TAC for white hake has been caught only recently became available. If implementation of this closure is delayed to solicit prior public comment, the white hake Trimester 1 TAC will be exceeded, thereby undermining the conservation objectives of the Fishery Management Plan. Any overage of the Trimester 1 TAC must be deducted from the Trimester 3 TAC, and any overage of the total catch limit in FY 2012 must be deducted from the FY 2013 catch limit. This would have adverse economic consequences on common pool vessels. The AA further finds, pursuant to 5

U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: August 10, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20054 Filed 8–10–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC129

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of arrowtooth flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the Bering Sea and Aleutian Islands management area.

DATES: Effective August 10, 2012, through 2400 hrs, Alaska local time, December 31, 2012. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, August 25, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS 2012–0150, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS 2012–0150 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible.

Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 initial total allowable catch (ITAC) of arrowtooth flounder in the BSAI was established as 21,250 metric tons (mt) by the final 2012 and 2013 harvest specifications for groundfish of the BSAI (77 FR 10669, February 23, 2012). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for arrowtooth flounder in the BSAI needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 1,075 mt to the arrowtooth flounder ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

The harvest specification for the 2012 arrowtooth flounder ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 22,325 mt for arrowtooth flounder in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the arrowtooth flounder fishery in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 24, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until August 30, 2012.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 10, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20056 Filed 8–10–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 158
Wednesday, August 15, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12, 163, and 178

[Docket No. USCBP–2012–0022]

RIN 1515–AD85

Prohibitions and Conditions on the Importation and Exportation of Rough Diamonds

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to set forth the prohibitions and conditions that are applicable to the importation and exportation of rough diamonds pursuant to the Clean Diamond Trade Act, as implemented by the President in Executive Order 13312 dated July 29, 2003, and the Rough Diamonds Control Regulations (RDCR) issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury. In addition to restating pertinent provisions of the RDCR, the proposed amendments would clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must accompany such shipments and make the copy available for inspection when requested by CBP. The document also proposes to require formal entry for shipments of rough diamonds.

DATES: Comments must be received on or before October 15, 2012.

ADDRESSES: You may submit comments, identified by docket number, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2012–0022.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Regulations and Rulings, Office of International Trade, (202) 325–0059.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

Background

I. Purpose

In response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in certain areas of the world, and to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds, the United States and numerous other countries announced in the Interlaken Declaration of November 5, 2002, the launch of the Kimberley Process Certification Scheme (KPCS) for rough diamonds. Under the KPCS, participating countries prohibit the importation of rough diamonds from, or the exportation of rough diamonds to, a non-participant and require that shipments of rough diamonds from or to a participating country be controlled through the KPCS. The U.S. Secretary of State is responsible for providing an up-to-date listing of all participants in the KPCS. The most recent listing of participants was published in the **Federal Register** (73 FR 80506) on December 31, 2008.

II. Clean Diamond Act and Executive Order

The Clean Diamond Trade Act (the Act), Public Law 108–19, 117 Stat. 631 (19 U.S.C. 3901 *et seq.*), was enacted on April 25, 2003. Section 4 of the Act requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the KPCS. Section 5(a) of the Act authorizes the President to issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to carry out the Act. Section 5(b) of the Act sets forth the general recordkeeping requirements that apply to persons seeking to export from or import into the United States any rough diamonds. Section 5(b) specifically provides that any United States person seeking to export from or import into the United States any rough diamonds shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under section 4(a) of the Act applies. Section 5(b) further provides

that such person may be required to furnish such information under oath, including the production of books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person. In addition to CBP having the authority to apply the customs laws to import violations of the Act, section 8 authorizes CBP and U.S. Immigration and Customs Enforcement (ICE), as appropriate, to assess penalties and enforce the export laws and regulations. *See also* 15 CFR 30.70. Therefore, pursuant to section 8, CBP may assess penalties for export recordkeeping violations. However, CBP notes that the penalties under 19 U.S.C. 1509(a)(1)(A) do not apply to recordkeeping requirements for export documents.

On July 29, 2003, the President issued Executive Order 13312 (published in the **Federal Register** (68 FR 45151) on July 31, 2003) to implement the Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003.

III. Existing Regulations and Requirements

CBP notes that persons importing into or exporting from the United States a shipment of rough diamonds must comply with the requirements of CBP, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury (part 592 of title 31 of the Code of Federal Regulations (31 CFR part 592)), and the U.S. Census Bureau (15 CFR part 30). Such persons should also be aware of any relevant Internet postings, guidance documents, or **Federal Register** notices issued by the U.S. Department of State. Also, it should be noted that ICE can take enforcement action on illegally imported and exported rough diamonds. *See* 19 U.S.C. 3907. Examples of the other government requirements are provided below.

OFAC, acting pursuant to Executive Order 13312 and delegated authority, published in the **Federal Register** (69 FR 56936) the Rough Diamonds Control Regulations (RDCR) (31 CFR part 592) as a final rule on September 23, 2004.

Among the requirements set forth in the RDCR is that all shipments of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate. *See* 31 CFR 592.301(a)(1).The RDCR also requires, pursuant to 31 CFR 592.502, that all importers and exporters of rough diamonds file an annual report with the U.S. Department of State regarding their import and/or export activity and stockpile information.

The U.S. Census Bureau issued notices on December 12, 2005, and April 3, 2007, respectively entitled ''Notice of Request for Faxed Submission of Kimberley Process Certificates'' and ''Revised Notice of Request for Faxed Submission of Kimberley Process Certificates,'' requiring importers, brokers, and parties involved in the export of rough diamonds to immediately fax their Kimberley Process Certificates (including voided certificates) to the U.S. Census Bureau upon clearance of their shipments into the commerce of the United States by CBP or upon export of their shipments from the United States, as applicable.

Explanation of Amendments

CBP is proposing to amend the CBP regulations to set forth the prohibitions and conditions that are applicable to the importation into, and the exportation from, the United States of rough diamonds pursuant to the Act, Executive Order 13312, and the RDCR. This document proposes to add a new § 12.152 to 19 CFR part 12 to set forth these prohibitions and conditions.

Because CBP (along with ICE, OFAC, and the U.S. Department of State) is involved in the administration and enforcement of the import and export requirements relating to rough diamonds, CBP believes that it is appropriate and in the interests of the trading community to restate in the CBP regulations certain of the entry, export, and recordkeeping requirements currently set forth in the RDCR. The RDCR, at 31 CFR 592.301, requires any person importing a shipment of rough diamonds to have the original Kimberley Process Certificate at the time of importation and to present it if demanded by CBP. The RDCR further requires the ultimate consignee to retain the original Certificate for at least five years from the date of importation and to present it to CBP upon demand. *See* 31 CFR 592.301. CBP is proposing to restate these requirements in new § 12.152 and to explicitly incorporate recordkeeping requirements that are implicitly included in the RDCR. Because any person importing a shipment of rough diamonds is required to have the original Certificate at the time of importation (per 31 CFR 592.301), CBP is proposing to amend the regulations to clarify that the Kimberley Process Certificate, which accompanies each shipment, is an entry record that must be maintained for a period of at least five years from the date of importation. Accordingly, the importer must make a copy of the Kimberley Process Certificate available for examination at the request of CBP during that time period. CBP also proposes to specifically add the Kimberley Process Certificate in its Interim (a)(1)(A) list in section IV of the Appendix to part 163 of title 19 of the Code of Federal Regulations (19 CFR). *See* 19 CFR 163.1(f), 163.3 and 163.4.

In accordance with section 5(b) of the Act, CBP is also proposing to require any U.S. persons exporting from the United States a shipment of rough diamonds to retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation and make the copy available for examination at the request of CBP. *See* 19 U.S.C. 3904(b).

CBP believes that these recordkeeping requirements will assist it in verifying whether importations of rough diamonds are properly controlled by the KPCS. The legal authority for these proposed requirements are discussed in further detail in the following discussion of each of the paragraphs in proposed new § 12.152, and new § 163.2(b), and the amendments to the Interim (a)(1)(A) list in section IV of the Appendix to part 163.

Paragraph (a)

Paragraph (a) provides a brief summary of the KPCS, the Act, Executive Order 13312, and the RDCR. Paragraph (a) also indicates that persons importing into, or exporting from, the United States a shipment of rough diamonds must comply with the requirements of CBP, OFAC, and the U.S. Census Bureau.

Paragraph (b)

Paragraph (b) sets forth certain definitions of terms derived from 19 U.S.C. 3902, section 3 of the Act, Annex I of the Kimberley Process Certification Scheme, and subpart C of the RDCR (subpart C of 31 CFR part 592).

Paragraph (c)

Paragraph (c) reflects the requirement in § 592.301 of the RDCR (31 CFR 592.301) that a shipment of rough diamonds imported into, or exported from, the United States, must be accompanied by an original Kimberley Process Certificate.

Paragraph (d)

Pursuant to the authority provided in 19 U.S.C. 1484 and 1498(a)(1)(B), paragraph (d) requires formal entry when importing a shipment of rough diamonds.

Paragraph (e)

Pursuant to the authority provided in 19 U.S.C. 1484(a)(1)(A), paragraph (e) requires brokers, importers, and filers making entry of a shipment of rough diamonds into the United States to either submit through CBP's Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the CBP Form 7501, Entry Summary, on each applicable line item.

Paragraph (f)

Paragraph (f)(1) reflects the requirement in 31 CFR 592.301 that the ultimate consignee of a shipment of rough diamonds imported into the United States must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must present the certificate to CBP upon request.

Paragraph (f)(2) reflects the requirement that the U.S. person importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of at least five years from the date of importation and present the copy to CBP upon request, pursuant to section 5(b) of the Act as well as § 163.4, CBP regulations (19 CFR 163.4), which provides that (with certain exceptions not applicable here) any record required to be made, kept, and rendered for examination and inspection by CBP under § 163.2 or any other provision of this chapter must be kept for five years from the date of entry, if the record relates to an entry, or five years from the date of the activity which required creation of the record. Section 163.2 identifies importers as persons who must maintain records and render those records for examination by CBP. The Kimberley Process Certificate is a record required for the entry of merchandise, within the meaning of 19 U.S.C. 1509(a)(1)(A) and 19 CFR 163.1(a).

Similarly, paragraph (f)(3) requires any U.S. person exporting a shipment of rough diamonds from the United States to retain a copy of the Kimberley Process Certificate for a period of at least five years from the date of exportation and to present the copy to CBP upon request. This provision is being proposed in accordance with section 5(b) of the Act.

The requirements set forth in paragraphs (f)(2) and (3) are further supported by §§ 501.601 and 592.501 of the OFAC regulations (31 CFR 501.601 and 592.501), which provide, in pertinent part, that every person engaging in any transaction subject to the RDCR and other provisions of 31 CFR chapter V shall keep a full and accurate record of each such transaction engaged in, and such record shall be available for examination for at least five years after the date of such transaction.

In addition, CBP is proposing to amend part 163 by adding to § 163.2(c) a paragraph stating that any U.S. person exporting from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. Section 163.2(c) would also state that failure to retain such records for at least five years may subject the exporter to penalties under 19 U.S.C. 3907.

CBP is also proposing to amend the Interim (a)(1)(A) list in Section IV of the Appendix to part 163 of 19 CFR to add the Kimberley Process Certificate to the list of documents that are required for the entry of special categories of merchandise. Finally, this document proposes to amend the list of control numbers assigned to information collections by the Office of Management and Budget (OMB) (pursuant to the Paperwork Reduction Act), which are set forth in 19 CFR 178.2, to add the information collections used by CBP to determine whether importations of rough diamonds are properly controlled by the KPCS.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

The proposed rule seeks to increase CBP's ability to verify whether importations or exportations of rough diamonds are in compliance with the KPCS. OFAC published the RDCR (31 CFR part 592) requiring the ultimate consignee to retain the original of the Kimberley Process Certificate. The proposed amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties pursuant to 19 U.S.C. 1509 or 3907. CBP believes the costs of retaining a copy of the Kimberley Process Certificate for five years and producing the copy to CBP upon request to be negligible.

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The proposed rule seeks to increase CBP's ability to verify whether importations or exportations of rough diamonds are in compliance with the KPCS. OFAC published the RDCR (31 CFR part 592) requiring the ultimate consignee to retain the original of the Kimberley Process Certificate, but not requiring this of the importer or the exporter. The proposed amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties pursuant to 19 U.S.C. 1509 or 3907. Given that this rule will impose a penalty only for noncompliance, it is not feasible to estimate the number of small entities which could be affected by this rule. CBP does not believe any additional professional expertise will be required to adhere to this requirement, as the Kimberley Process Certificate will only need to be stored and presented for examination upon request of CBP. CBP believes the costs of retaining a copy of the Kimberley Process Certificate for five years and providing the copy to CBP upon request to be negligible. Due to these low compliance costs, CBP subject matter experts believe this regulation will neither increase non-compliance nor result in a substantial number of small entities receiving penalties. CBP did not consider alternatives to the proposed rule for small entities because it does not impose any significant additional operational or labor costs on small

entities for compliance. CBP is unaware of any other federal rules which conflict with the requirements of the proposed rule.

Because the penalty for noncompliance may be greater than $500 (in 1980 dollars), constituting a significant impact for a small entity, the economic impact of noncompliance with this would be considered significant. However, as discussed above CBP subject matter experts do not believe this rule will increase noncompliance with the KPCS for small entities. Thus, CBP does not believe this rule will have a significant impact on a substantial number of small entities. CBP welcomes any comments regarding this assessment. If CBP does not receive any comments contradicting this finding, CBP will certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

Paperwork Reduction Act

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information contained in these regulations are provided for by OMB control number 1505–0198, to cover the requirements concerning CBP Form 7501, and by OMB control number 1651–0076, to cover the recordkeeping requirement.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Exports, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Sanctions.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Imports, Reporting and recordkeeping requirement.

Proposed Amendments to the CBP Regulations

For the reasons set forth above, parts 12, 163, and 178 of title 19 of the Code of Federal Regulations (19 CFR parts 12, 163, and 178) are proposed to be amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, CBP regulations, continues to read, and a new specific authority citation for § 12.152 is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.152 also issued under 19 U.S.C. 1484, 1498; the Clean Diamond Trade Act (Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901 *et seq.*)); Executive Order 13312 dated July 29, 2003.

2. In part 12, a new § 12.152 is added to read as follows:

§ 12.152 Prohibitions and conditions on the importation and exportation of rough diamonds.

(a) *General.* The Clean Diamond Trade Act (Pub. L. 108–19) requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States, of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme. By Executive Order 13312 dated July 29, 2003, published in the **Federal Register** (68 FR 45151) on July 31, 2003, the President implemented the Clean Diamond Trade Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003. Pursuant to Executive Order 13312, the Office of Foreign Assets Control (OFAC), Department of the Treasury, promulgated the Rough Diamonds Control Regulations (*see* 31 CFR part 592). Any persons importing into or exporting from the United States a shipment of rough diamonds must comply with the requirements of CBP, OFAC, and the U.S. Census Bureau (15 CFR part 30).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Controlled through the Kimberley Process Certification Scheme.* ''Controlled through the Kimberley Process Certification Scheme'' means meeting the requirements set forth in 31 CFR 592.301;

(2) *Kimberley Process Certificate.* ''Kimberley Process Certificate'' means a forgery resistant document that meets the minimum requirements listed in Annex I of the Kimberley Process Certification Scheme, as well as the requirements listed in 31 CFR 592.307;

(3) *Rough diamond.* ''Rough diamond'' means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States;

(4) *United States.* ''United States'', when used in the geographic sense, means the several states, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) *United States person.* ''United States person'' means:

(i) Any United States citizen or any alien admitted for permanent residence into the United States;

(ii) Any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); and

(iii) Any person in the United States.

(c) *Original Kimberley Process Certificate.* A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate.

(d) *Formal Entry Required.* Formal entry is required when importing a shipment of rough diamonds. Formal entry procedures are prescribed in part 142 of this chapter.

(e) *Report of Kimberley Process Certificate Unique Identifying Number.* Customs brokers, importers, and filers making entry of a shipment of rough diamonds must either submit through CBP's Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the CBP Form 7501, Entry Summary, on each applicable line item.

(f) *Maintenance of Kimberley Process Certificate.* (1) *Ultimate consignee.* The ultimate consignee identified on the CBP Form 7501, Entry Summary, or its electronic equivalent filed with CBP in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must make the certificate available for examination at the request of CBP.

(2) *Importer.* The U.S. person that importsinto the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from

the date of importation and must make the copy available for examination at the request of CBP.

(3) *Exporter.* The U.S. person that exports from the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of exportation and must make the copy available for examination at the request of CBP.

PART 163—RECORDKEEPING

3. The specific authority citation for part 163 is revised and the general authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.
also issued under 19 U.S.C. 3904, 3907.

* * * * *

4. Section 163.2(c) is revised to read as follows:

§ 163.2 Persons required to maintain records.

* * * * *

(c) *Recordkeeping required for certain exporters. (1) NAFTA.* Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(2) Kimberley Process Certification Scheme. Any U.S. person (see definition in § 12.152(b)(5)) who exports from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. *See* 19 CFR 12.152(f)(3). Any U.S. person who exports from the United States any rough diamonds and does not keep records in this time frame may be subject to penalties under 19 U.S.C. 3907.

5. The Appendix to part 163 is amended by adding a new listing under § IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 12.152 Kimberley Process Certificate for rough diamonds.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

6. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

7. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
*	*	*
§ 12.152.	Certificate and recordkeeping requirements for the entry of rough diamonds.	1505–0198 and 1651–0076.
*	*	*

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: August 10, 2012,

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury,

[FR Doc. 2012–20001 Filed 8–14–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–119632–11]

RIN 1545–BK87

Regulations Pertaining to the Disclosure of Return Information To Carry Out Eligibility Requirements for Health Insurance Affordability Programs; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations relating to the disclosure of return under section 6103(1)(21) of the Internal Revenue Code, as enacted by the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010.

DATES: The public hearing, originally scheduled for August 31, 2012 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Monday, April 30, 2012 (77 FR 25378) announced that a public hearing was scheduled for August 31, 2012, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing was under the section 6103(1)(21) of the Internal Revenue Code.

The public comment period for these regulations expired on July 30, 2012. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, August 9, 2012, no one has requested to speak. Therefore, the public hearing scheduled for August 31, 2012, is cancelled.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–19969 Filed 8–14–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R08–OAR–2012–0479; FRL–9715–6]

Approval and Promulgation of Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nations), North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to promulgate a Reservation-specific Federal Implementation Plan in order to regulate emissions from oil and natural gas production facilities located on the Fort Berthold Indian Reservation located in North Dakota. The proposed Federal Implementation Plan includes basic air quality regulations for the protection of communities in and adjacent to the Fort Berthold Indian Reservation. The proposed Federal Implementation Plan requires owners and operators of oil and natural gas production facilities to reduce emissions of volatile organic compounds emanating from well completions, recompletions, and production and storage operations. This Federal Implementation Plan would be implemented by EPA, or a delegated Tribal Authority, until replaced by a Tribal Implementation Plan. EPA is issuing an interim final rule for a Reservation-specific Federal Implementation Plan, concurrently with this proposed rule, for a Reservation-specific Federal Implementation Plan and any additional information can be found within the interim final rule under the same title.

DATES: Written comments must be received on or before October 15, 2012.

Public Hearing: EPA will hold a public hearing on the following date: September 12, 2012. The hearing will start at 1 p.m. local time and continue until 4 p.m. or until everyone has had a chance to speak. Additionally, an evening session will be held from 6 p.m. until 8 p.m. The hearing will be held at the 4 Bears Casino & Lodge, 202 Frontage Rd, New Town, ND 58763, (701) 627–4018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0479, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: r8airrulemakings@epa.gov*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0479. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following locations: Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129; and Environmental Division, Three Affiliated Tribes, 204 West Main, New Town, North Dakota 58763–9404. EPA requests that if at all possible, you contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deirdre Rothery, U. S. Environmental Protection Agency, Region 8, Air Program, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6431, *rothery.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information on this proposed rule, please see the interim final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is taking this action as an interim final rule without prior proposal and public comment because EPA finds for good cause under section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* that notice-and-comment are impracticable, unnecessary or contrary to the public interest in this instance. Section 307(d) of the CAA states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register** (CAA section 307(d)(3)). The promulgation or revision of regulations under section 110 of the CAA is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the APA. Further discussion on EPA's determination on invoking the good cause exemption can be found in the interim final rule as well as a detailed rationale for our approval. The requirements in a subsequent final rule for this proposed rule are expected to supersede the requirements being promulgated in that interim final rule.

Note that Docket Number EPA–R08–OAR–2012–0479 is being used for both the interim final rule and the proposed rule.

EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 1, 2012.

James B. Martin,

Regional Administrator, Region 8.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2012–0268; FRL–9358–7]

RIN 2070–AJ95

Perfluoroalkyl Sulfonates and Long-Chain Perfluoroalkyl Carboxylate Chemical Substances; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is proposing to amend a significant new use rule (SNUR) for perfluoroalkyl sulfonate (PFAS) chemical substances to add PFAS chemical substances that have completed the TSCA new chemical review process but have not yet commenced production or import, and to designate (for all listed PFAS chemical substances) processing as a significant new use. EPA is also proposing a SNUR for long-chain perfluoroalkyl carboxylate (LCPFAC) chemical substances that would designate manufacturing, importing, or processing for use as part of carpets or for treating carpet (*e.g.,* for use in the carpet aftercare market) as a significant new use. For this SNUR, EPA is also proposing to make the article exemption inapplicable to the import of LCPFAC chemical substances as part of carpets. Persons subject to these SNURs would be required to notify EPA at least 90 days before commencing any significant new use. The required notifications would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments must be received on or before October 15, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0268, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2012–0268. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0268. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov;* select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Katherine Sleasman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–7716; email address: *sleasman.katherine@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or import any of the chemical substances listed in Table 4 of this unit.

Potentially affected entities may include, but are not limited to:

• Manufacturers or importers of one or more of subject chemical substances (North American Industrial Classification System (NAICS) codes 325 and 324110); *e.g.,* chemical manufacturing and petroleum refineries,
• Carpet and rug mills (NAICS code 314110),
• Fiber, yarn, and thread mills (NAICS code 31311),
• Home furnishing merchant wholesalers (NAICS code 423220), and
• Carpet and upholstery cleaning services (NAICS code 561740).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5, 40 CFR 721.9582, and proposed 40 CFR 721.10536. 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**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after September 14, 2012 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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 that you mail to EPA 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?

Under section 5(a)(2) of TSCA, EPA is proposing to amend a SNUR at § 721.9582 for PFAS chemical substances to add PFAS chemical substances that have completed the TSCA new chemical review process but have not yet commenced production or import, and to designate (for all listed PFAS chemical substances) processing as a significant new use. EPA is also proposing a SNUR for LCPFAC chemical substances that would designate manufacturing, importing, or processing for use as part of carpets or for treating carpet (*e.g.,* for use in the carpet aftercare market) as a significant new use. For this SNUR, EPA is also proposing to make the article exemption at § 721.45(f) inapplicable to persons who import LCPFAC chemical substances as part of carpets because if in the future LCPFAC are incorporated in carpets and then imported, exposure would increase. However, the article exemption at § 721.45(f) would be in effect for persons who import LCPFAC chemical substances as part of other sorts of articles. The article exemption at § 721.45(f) relating to persons who process chemical substances as part of an article would also be in effect, for both the PFAS SNUR and the LCPFAC SNUR. On December 30, 2009, EPA issued the ''Long-Chain Perfluorinated Chemicals (PFCs) Action Plan'' (Ref. 1). Today's action is consistent with the purpose of that Action Plan. EPA is continuing to assess these chemicals to determine what other actions would be warranted.

In this proposal, the term PFAS refers to a general category of perfluorinated sulfonate chemical substances of any chain length. The PFAS chemical substances for which EPA is proposing to modify an existing SNUR are currently listed in § 721.9582 in paragraph (a)(1). The PFAS chemical substances that EPA is proposing to add to an existing SNUR would be added to this list. All of these chemical substances are collectively referred to in this proposed rule as perfluoroalkyl sulfonates, or PFAS chemical substances.

The term LCPFAC refers to the long-chain category of perfluorinated carboxylate chemical substances with perfluorinated carbon chain lengths equal to or greater than seven carbons. The category of LCPFAC chemical substances also includes the salts and precursors of these perfluorinated carboxylates. See Unit IV.A for the specific definition of the LCPFAC category.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit II.C., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. However, EPA is proposing that the articles exemption at 40 CFR 721.45(f) would not apply to imports of LCPFAC chemical substances as part of carpets under this proposed SNUR. As a result, persons subject to the provisions of this proposed rule would not be exempt from significant new use reporting if they import LCPFAC chemical substances as part of carpets. However, EPA is proposing that the articles exemption remain in effect for persons who process chemical substances as part of an article because, with respect to carpets, existing stocks may still contain LCPFAC substances. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submissions requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6 or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

III. Overview of PFAS Chemical Substances

A. What PFAS chemical substances are subject to this proposed SNUR?

The PFAS chemical substances for which EPA is proposing to add additional significant new uses are already listed in § 721.9582 in paragraph (a)(1). The PFAS chemical substances that EPA is proposing to add to the existing PFAS SNUR are the subjects of PMN Case Numbers P–83–0126, P–90–0110, P–94–1508, P–94–1509B, P–98–0809, P–99–0296, and P–01–0035. The PMN submitters for these chemicals never commenced manufacturing or import of these chemicals. EPA considers that the commencement of manufacturing, import, or processing of these chemicals would thus significantly increase the magnitude and duration of exposure to humans and the environment. Given the structural similarity of these chemicals to the PFAS chemicals covered under 40 CFR 721.9582 and EPA's health and environmental concerns associated with these chemicals, EPA has concluded any manufacturing, import, or processing for any use of these uncommenced PFAS chemicals would be a significant new use and therefore, action on these PFAS chemicals is warranted.

All of these chemical substances are referred collectively in this proposed rule as perfluoroalkyl sulfonates, or PFAS chemical substances.

B. What action has the agency previously taken on other PFAS chemical substances?

On October 18, 2000, EPA published in the **Federal Register** a proposed SNUR (65 FR 62319) (FRL–6745–5) to regulate perfluorooctyl sulfonate (PFOS). The structure and definition of the chemical substances affected by the proposed SNUR were described on page 62325, Unit IV.A. of that proposed rule. The final rule was published in the **Federal Register** on March 11, 2002 (67 FR 11008) (FRL–6823–6), for 13 PFAS chemical substances (Ref. 2). In response to comments, EPA decided to use the generic term perfluoroalkyl sulfonates (PFAS) for this category of perfluorinated compounds, which includes those with eight carbons as well as those with higher and lower amounts of carbon and the term PFOS to represent only those chemical substances that have predominantly eight carbons. A supplemental proposed SNUR for 75 other similar PFAS chemical substances was published in the **Federal Register** on March 11, 2002 (67 FR 11014) (FRL–6823–7) (Ref. 3). EPA promulgated a final rule for these 75 PFAS chemical substances on December 9, 2002 (67 FR 72854) (FRL–7279–1) (Ref. 4). On March 10, 2006 (71 FR 12311) (FRL–7740–6), EPA proposed to add 183 PFAS chemical substances to the SNUR at 40 CFR 721.9582, and published a final rule for these 183 PFAS chemical substances on October 9, 2007 (71 FR 12311) (FRL–8150–4) (Ref. 5).

C. What are the uses and production levels of the PFAS chemical substances?

The Agency previously determined that the 271 PFAS chemical substances identified in 40 CFR 721.9582(a)(1) were no longer being manufactured or imported for any use in the United States, other than the uses listed under § 721.9582 (a)(3), (a)(4), and (a)(5) (67 FR 72858 and 72 FR 57225). In addition, since those chemicals are no longer manufactured or imported other than for the listed uses, EPA concluded that those chemical substances are also no longer processed other than for those listed uses.

PFAS chemical substances included in § 721.9582 were previously used in a variety of products, which can be divided into three main use categories: Surface treatments, paper protection, and performance chemicals (Ref. 6). In the past, PFAS chemical substances in the performance chemicals category were used in a wide variety of specialized industrial, commercial, and consumer applications. Specific applications included fire fighting foams, mining and oil well surfactants, acid mist suppressants for metal plating and electronic etching baths, alkaline cleaners, floor polishes, inks, photographic film, denture cleaners, shampoos, chemical intermediates, coating additives, carpet spot cleaners, and as an insecticide in bait stations for ants (Ref. 7). In 2000, the domestic production volume of the PFAS chemical substances containing eight carbons for the performance chemicals use category was estimated to be approximately 1.5 million pounds (Ref. 16).

PFAS chemical substances were also used for treating textiles, fabrics and carpet. These upholstery and fabric protectors were designed to protect rugs and carpets against soiling and restore their original look. Prior to 2003, these formulations were based on PFOS compounds, which contain eight perfluorinated carbons. After 2003, however, 3M, the primary manufacturer of these chemical substances, reformulated the product to be based on perfluorobutane sulfonate (PFBS) compounds containing four

perfluorinated carbons (Ref. 8). In addition to domestic manufacture, articles treated with these PFAS chemical substances are also imported. EPA is continuing to evaluate these uses and may determine that regulatory action may be appropriate in the future.

The PFAS chemical substances that EPA is proposing to add to the existing PFAS SNUR are chemical substances that have completed the TSCA new chemical review process but have not yet commenced production or import. Any person who commences the manufacture or import of a new chemical substance for which that person previously submitted a section 5(a) notice must submit a notice of commencement of manufacture or import (40 CFR 720.102). EPA has not received any notices of commencements for these chemical substances, and there is currently no production or import of these chemical substances. If commenced, these chemical substances could be used for the PFAS uses described above, significantly increasing the magnitude and duration of exposure to humans and the environment, constituting a significant new use.

D. What are the potential health effects of these chemicals and the potential sources and routes of exposures to these chemicals?

PFAS chemical substances degrade ultimately to perfluoroalkylsulfonic acid (PFASA), which can exist in the anionic form under environmental conditions. Further degradation of PFASA is not observed under normal environmental conditions. PFASA is highly persistent in the environment and has a tendency to bioaccumulate (Refs. 8 and 9). PFASA can continue to be formed by any PFAS containing chemical substances introduced into the environment.

Studies have found PFAS chemical substances containing five to fourteen carbons (C5–C14) in the blood of the general human population, as well as in wildlife, indicating that exposure to these chemical substances is widespread (Refs. 1, 2, and 10). The widespread presence of PFAS chemical substances in human blood samples nationwide suggests other pathways of exposure, possibly including the release of PFAS treated articles. EPA's Office of Research and Development (ORD) has conducted research on 116 articles of commerce documenting that PFCs contained in articles of commerce have the potential to be released from those articles and be transformed into PFAC (Ref. 1).

Biological sampling has shown the presence of certain perfluoroalkyl compounds in fish and in fish-eating birds across the United States and in locations in Canada, Sweden, and the South Pacific (Ref. 2). The wide distribution of the chemical substances in high trophic levels is strongly suggestive of the potential for bioaccumulation and/or bioconcentration.

Based on currently available information, EPA believes that while all PFAS chemical substances are expected to persist, the length of the perfluorinated chain may also have an effect on bioaccumulation and toxicity, which are also characteristics of concern for these chemical substances. PFAS chemical substances with longer carbon chain lengths may be of greater concern than those with shorter chain lengths (Refs. 11, 12, and 13).

The hazard assessment published by the Organization for Economic Cooperation and Development (OECD) (Ref. 15) concluded that perfluorooctyl sulfonates (PFOS) are persistent, bioaccumulative and toxic to mammalian species. While most studies to date have focused primarily on PFOS, structure-activity relationship analysis indicates that the results of those studies are applicable to the entire category of PFAS chemical substances, which includes PFOS. Available test data have raised concerns about their potential developmental, reproductive, and systemic toxicity (Refs. 1, 2, and 3).

For a more detailed summary of background information (*e.g.,* chemistry, environmental fate, exposure pathways, and health and environmental effects), as well as references pertaining to PFAS chemical substances, please refer to EPA's proposed SNURs on PFAS chemical substances issued in the **Federal Register** of October 18, 2000 (65 FR 62319) (FRL–6745–5) (Ref. 16) and March 10, 2006 (71 FR 12311) (FRL–7740–6) (Ref. 17), and also refer to December 30, 2009 Long-Chain Perfluorinated Chemicals Action Plan (Ref. 1).

IV. Overview of LCPFAC Chemical Substances

A. What LCPFAC chemical substances are subject to this proposed SNUR?

LCPFAC chemical substances are synthetic chemicals that do not occur naturally in the environment. The LCPFAC chemical substances are identified as follows, where n > 5 or m > 6:

1. $CF_3(CF_2)_n$-COO M where M = H^+ or any other group where a formal dissociation can be made;
2. $CF_3(CF_2)_n$-CH = CH_2;
3. $CF_3(CF_2)_n$-C(=O)-X where X is any chemical moiety;
4. $CF_3(CF_2)_m$-CH_2-X where X is any chemical moiety;
5. $CF_3(CF_2)_m$-Y–X where Y = non-S, non-N hetero atom and where X is any chemical moiety; and
6. Structurally similar degradation products of any of the compounds in 2. through 5. above.

This category definition of LCPFAC, based on the chemical structures above, refers to a large group of chemical substances containing perfluorooctanoic acid (PFOA) and its higher homologues. The category also includes the salts and precursors of these chemical substances. The precursors may be simple derivatives of PFOA and higher homologues or polymers that contain or may degrade to PFOA or higher homologues. These precursors include certain fluoropolymers and all fluorotelomers.

B. What are the uses and production levels of LCPFAC chemical substances?

Currently, DuPont is the sole manufacturer of PFOA in the United States. In addition, PFOA, except possibly as part of articles, is not imported into the United States with the exception of the product manufactured by DuPont facilities overseas. According to EPA's 2006 Inventory Update Reporting database, the aggregated production volume of PFOA and ammonium perfluorooctanoate (APFO) was less than 500,000 pounds for each. APFO is the ammonium salt of PFOA, which dissociates to PFOA in water (Ref. 1).

Fluoropolymers such as polytetrafluoroethylene (PTFE), which may contain some PFAC contamination, or that use PFOA as an emulsion stabilizer in aqueous dispersions, are included in the LCPFAC definition and have a large U.S. market. The wire and cable industry is one of the largest segments of the fluoropolymer market, accounting for more than 35 percent of total U.S. fluoropolymer use. Apparel makes up about 10 percent of total fluoropolymer use, based on total reported production volume. Fluoropolymers are used in a wide variety of mechanical and industrial components, such as plastic gears, gaskets and sealants, pipes and tubing, O-rings, and many other products. Total U.S. demand for fluoropolymers in 2004 was between 50,000 and 100,000 metric tons. The United States accounted for less than 25 percent of the world consumption of PTFE in 2007, and between 25 and 50 percent of the world consumption of other fluoropolymers. PTFE is the most commonly used fluoropolymer, and the United States

consumed less than 50,000 metric tons of PTFE in 2008 (Ref. 1).

Fluorotelomers, oligomers of tetrafluoroethylene, are relatively small functionalized molecules used to make polymers. World-wide production of fluorotelomer-based polymers (FTBP), was estimated at 20 million pounds in 2006. Fluorotelomer monomers and FTBP are included in the LCPFAC category definition as potential LCPFAC precursors. The United States accounts for more than 50 percent of world-wide fluorotelomer/FTPB production. Textiles and apparel account for approximately 50 percent of the volume, with carpet and carpet care products accounting for the next largest share in consumer product uses. Polymeric coatings, including those for paper products, are the third largest category of consumer product uses (Ref. 1). Articles tested and found to contain the highest levels of PFAC were carpet and carpet treatment products, various types of apparel, home textiles, thread sealant tape, floor wax and other sealants, and food contact paper and paper coatings.

LCPFAC chemical substances, including FTBP, were used in the textile market because of their thermo-stability, ability to adapt to a variety of surface characteristics, low refractive indexes, low dielectric constants, and high chemical stability. FTBP are used as soil retardants and stain repellents in carpets. FTBP are used to treat textiles which cannot be laundered, including carpets, by preventing or reducing the adhesion of liquid or solid contaminants to the textile fibers. Fluorotelomer carpet treatments are incorporated in polymers including fluorinated polyurethanes, fluorinated vinyl polymers and fluorinated acrylate and methacrylate polymers. Most of these fluorinated polymers have a non-fluorinated backbone with fluorinated alkyl chains which provide the desired physical characteristics. Fluorinated polyurethanes are noted to be tough but resilient and can withstand foot traffic on carpets (Ref. 18).

PFAS and LCPFAC chemical substances were used in carpets to impart stain, soil, and grease repellant properties (Ref. 18). There are four typical scenarios for chemical application that could lead to the presence of these chemical substances in carpet products, and this SNUR would apply to all of them. First, these chemical substances could be applied to carpet at a carpet and rug mill during the manufacturing process. Second, these chemical substances could be applied to carpet after the manufacturing process at a separate finishing facility. Third, treatment products containing these chemical substances could be applied to carpets in the aftermarket by consumers or professional carpet cleaners. In the described scenarios, LCPFAC chemical substances could have been domestically produced or imported. Fourth, treated carpet fabrics or treated carpet could be imported as articles. Domestically produced carpets could be made using imported fabrics that had been treated with PFAS or LCPFAC chemical substances or carpet containing these chemical substances could be imported into the United States as a final product.

The Agency believes that the LCPFAC chemical substances included in this proposal are no longer being manufactured, processed, or imported for use as part of carpet or for treating carpet (*e.g.,* for use in the carpet aftercare market) in the United States. The Agency also believes that LCPFAC chemical substances are not being imported as part of carpet. In January 2012, The Carpet and Rug Institute (CRI) informed EPA that all members of CRI have voluntarily discontinued the use of LCPFAC chemical substances and have switched to alternative compounds beginning prior to 2003 and completing sometime near the end of 2005 or beginning of 2006 (Ref. 19). CRI is a nonprofit trade association representing the manufacturers of more than 95 percent of all carpet made in the United States, as well as their suppliers and service providers. Although CRI does not track data from non-United States manufacturers or the few domestic manufacturers who are not members of CRI, EPA's market analysis showed no indication that imported carpet products contain PFAS and LCPFAC chemical substances covered by this proposal, nor did it show any evidence that these chemical substances are manufactured or imported for use as part of carpets (Refs. 20 and 21). The Agency is concerned that LCPFAC chemicals may in the future be used again as part of carpet or for treating carpet, and is hence proposing to include these uses among the significant new uses to be designated for those chemical substances.

D. What are the potential health and environmental effects of LCPFAC chemical substances and the potential sources and routes of exposure to these substances?

The following summary of chemistry, environmental fate, exposure pathways, and health and environmental effects of LCPFAC chemical substances is based on the December 30, 2009 Long-Chain Perfluorinated Chemicals Action Plan (Ref. 1), as well as references cited in the 2009 Action Plan.

PFOA is the most studied chemical of the LCPFAC chemical substances. PFOA is manufactured for use primarily as an aqueous dispersion agent, as the ammonium salt, in the manufacture of fluoropolymers, such as PTFE, which have thousands of important manufacturing and industrial applications. PFOA can also be produced unintentionally by the degradation of some fluorotelomers, which are not manufactured using PFOA but could degrade to PFOA. Fluorotelomers are used to make polymers that impart soil, stain, grease, and water resistance to coated articles. Some fluorotelomer based products are also used as high performance surfactants in products where an even flow is essential, such as paints, coatings, cleaning products, and fire-fighting foams for use on liquid fuel fires.

FTBP can be applied to articles both at the factory and by consumers and commercial applicators in after-market uses such as carpet treatments and water repellent sprays for apparel and footwear (Ref. 18). Therefore, exposure to carpet treatment chemicals may occur both during and after the carpet manufacturing process. In 2008, EPA's ORD conducted research on 116 articles of commerce and found high levels of LCPFAC in carpet and carpet treatment products (levels were from 0.04–40,200 nanograms per gram) (Ref. 1). This is of particular concern for children since they engage in a variety of activities on carpets for longer periods of time in their earliest years and can be exposed to chemical substances in carpets via inhalation and dust ingestion (Ref. 1).

PFOA and its higher homologues are highly persistent chemical substances that are resistant to degradation under environmental conditions. The chemical substances which degrade to form these chemicals are called LCPFAC precursors. These precursors may be present in the final polymer product as residuals and the amount present in the polymer as perfluoroalkyl group (R_f) moieties. The availability of LCPFAC precursor from the content of residuals in fluorotelomer based polymer products (FTBP) would be small in comparison to the amount released should polymeric materials biodegrade in the environment. Potentially all monomeric and most if not all polymeric products, not just the small amounts of residual monomers and other monomer raw material and intermediates, could be LCPFAC precursors. LCPFAC can continue to be formed by LCPFAC precursors

introduced into the environment as they biodegrade with time.

A limited number of studies on the degradation of fluorotelomers have been submitted in support of PMN submissions and existing chemical substances, and they have been published in the open literature. Based on studies, some fluorotelomer-based polymers are subject to hydrolysis, photolysis and biodegradation to some extent. Studies have shown half-lives of a few days to hundreds of years. In addition, existing research on degradation of fluorotelomers has shown that some urethanes and acrylates biodegrade; however, half-lives and kinetics of the fluorotelomers are not yet well defined (Ref. 22). Nevertheless, these studies have shown unambiguously that the perfluorinated portion of some polymers is released as the polymer is degraded by microbial or abiotic processes to form telomer alcohols or other intermediates and that they eventually form LCPFAC.

LCPFAC have been detected in biota, air, water, dust, and soil samples collected throughout the world. Some LCPFAC chemical substances have the potential for long-range transport. They are transported over long distances by a combination of dissolved-phase ocean and gas-phase atmospheric transport; however, determining which is the predominant transport pathway is complicated by many factors including the uncertainty over water to atmosphere partitioning. Furthermore, there is evidence that transport and subsequent oxidation of volatile alcohol LCPFAC precursors contribute to the levels of LCPFAC in the environment.

LCPFAC chemical substances have been detected in human blood samples throughout the United States and the world. These compounds have also been detected in human breast milk, liver, umbilical cord blood, and seminal plasma. Individual samples collected on perfluorinated chemical substances in the most recent National Health and Nutrition Examination Survey (NHANES) 1999–2009 are similar across teens and adults (Ref. 1); however, pooled data from NHANES 2001–2002 indicate that most of the levels of perfluorinated compounds are higher in children ages 3–11 years compared to adults. In addition, a 2009 Texas survey of 300 children reported PFOS, PFOA, perfluorohexanesulfonate (PFHS) and perfluorononanoic acid (PFNA) at higher levels in children 9 to 13 years than in 0 to 2 years (Ref. 1).

Multiple studies have reported a global distribution of LCPFAC in wildlife tissue and blood samples. LCPFAC have also been found in a variety of aquatic organisms. In general, the highest concentrations in wildlife have been found in the livers of fish-eating animals close to industrialized areas.

Animal studies of the straight-chain LCPFAC have shown that these compounds are well absorbed orally, but poorly eliminated; they are not metabolized, and they undergo extensive uptake from enterohepatic circulation. Studies of PFOA have shown that these compounds are distributed mainly to the serum, kidney, and liver, with liver concentrations being several times higher than serum concentrations; the distribution is mainly extracellular. PFOA has a high affinity for binding to B-lipoproteins, albumin, and liver fatty acid-binding protein. Studies have reported several LCPFAC chemical substances in umbilical cord blood, in amniotic fluid, and in blood samples from infants and toddlers (Ref. 1).

In general, the rate of elimination decreases with increasing chain length. Elimination in humans takes years (elimination half-life of PFOA is 2.3–3.8 years). These compounds will persist and bioaccumulate in humans, which means that comparatively low exposures may result in large body burdens.

LCPFAC bioaccumulate and persist in protein-rich compartments of fish, birds, and marine mammals, such as carcass, blood, and liver. Studies have found fish bioconcentration factor (BCF) values for C8 to C14 LCPFAC ranging from 4–40,000 in rainbow trout. Available evidence shows the likely potential for bioaccumulation or biomagnifications in marine or terrestrial species. Additional evidence that C14 and C15 LCPFAC bioaccumulate and are bioavailable is their presence in fish, invertebrates, and polar bears. The bioaccumulation of LCPFAC is thought to represent biomagnification due to high gastrointestinal uptake and slow elimination.

The toxicity of PFOA has been extensively studied and available data have raised concerns about LCPFAC chemical substances' potential developmental, reproductive, and systemic toxicity (Ref. 1). Although there is an extensive database for PFOA, few studies have examined the toxicity of other LCPFAC chemical substances. However, the data suggest that the toxicity profile is quite similar to that of PFOA, albeit at different dose levels.

V. Rationale and Objectives

A. Rationale

As discussed in Units III and IV, PFAS and LCPFAC chemical substances are found world-wide in the environment, wildlife, and humans. They are bioaccumulative in wildlife and humans, and are persistent in the environment. They are toxic to laboratory animals, producing reproductive, developmental, and systemic effects in laboratory tests. The exact sources and pathways by which these chemicals move into and through the environment and allow humans and wildlife to become exposed are not fully understood, but are likely to include releases from manufacturing of the chemicals, processing of these chemicals into products like carpets and textiles, and aging and wear of products containing them.

Since the manufacture, import, and processing of PFAS and LCPFAC chemical substances for the proposed uses have been discontinued, EPA expects their presence in humans and the environment to decline over time as has been observed in the past when production and use of other persistent chemicals has ceased. EPA is concerned that the manufacturing, import (including import as part of certain articles), or processing of these chemical substances for the proposed new uses could be reinitiated in the future. If reinitiated, EPA believes that such use would increase the magnitude and duration of exposure to humans and the environment to these chemical substances, constituting a significant new use.

EPA is concerned about the potential for PFAS or LCPFAC chemical substances (manufactured or imported for an ongoing use) to be redirected to other uses without prior notice to the Agency. For example, a chemical substance may be initially manufactured or imported for a uses listed under § 721.9582(a)(3), (a)(4), or (a)(5), and then redirected for another use after its initial manufacture or import. EPA is therefore proposing to add the processing of a PFAS chemical substances (for any use in the United States, other than the uses listed under § 721.9582(a)(3), (a)(4), and (a)(5)) to the significant new uses of those chemical substances. For similar reasons, EPA is proposing to include the processing of LCPFAC chemical substances (for use as part of carpets or to treat carpet) among the significant new uses to be designated for those chemical substances. While the processing of articles containing PFAS and LCPFAC would remain exempt from notice

requirements, pursuant to § 721.45(f), persons who otherwise process PFAS or LCPFAC for a use other than the above-listed uses where applicable would be required to first notify EPA, even if they are not themselves manufacturers or importers of the chemical substance.

Accordingly, EPA wants the opportunity to evaluate and control, where appropriate, activities associated with those uses, if such manufacturing, importing, or processing were to start or resume. The required notification provided by a SNUN would provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, from exposure to PFAS and LCPFAC chemical substances.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to propose a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the Agency's action is based on EPA's determination that if the use begins or resumes, it may present a risk that EPA should evaluate under TSCA before the manufacturing or processing for that use begins. Since the new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical for the use, the notice to EPA allows EPA to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

While the Agency is currently only proposing as significant new uses of LCPFAC chemical substances use as part of carpet or to treat carpet, the Agency believes the 2010/2015 PFOA Stewardship Program will eliminate many other ongoing uses of LCPFAC chemical substances. As those uses are phased out in the United States, EPA anticipates taking additional regulatory actions to prevent resumption of the uses without prior notice to EPA.

B. Objectives

Based on the considerations in Unit V.A., EPA wants to achieve the following objectives with regard to the significant new use(s) that are designated in this proposed rule:

1. EPA would receive notice of any person's intent to manufacture, import, or process PFAS or LCPFAC chemicals for the described significant new use before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing PFAS or LCPFAC chemicals for the described significant new use.

3. EPA would be able to regulate prospective manufacturers, importers, or processors of PFAS or LCPFAC chemicals before the described significant new use of the chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

VI. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use of the PFAS and LCPFAC chemical substances subject to this proposed rule, as discussed herein, EPA considered relevant information about the toxicity of these substances, likely human exposures and environmental releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

EPA has preliminarily determined that the manufacture, import, processing of any of the PFAS chemical substances subject to this proposed rule, for any use except ongoing uses specified in § 721.9582(a)(3) through (a)(5) of the regulatory text in this document, is a significant new use. EPA has also preliminarily determined that the manufacture, import, or processing of any of the LCPFAC chemical substances subject to this proposed rule for use as part of carpet or to treat carpets, is a significant new use, and further determined that importing any of the LCPFAC chemical substances subject to this proposed rule as part of carpet constitutes a significant new use and warrants making inapplicable the article exemption at § 721.45(f).

VII. Request for Comment

EPA welcomes comments on any aspect of this proposed SNUR. EPA requests comment on whether any of the uses proposed to be added as significant new uses are in fact ongoing, and would request specific documentation of any such ongoing use.

VIII. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions:

A. Promulgate a TSCA Section 8(a) Reporting Rule

Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they intend to manufacture, import, or process a listed chemical for a specific use or any use. However, for PFAS and LCPFAC chemical substances, the use of TSCA section 8(a) rather than SNUR authority would have several limitations. First, if EPA was to require reporting under TSCA section 8(a) instead of TSCA section 5(a), EPA would not have the opportunity to review human and environmental hazards and exposures associated with the proposed significant new use and, if necessary, take immediate follow-up regulatory action under TSCA sections 5(e) or 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because such firms generally are exempt from TSCA section 8(a) reporting requirements. In view of the level of health and environmental concerns about PFAS and LCPFAC chemical substances if used for the proposed significant new use, EPA believes that a TSCA section 8(a) rule for this substance would not meet EPA's regulatory objectives.

B. Regulate PFAS and LCPFAC Chemical Substances under TSCA Section 6

EPA may regulate under TSCA section 6 if ''the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture * * * presents or will present an unreasonable risk of injury to health or the environment.'' (TSCA section 6(a)). Given that LCPFAC chemical substances are no longer being used as part of a carpet, and that the PFAS chemicals subject to this action have not commenced production or import, EPA concluded that risk management action under TSCA section 6 for these uses is not necessary at this

time. This proposed SNUR would allow the Agency to address the potential risks associated with the proposed significant new use.

IX. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substance(s) that would be regulated through this proposed rule, if finalized, would have to cease any such activity before the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. Uses arising after the publication of the proposed rule are distinguished from uses that exist at publication of the proposed rule. The former would be new uses, the latter ongoing uses. To the extent that additional ongoing uses are found in the course of rulemaking, EPA would exclude those uses from the final SNUR. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under section 721.45(h), that person would be considered to have met the requirements of the final SNUR for those activities.

X. Test Data and Other Information

EPA recognizes that TSCA section 5 does not usually require developing any particular test data before submission of a SNUN. There are two exceptions: (1) development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)); and (2) development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)). In the absence of a section 4 test rule or a section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25, and 40 CFR 720.50). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, import, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

1. Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
2. Potential benefits of the chemical substance.
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

XI. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems*.

XII. Economic Analysis

A. SNUNs

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers, importers, and processors of the chemical substance included in this proposed rule (Ref. 23). In the event that a SNUN is submitted, costs are estimated at approximately $8,571 per SNUN submission for large business submitters and $6,171 for small business submitters. These estimates include the cost to prepare and submit the SNUN, and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)). The costs of submission of SNUNs will not be incurred by any company unless a company decides to pursue a significant new use as defined in this proposed SNUR. EPA's complete economic analysis is available in the public docket for this proposed rule (Ref. 23).

B. Export Notification

Under section 12(b) of TSCA and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under section 5. For persons exporting a substance the subject of a SNUR, a one-time notice must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical, depending on the number of required notifications (i.e., the number of countries to which the chemical is exported). EPA is unable to make any estimate of the likely number of export notifications for the chemical covered in this proposed SNUR.

XIII. References

As indicated under **ADDRESSES**, a docket has been established for this proposed rule under docket ID number EPA–HQ–OPPT–2012–0268. The following is a listing of the documents that have been placed in the docket for this proposed rule. The docket includes information considered by EPA in developing this proposed rule, including the documents listed in this unit, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that

are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult either technical person listed under **FOR FURTHER INFORMATION CONTACT**. The docket is available for review as specified under **ADDRESSES**.

1. USEPA. ''Long-Chain Perfluorinated Chemicals Action Plan.'' December 30, 2009.
2. USEPA. ''Perfluoroalkyl Sulfonates; Significant New Use Rule, Final Rule.'' 67 FR 11008, March 11, 2002.
3. USEPA. ''Perfluoroalkyl Sulfonates; Proposed Significant New Use Rule, Supplemental proposed rule.'' 67 FR 11014, March 11, 2002.
4. USEPA. ''Perfluoroalkyl Sulfonates; Significant New Use Rule, Final Rule.'' 67 FR 72854, December 9, 2002.
5. USEPA. ''Perfluoroalkyl Sulfonates; Proposed Significant New Use Rule, Final Rule.'' 72 FR 57222, October 9, 2007.
6. 3M Company. Fluorochemical Use, Distribution, and Release Overview. St. Paul, Minnesota, May 26, 1999.
7. Weppner, William A., 3M Company. Phase-Out Plan for POSF-Based Products, St. Paul, Minnesota, July 7, 2000.
8. R. Renner. 2006. ''The Long and the Short of Perfluorinated Replacements.'' Environmental Science and Technology. 40: 12–13.
9. 3M Company. Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. St. Paul, Minnesota, March 1, 2000.
10. 3M Company. The Science of Organic Fluorochemistry. St. Paul, Minnesota, February 5, 1999.
11. 3M Company. Perfluorooctane Sulfonate: Current Summary of Human Sera, Health and Toxicology Data. St. Paul, Minnesota, January 21, 1999.
12. Kudo, Naomi, et. al. ''Comparison of the Elimination Between Perfluorinated Fatty Acids with Different Carbon Chain Lengths in Rats.'' Chemico-Biological Interactions. Volume 134(2), 2001, pp. 203–216.
13. Goeke-Flora, Carol M. and Nicholas V. Reo. ''Influence of Carbon Chain Length on the Hepatic Effects of Perfluorinated Fatty Acids, A\19\ F- and \31\P-NMR Investigation.'' Chemical Research in Toxicology, 9(4), 1996, pp. 689–695.
14. Dixon, David A. ''Fluorochemical Decomposition Processes,'' Theory, Modeling, and Simulation, William R. Wiley Environmental Molecular Sciences Laboratory, Pacific Northwest National Laboratory, Richland, Washington, April 4, 2001.
15. Organization for Economic Cooperation and Development (OECD), Environment Directorate. ''Hazard Assessment of Perfluorooctane Sulfonate (PFOS) and its Salts,'' ENV/JM/RD(2002)17/FINAL, November, 21, 2002.
16. USEPA. ''Perfluorooctyl Sulfonates; Proposed Significant New Use Rule.'' 65 FR 62319, October 18, 2000.
17. USEPA. ''Perfluoroalkyl Sulfonates; Proposed Significant New Use Rule, Proposed Rule.'' 71 FR 12311, March 10, 2006.
18. Kissa, David. Fluorinated Surfactants and Repellents. Surfactant Science Series. Marcel Dekker, Inc.: New York. 2001.
19. The Carpet and Rug Institute. Letter from Werner H. Braun to Maria Doa, Director, CCD, OPPT, USEPA. January 16, 2012.
20. USEPA. ''Market Profile for PFCs Used as Part of Carpets (contains proprietary information).'' Washington, DC February 17, 2012.
21. USEPA. ''Non-Proprietary Market Profile for PFCs Used as Part of Carpets.'' Washington, DC February 17, 2012.
22. Washington J.W., Ellington J.J., Thomas M.J., Evans J.J., Hoon Yoo, Hafner S.C. (2009). Degradability of an acrylate-linked, fluorotelomer polymer in soil Environmental Science and Technology, 43(17), 6617–6623.
23. USEPA. Economic Analysis of the Significant New use Rule for Perfluoroalkyl Sulfonates and Long-Chain Perfluoroalkyl Carboxylate Chemical Substances. Prepared by Timothy Lehman and Abt Associates Inc. February 16, 2012.

XIV. 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 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), and was therefore not reviewed by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled *Improving Regulation and Regulatory Review* (76 FR 3821).

EPA has prepared an economic analysis of this action, which is contained in a document entitled *Economic Analysis of the Significant New Use Rule for Perfluoroalkyl Sulfonates and Long-Chain Perfluoroalkyl Carboxylate Chemical Substances* (Ref. 23). A copy of the economic analysis is available in the docket for this final rule and is summarized in Unit XII.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR, part 9, and included on the related collection instrument, or form, if applicable. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 110 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN. Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since this proposed SNUR would require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted, only one appears to be from a small entity in response to any SNUR. Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or

adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690)(FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132: Federalism

This action would not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

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

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

This proposed 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), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

Since this action does not involve any technical standards; 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), does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 7, 2012.

Wendy Cleland-Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Add § 721.10536 to subpart E to read as follows:

§ 721.10536 Long-chain perfluoroalkyl carboxylate chemical substances.

(a) *Definitions.* The definitions in § 721.3 apply to this section. In addition, the following definition applies: *Carpet* means a finished fabric or similar product intended to be used as a floor covering. This definition excludes resilient floor coverings such as linoleum and vinyl tile.

(b) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified below, where n > 5 or m > 6, are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(i) $CF_3(CF_2)_n-COO^-M$ where M = H^+ or any other group where a formal dissociation can be made;

(ii) $CF_3(CF_2)_n-CH{=}CH_2$;

(iii) $CF_3(CF_2)_n-C(=O)-X$ where X is any chemical moiety;

(iv) $CF_3(CF_2)_m-CH_2-X$ where X is any chemical moiety;

(v) $CF_3(CF_2)_m-Y-X$ where Y = non-S, non-N hetero atom and where X is any chemical moiety, and

(vi) structurally similar degradation products of any of the compounds in (i) through (v) of this paragraph.

(2) *Significant new uses.* The significant new uses for chemical substance identified in paragraph (b)(1) of this section are: manufacture, import, or processing for use as part of carpets or to treat carpets (*e.g.,* for use in the carpet aftercare market).

(c) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Revocation of certain notification exemptions.* With respect to imports of carpets, the provisions of § 721.45(f) do not apply to this section. A person who imports a chemical substance identified in this section as part of a carpet is not exempt from submitting a significant new use notice. The other provision of § 721.45(f), respecting processing a chemical substance as part of an article, remains applicable.

(2) [Reserved]

3. Section 721.9582 is amended by revising paragraph (a)(1) introductory text; by adding Table 4 to paragraph (a)(1) and by revising paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) to read as follows:

§ 721.9582 Certain perfluoroalkyl sulfonates.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances listed in Table 1, Table 2, Table 3, and Table 4 of this section are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

* * * * *

TABLE 4—FOURTH SET OF PFAS CHEMICALS SUBJECT TO REPORTING

Premanufacture notice case No.	Generic chemical name
P–83–0126	Modified fluoroaliphatic adduct.
P–90–0110	Fluorochemical epoxide.
P–94–1508	Fluorinated polysiloxane.
P–94–1509B	Fluorinated polysiloxane.
P–98–0809	Fluorochemical esters.
P–99–0296	Fluoroalkyl derivative.
P–01–0035	Perfluorooctane sulfonate.

(2) The significant new uses are:

(i) Manufacturing, importing, or processing of any chemical substance listed in Table 1 of paragraph (a)(1) of this section for any use.

(ii) Manufacturing, importing, or processing of any chemical substance listed in Table 2 of paragraph (a)(1) of this section for any use, except as noted in paragraph (a)(3) of this section.

(iii) Manufacturing, importing, or processing of any chemical substance listed in Table 3 of paragraph (a)(1) of this section for any use, except as noted in paragraphs (a)(3) through (a)(5) of this section.

(iv) Manufacturing, importing, or processing of any chemical substance listed in Table 4 of paragraph (a)(1) of this section for any use.

(3) Manufacturing, importing, or processing of any chemical substance listed in Table 2 and Table 3 of paragraph (a)(1) of this section for the following specific uses shall not be considered as a significant new use subject to reporting under this section:

(i) Use as an anti-erosion additive in fire-resistant phosphate ester aviation hydraulic fluids.

(ii) Use as a component of a photoresist substance, including a photo acid generator or surfactant, or as a component of an anti-reflective coating, used in a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices.

(iii) Use in coating for surface tension, static discharge, and adhesion control for analog and digital imaging films, papers, and printing plates, or as a surfactant in mixtures used to process imaging films.

(iv) Use as an intermediate only to produce other chemical substances to be used solely for the uses listed in paragraph (a)(3)(i), (ii), or (iii) of this section.

(4) Manufacturing, importing, or processing of tetraethylammonium perfluorooctanesulfonate (CAS No. 56773–42–3) for use as a fume/mist suppressant in metal finishing and plating baths shall not be considered as a significant new use subject to reporting under this section. Examples of such metal finishing and plating baths include: Hard chrome plating; decorative chromium plating; chromic acid anodizing; nickel, cadmium, or lead plating; metal plating on plastics; and alkaline zinc plating.

(5) Manufacturing, importing, or processing of: 1-Pentanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,5-undecafluoro-, potassium salt (CAS No. 3872–25–1); Glycine, N-ethyl-N-[(tridecafluorohexyl)sulfonyl]-, potassium salt (CAS No. 67584–53–6); Glycine, N-ethyl-N-[(pentadecafluoroheptyl)sulfonyl]-, potassium salt (CAS No. 67584–62–7); 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, ammonium salt (CAS No. 68259–07–4); 1-Heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro- (CAS No. 68957–62–0); Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(pentadecafluoroheptyl) sulfonyl]amino]ethyl]-.omega.-methoxy- (CAS No. 68958–60–1); or 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, compd. with 2,2′-iminobis[ethanol] (1:1) (CAS No. 70225–16–0) for use as a component of an etchant, including a surfactant or fume suppressant, used in the plating process to produce electronic devices shall not be considered a significant new use subject to reporting under this section.

* * * * *

[FR Doc. 2012–19952 Filed 8–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2012–0056; 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Bicknell's Thrush (Catharus bicknelli) as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Bicknell's thrush (*Catharus bicknelli*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we will be initiating a review of the status of the species to determine if listing the Bicknell's thrush is warranted. To ensure that our status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the results of our status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: We request that we receive information on or before October 15, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section below) is 11:59 p.m. Eastern Time on this date. After October 15, 2012, you must submit information directly to the Division of Policy and Directives Management (see **ADDRESSES** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter FWS–R5–ES–2012–0056, which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on ''Comment Now!.'' If your submission will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information collection procedures. If you attach your submission as a separate document, our preferred file format is Microsoft Word. If you attach multiple documents (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2012–0056; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R5–ES–2012–0056. Supporting documentation we used in preparing this finding is

available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Thomas R. Chapman, Supervisor, U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301; by telephone at 603–223–2541. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly initiate review of the status of the species (status review). For the status review to be complete, and based on the best available scientific and commercial information, we request information on the Bicknell's thrush from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Information regarding the potential impacts to the species resulting from climate change, such as data, analyses, and predictions related to:

(a) The loss of spruce-fir forested habitat where the species breeds, including the projected impacts to the Canadian portion of the species' breeding range;

(b) Impacts to forest habitats in the Caribbean that provide important wintering habitat for the species; and

(c) Alterations to the cycling and productivity in balsam fir cone production that may alter population dynamics in red squirrels, a major predator of nestling Bicknell's thrush.

(4) Information regarding the ongoing and projected impacts of ground-level ozone emissions on spruce and fir in the northeastern United States and Maritime Provinces of Canada.

(5) Behavioral, survival, and reproductive consequences of various mercury accumulation levels in insectivorous songbirds.

(6) Impacts to the species resulting from the construction and operation of commercial wind turbines and transmission lines in breeding habitat, including habitat loss, mortality, productivity, and avoidance of turbines as a result of blade movements or noise.

(7) Existing regulatory mechanisms that may be protective of the Bicknell's thrush and its habitat, particularly on its wintering grounds in the Greater Antilles.

If, after the status review, we determine that listing the Bicknell's thrush is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area currently occupied by the species that are ''essential for the conservation of the species''; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New England Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a

species status review. The status review and 12-month petition finding are combined in a single **Federal Register** notice.

Petition History

On August 26, 2010, we received a petition, dated August 24, 2010, from Mollie Matteson, Center for Biological Diversity (CBD or petitioner), Northeast Field Office, requesting that the Bicknell's thrush be listed as threatened or endangered and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a September 9, 2010, letter to the petitioner, we responded that we would review the information presented in the petition and determine if listing of the Bicknell's thrush was warranted. This finding addresses the petition.

Previous Federal Actions

In 1994, the Bicknell's thrush was determined to be a category 2 species of concern and we announced that finding in the Animal Candidate Review for Listing as Endangered or Threatened Species (59 FR 58982). Category 2 was defined as including taxa for which the Service had information indicating that proposing to list as endangered or threatened is possibly appropriate, but for which persuasive data on biological vulnerability and threat are not currently available to support proposed rules. In 1996, the Service discontinued the list of category 2 candidate species, resulting in the removal of the Bicknell's thrush from candidate status (61 FR 64481).

Although the Bicknell's thrush was removed from the list of candidate species in 1996, the species was identified by the North American Bird Conservation Initiative as one of the Highest Priority Landbirds in the Atlantic Northern Forest (Dettmers 2006, p. 21), and the Service's New England Field Office has continued to amass information related to the species and to support conservation of the species.

On September 9, 2011, the U.S. District Court for the District of Columbia approved two settlement agreements: one agreement between the Service and CBD and a second agreement between the Service and WildEarth Guardians (WEG). The agreements enable the Service to systematically, over a period of 6 years, review and address the needs of more than 250 species listed on the 2010 Candidate Notice of Review (75 FR 69222). The agreements also include additional scheduling commitments for a small subset of the actions in the 6-year work plan that are consistent with the Service's objectives and biological priorities. For the Bicknell's thrush, the settlement agreement with WEG specifies that we will complete a 90-day petition finding by the end of fiscal year 2012.

Species Information

The Bicknell's thrush (*Catharus bicknelli*) is the smallest of North American *Catharus* thrushes in the family Turdidae, which includes all birds related to the robins (Rimmer *et al.* 2001, p. 2). Rimmer *et al.* (2001, pp. 1–28) provides a comprehensive overview of the species' biology. Field identification of the Bicknell's thrush is difficult, because of close similarities in appearance with the gray-cheeked (*C. minimus*) and the Swainson's (*C. ustulatus*) thrushes (Wallace 1939, p. 217; Rimmer *et al.* 2001, p. 2). The total population of Bicknell's thrush is estimated to be 95,000 to 126,000 birds (International Bicknell's Thrush Conservation Group (IBTCG) 2010, p. 6).

The Bicknell's thrush was considered a subspecies of the gray-cheeked thrush until 1993. Ornithologists carefully evaluated the species' morphology, range, song, behavior, habitat, and genetic divergences and detected significant differences between the taxa. This evaluation subsequently led to the recommendation that the Bicknell's thrush be elevated to a full species (Ouellet 1993, p. 568). The American Ornithologist Union (1995, p. 824) recognizes the Bicknell's thrush as a species, and the Service concurs with that taxonomic change.

The Bicknell's thrush is a migratory species, meaning it travels between different geographical areas to fulfill life-history functions like breeding and raising its young. The species feeds predominantly on insects, but during migration and on its wintering grounds, the species can shift its diet almost entirely to the consumption of several varieties of small fruits (Beal 1915 in Wallace 1939, p. 295; Rimmer *et al.* 2001, pp. 9–10; Townsend *et al.* 2010, p. 517). Bicknell's thrush forages for food among trees, feeding among the branches or hawking (pursuit in flight); however, most foraging activity takes place on or near the ground through litter pecking or gleaning (Wallace 1939, p. 295; Sabo 1980, p. 251; Rimmer *et al.* 2001, pp. 9–10).

The Bicknell's thrush breeds in portions of the northeastern United States and eastern and southern Canada and winters in the Greater Antilles. On its way between the breeding and wintering grounds, the Bicknell's thrush flies along the Atlantic coast and may stop in certain areas for resting and feeding. The breeding range of the species extends from the northern Saint Lawrence area of Quebec and the Maritime Canadian Provinces south through New England and New York to that State's Catskill Mountains (Wallace 1939, pp. 258–259; Ouellet 1993, pp. 563–564; Rimmer *et al.* 2001, p. 1). Breeding habitat for the Bicknell's thrush is described as dense tangles of both living and dead ''stunted'' trees that are predominately balsam fir (*Abies balsamea*) with lesser amounts of red spruce (*Picea rubens*) and white birch (*Betula papyrifera var. cordifolia*) (Wallace 1939, p. 285; Rimmer *et al.* 2001, p. 7; Ouellet 1993, p. 561). Depending upon location, white spruce (*P. glauca*) or an occasional black spruce (*P. mariana*) can also provide breeding habitat, as can pin cherry (*Prunus pennsylvanica*), mountain ash (*Sorbus americanus*), shadbush (*Amelanchier spp.*), and other deciduous species (Wallace 1939, pp. 285–286; Sabo 1980, p. 242; Ouellet 1993, p. 561; Rimmer *et al.* 2001, p. 7). Except in the case of the Maritime Provinces, where the species can be found at lower elevations using regenerating industrial forests, the species breeds mostly in stunted high elevation, or montane spruce-fir forests located close to, but below, timberline, which usually occurs at elevations in excess of 900 meters (m) (3,000 feet (ft)) elevation (Wallace 1939, pp. 248 and 286; Ouellet 1993, pp. 560, 561; Atwood *et al.* 1996, p. 652; Rimmer *et al.* 2001, p. 7).

The montane spruce-fir forests that this species prefers for breeding are typical of chronically disturbed areas associated with altered growing conditions resulting from human activities (e.g., ski trails) and natural processes. Natural disturbances include 'terrific' winds, which can exceed 45 meters per second (mps) (100 miles per hour (mph)), and heavy rime ice accumulation that occurs when supercooled water droplets undergo rapid freezing upon contact with a cold surface (Wallace 1939, p. 282; Rimmer *et al.* 2001, p. 7). As a result of these conditions, trees are stunted and the mean canopy height in areas where the Bicknell's thrush is found in the White Mountains of New Hampshire is 4.8 m (15.7 ft) (Sabo 1980, p. 250). Habitats of this type provide approximately 100,000 to 150,000 hectares (ha) (247,105 to 370,658 acres (ac)) of Bicknell's thrush nesting habitat for the United States' breeding population, which is estimated to be between 57,000 and 77,000 birds

and represents approximately 60 percent of the global population (Atwood *et al.* 1996, p. 654; IBTCG 2010, p. 6).

The remaining global population of the Bicknell's thrush, or 37,000 to 49,000 birds, breeds in Canada (IBTCG 2010, p. 6). While Bicknell's thrush can be found in Canadian habitats associated with industrial forests at elevations as low as 175 m (574 ft), most are found in montane spruce-fir forests at elevations exceeding 600 m (1968 ft) (Ouellet 1993, pp. 560–563; Nixon *et al.* 2001, p. 38). Bird densities in lower elevation habitats range from 16 to 40 pairs per 100 ha (247 ac), which is much lower than the 90 to 100 pairs per 100 ha (247 ac) densities measured during a 4-year study in montane habitat on Vermont's Mount Mansfield (Nixon *et al.* 2001, p. 38; Rimmer *et al.* 1996, p. 641).

Although the Bicknell's thrush exhibits some flexibility in the elevation of breeding habitats used, the species demonstrates a strong preference for a specific vegetation structure. Breeding habitats in montane habitats or in lower elevation areas are characterized by dense vegetation (Rimmer *et al.* 2001, pp. 7–8).

Breeding occurs in June, with males singing to attract a mate (Wallace 1939, p. 311; Rimmer *et al.* 2001, p. 12). Both males and females will mate with multiple partners, resulting in multiple paternity within the same nest (Rimmer *et al.* 2001, p. 13). Nest building and egg incubation is the sole responsibility of the female, but both males and females feed the chicks (Wallace 1939, pp. 323–325; Rimmer *et al.* 2001, pp. 15–17). Fledging occurs at 9 to 14 days, at which time the young either stay in the vicinity of the nest or depart to other areas, including down-slope, hardwood-dominated habitats (Rimmer *et al.* 2001, p. 18). The sex ratio of Bicknell's thrush nestlings can vary from 1 male:1.5 females to 2 males:1 female (Rimmer *et al.* 2001, p. 13; Townsend *et al.* 2009, pp. 92–93).

By the end of September, the Bicknell's thrush departs its breeding grounds (Wallace 1939, p. 259). Migration patterns are poorly known (Ouellet 1993, p. 564; Rimmer *et al.* 2001, pp. 6–7); however, fall migration progresses at a ''leisurely'' pace with most birds usually remaining at some stop-over locations for a day or two and some documented to stay for as long as 7 days (Wallace 1939, p. 259; Rimmer *et al.* 2001, p. 7). Fall migration follows a coastal route, south to the mid-Atlantic coast where it is thought that most birds depart land and fly across the ocean, finally arriving in the Greater Antilles by early November (Ouellet 1993, p. 564; Rimmer *et al.* 2001, pp. 6–7).

Wintering occurs exclusively in the Greater Antilles, with the majority of birds on the island of Hispaniola, in Haiti and the Dominican Republic. The species can also be found on the islands of Cuba, Jamaica, and Puerto Rico (Rimmer *et al.* 2001, pp. 3–4), although it is considered an uncommon migrant in Hispaniola; a rare migrant to the Bahamas, Cuba, and Jamaica; and a vagrant on Puerto Rico and the Virgin Islands (Raffaele *et al.* 1998, p. 376). In the Dominican Republic, the Bicknell's thrush can be found from sea level to 2,200 m (7,200 ft), although most occur in mesic to wet broadleaf montane forests in excess of 1,000 m (3,300 ft) elevation (Rimmer *et al.* 2001, p. 8). The Bicknell's thrush can also be found in dry, pine-dominated forests (Rimmer *et al.* 2001, p. 6). The species prefers dense thicket vegetation similar to habitats selected during the breeding season (Townsend *et al.* 2010, p. 520), and individuals (both males and females) defend and maintain exclusive territories where conspecifics (members of the same species) are excluded (Townsend *et al.* 2010, p. 517).

In spring, the birds leave the Greater Antilles, probably by late April (Rimmer *et al.* 2001, p. 5). They first appear in Florida, and by the end of May they can be found back in the mountains of New England and Canada (Wallace 1939, p. 259; Rimmer *et al.* 2001, p. 5). Males typically arrive sooner than the females (Rimmer *et al.* 2001, p. 5).

Population Trends

Conducting comprehensive surveys for the Bicknell's thrush is difficult because of the species' patchy distribution. As a result, Bicknell's thrush is under-represented in the United States' historical Breeding Bird Survey data, making detection of long-term trends difficult (Bystrak 1981, p. 38). However, several local extirpations from former breeding habitat have been detected (Rimmer *et al.* 2001, p. 4). For example, in Massachusetts, the Bicknell's thrush breeding population on Mount Greylock gradually declined from 10 pairs in 1950 to 0 pairs in 1973, and visits to Saddle Ball Mountain during the period 1992 to 1995 failed to detect the species (Atwood *et al.* 1996, p. 657). This same survey also failed to detect the Bicknell's thrush where it had historically occurred in Vermont on Glebe and Molly Stark Mountains, as well as Mounts Aeolus and Ascutney. In New Hampshire, Bicknell's thrush was not found on Mounts Pemigewasset, Monadnock, and Sunapee, as well as North Moat Mountain, where the species had been previously located.

In Canada, the species has disappeared from Seal and Mud Islands in Nova Scotia (Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2009, p. 9), despite being relatively common at the time of Wallace's writing (1939, p. 331), when at least a dozen nests were found on Seal Island. Bicknell's thrush has also been absent from formerly occupied habitats on Cape Breton Island and Cape Forchu, Nova Scotia (COSEWIC 2009, p. 9; Rimmer *et al.* 2001, p. 4). In Quebec, the Bicknell's thrush has not been observed in the last 10 years in the following previously occupied locations: Montagne Noire; Monts Sir-Wilfrid, des Éboulements, Comi, and St-Pierre; at some previously occupied sites in the zec des Martres; Métis-sur-Mer; and on Bonaventure and Magdalen Islands (COSEWIC 2009, p. 9). In New Brunswick since the 1980s, the species has apparently become absent as a breeder from the southern half of the province, including from Grand Manan Island and the Rapidy Brook area (COSEWIC 2009, p. 9).

To obtain better information on the population status of all birds occupying high-elevation spruce-fir habitat in New Hampshire's White Mountains, a comprehensive survey was conducted during the period of 1993 to 2003 (King *et al.* 2008). This survey effort involved annual bird counts at 768 points on 42 transects located along hiking trails. The results revealed that in a 10-year period (1993 to 2003), the Bicknell's thrush population had declined by 7 percent (Lambert *et al.* 2008, p. 607) in the survey area. However, results from this study may not be indicative of Bicknell's thrush populations rangewide, especially when considering that the combined trend data from across the United States' breeding range have been stable for the period 2001 to 2009, with local abundance increasing in the Adirondack Mountains (New York), while remaining the same in the Catskills (New York), the Green Mountains (Vermont), and the White Mountains (New Hampshire) (IBTCG 2010, p. 7). Conversely, survey data from Canada demonstrate a 17 percent annual decline in New Brunswick and a 15 percent annual decline in Nova Scotia (IBTCG 2010, p. 7). On Mont Gosford, there were 60 percent fewer individuals detected in 2007 than in 2001 (IBTCG 2010, p. 7). Long-term Canadian Breeding Bird Survey data for the period of 1966 to 2008 show a 9 percent decline (IBTCG 2010, p. 7).

In summary, the readily available current population trend information

seems to indicate a static or slightly declining Bicknell's thrush breeding population from historical population levels. However, there is no information readily available to the Service about the species' wintering population. Further information about the species' overall population numbers and trends will be gathered during the status review.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat, and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the Bicknell's thrush, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petitioner asserts that the ''primary threat to the long-term persistence of the Bicknell's thrush is habitat loss'' (Center for Biological Diversity 2010 petition (Petition), p. 24). The petitioner concludes that ''montane ecosystems that host populations of the Bicknell's thrush are small and fragmented, heightening their vulnerability to a number of complex, interrelated threats'' (Petition, p. 24). ''Foremost among these threats is global climate change,'' the petitioner asserts, that will result in disappearance of montane forests from the species' current breeding range (Petition, p. 24). In addition to direct and indirect impacts of climate change, the petition also describes other factors that contribute to the loss of important breeding and wintering Bicknell's thrush habitat, including: (1) Acid rain deposition; (2) ground-level ozone and nitrogen atmospheric deposition; (3) recreational, telecommunication, and wind energy development activities; and (4) timber extraction that results in the conversion of breeding habitat to other land uses (Petition, pp. 6, 24).

Evaluation of Information Provided in the Petition and Available in Service Files

Climate Change—Impacts to Breeding and Wintering Habitat

The petitioner states that ''Climate change represents the gravest threat to the long-term survival of the Bicknell's thrush'' (Petition, p. 24). The petition provides an overview of global climate change research, including past, present, and predicted future climate change conditions (Petition, pp. 24–28). Following this overview of the scientific basis of global climate change, the petitioner discusses observed and predicted impacts to Bicknell's thrush habitat. The petitioner asserts that the predicted global climate change will result in increased July temperatures that could lead to a reduction in the amount of spruce-fir habitat for the Bicknell's thrush by over 95 percent (Petition, p. 29), as well as increase the frequency of erratic and severe weather events. The petition also cites references that indicate that climate change will result in drying trends for the Caribbean Basin that may reduce the suitability of important wintering habitats, as well as an increase in the frequency of tropical storms that may destroy habitat (Petition, pp. 31, 33).

Regarding climate change-induced increased summer temperatures in the Northeast, several studies provide relevant information. For example, the petitioner asserts that the Fourth Assessment Report: Climate Change 2007 (hereafter referred to as AR4), prepared by the Intergovernmental Panel on Climate Change (IPCC) presents the best available science on global climate change. We concur that the information on global climate change contained within AR4 is reliable. The IPCC concludes that warming of the climate system is unequivocal, as is now evident from observations of increase in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (IPCC 2007, p. 2). Further, they attribute the warming to a 70 percent increase in greenhouse gas (mostly CO_2) emissions from human activities during the period 1970 to 2004, and those emissions result in a marked increase in global concentration of contributing gases, as evidenced by ice core samples (IPCC 2007, p. 5). In conclusion, the IPCC expresses a ''very high confidence'' that the net effect of recent human activities has been one of warming (IPCC, p. 5).

This warming trend is expected to continue as a result of a projected increase of global greenhouse gas emissions by 25 to 90 percent between 2000 and 2030, which would be greater than the change observed during the 20th century (IPCC, p. 7). Although there is some uncertainty regarding the mechanics of climate change and how much temperatures will change, the projected global average surface temperature increase is estimated to range from 1.1 °C to 6.4 °C (2.0 °F and 11.5 °F) in 2090 to 2099, over the temperatures observed during the 19-year period of 1980 to 1999 (IPCC 2007, p. 8). Consistent with this increase in global average temperatures, at a regional scale, average annual temperatures in the northeastern United States are also projected to rise by 2.9 °C to 5.3 °C (5.0 °F to 10.0 °F) by 2070 to 2099, in comparison to the period of 1961 to 1990 (Hayhoe *et al.* 2007, p. 388).

The petition presents research, supported by readily available information in our files, which demonstrates that climate change-induced habitat loss has occurred

within the range of the Bicknell's thrush. The spruce-fir/deciduous ecotone is correlated with elevation areas that have a mean July temperature of approximately 17 °C (63 °F); consequently, montane spruce-fir forests are restricted to upper elevations (Cogbill and White 1991, pp. 169 and 171). During the period of 1964 to 2004, analysis of forest plots in Vermont's Green Mountains indicates a 19 percent increase in the dominance of northern hardwood species in the northern hardwood-boreal forest ecotone, at the expense of red spruce, balsam fir, and montane paper birch (Beckage *et al.* 2008, p. 4197). This tree species shift is corroborated by remotely sensed data from 1962 to 2005 that indicates a 92-m (302-ft) and 119-m (390-ft) upslope movement in the northern hardwood to boreal ecotone on two mountains: Mount Abraham, which supports a breeding population of the Bicknell's thrush (Rimmer *et al.* 2005a, p. 27) and Camels Hump. This change coincides with an increase of 1.1 °C (2 °F) in annual temperature during the same period, and the authors propose that this climate change promotes the growth and recruitment of northern hardwoods at higher elevations (Beckage *et al.* 2008, p. 4201). The authors then suggest that the increase in northern hardwood species is made possible by vacancies left by boreal forest species that have, possibly, succumbed to the effects of acid rain depositions, to which red spruce mortality has been attributed (Beckage *et al.* 2008, p. 4201). In conclusion, the authors suggest ''that high-elevation forests may be jeopardized by climate change * * *'' (Beckage *et al.* 2008, p. 4197). Similar information also exists from other Vermont sites (Friedland 1989, pp. 240–241) and from New York (Cook 1985 and Johnston *et al.* 1988 in Friedland 1989, p. 242).

The montane spruce-fir forests of New York and northern New England provide breeding habitat for approximately 60 percent of the world's estimated Bicknell's thrush population (IBTCG 2010, p. 6). Rodenhouse *et al.* (2008, p. 525) suggest that because the occurrence of this habitat type is primarily controlled by climate, projected warming has the potential to alter the distribution and abundance of the Bicknell's thrush. To evaluate the consequences of climate change to Bicknell's thrush habitat, Rodenhouse *et al.* (2008, p. 525) evaluate the potential impacts of a warming climate on modeled Bicknell's thrush habitat. The authors argue a warming climate will enable northern hardwoods to encroach on red spruce and balsam fir, causing the montane spruce fir forest to shift out of Bicknell's thrush habitat suitability (Rodenhouse *et al.* 2008, p. 525). Based on their results, regional warming of 1 °C (1.8 °F) will reduce Bicknell's thrush habitat by more than one-half, while an increase of 2 °C (3.6 °F) may result in the elimination of all breeding sites from the Catskill Mountains and most of Vermont. Furthermore, with an increase of 3 °C (5.4 °F), most Bicknell's thrush will be eliminated from the northeastern United States. With an increase of 5 °C (9 °F), nearly all the habitat will be eliminated, but some small habitat patches may persist (Rodenhouse *et al.* 2008, p. 526). This information is relevant, because the average annual temperatures in the northeastern United States are projected to rise by 2.9 °C to 5.3 °C (5.0 °F to 10.0 °F) by 2070 to 2099, above those of the period 1961 to 1990 (Hayhoe *et al.* 2007, p. 388).

The petitioner indicates that she is unaware of any climate modeling for Canadian highland forests used by Bicknell's thrush (Petition, p. 31). This will be further investigated during our 12-month status review.

In regard to increasing frequency of storms, the petitioner also indicates that climate change will cause ''more erratic and severe weather events'' but acknowledges that how or to what extent the bird's breeding habitat will be impacted is unknown (Petition, p. 33). There is no information readily available to the Service specific to the expected frequency or intensity of storms that may impact montane spruce-fir breeding habitat, but this will be further investigated during our 12-month status review.

In addition to climate change impacts to breeding habitat, the petitioner asserts that the quality of wintering habitat for the Bicknell's thrush in the Greater Antilles will be reduced by climate change-induced drought (Petition, p. 31) and more intense and frequent El Niño Southern Oscillation events (Petition, p. 33). By 2050, the observed significant drying trends in the Caribbean are expected to reduce water resources (Neelin *et al.* 2006, p. 6110; IPCC 2007, p. 52). The impacts of these drought conditions or flooding that may result from El Niño events on the Bicknell's thrush and its habitat are unclear. There is no information readily available to the Service on climate change in this area, but this will be further investigated during our 12-month status review.

Climate Change—Changing Dynamic of Forest Pests and Disease

The petition suggests that climate change may alter the disturbance dynamics of native forest insects and diseases, as well as facilitate the establishment and spread of nonindigenous species (Hunt *et al.* 2006, pp. 6–7). In addition to the direct degradation of breeding habitat, these pests may facilitate invasion of montane spruce-fir forests by northern hardwoods (Beckage *et al.* 2008, p. 4201), as discussed below.

The spruce budworm (*Choristoneura fumiferana*) is the most important native pest of spruce and fir in the Northeast and is capable of substantially modifying large areas of boreal forest (Fleming and Candau 1998, p. 236). The spruce budworm is a naturally outbreaking insect that can be extremely abundant for periods of 5 to 15 years, with populations reaching 10^8 fourth instar larvae per ha (> 40 million per ac). This level of abundance can kill most trees in dense, mature balsam fir stands (Fleming and Candau 1998, pp. 236, 237; Gitay *et al.* 2001, p. 291). These periods of abundance can be followed by periods of up to 60 years when the budworm is relatively rare. Budworm outbreaks frequently follow droughts or hot, dry summers. This event sequencing may lead to increased egg production and disruptions in the timing of budworm and several of its parasitoid predators, thereby increasing population growth potential in the budworm (Gitay *et al.* 2001, p. 291). Therefore, the environmental changes resulting from climate change could affect spruce budworm populations by altering any of the relationships among host tree species, the budworm, and its natural enemies (Fleming and Candau 1998, p. 236).

Local extinction of balsam fir is one potential outcome of climate change-induced intensification of spruce budworm outbreaks (Fleming and Candau 1998, p. 246). However, a potential benefit of this change is that the Bicknell's thrush is known to use regenerating forests disturbed by spruce budworm infestations (COSEWIC 2009, p. 10; Bredin and Whittam 2009, p. 13). As we describe above in the Species Information section, Bicknell's thrush feed on many insects, including species of lepidopteran larvae (Wallace 1939, p. 295), which may include the spruce budworm.

The balsam woolly adelgid (*Adelges piceae*) is another insect that the petitioner discusses as a threat to Bicknell's thrush habitat. The balsam woolly adelgid is an exotic pest of fir

trees, introduced from central Europe, and is impacting large stands of fir in the southern Appalachians (Iverson *et al.* 1999, p. 176; Ragenovich and Mitchell 2006). Weather is an important factor in the survival of this insect, because in cold winters, only those adelgids below the snowline will survive temperatures below −1 °C (30 °F) (Ragenovich and Mitchell 2006, p. 9). Furthermore, only the first instar can survive the winter. In montane spruce-fir habitats, the season may be too short for this insect to complete a second generation, which affords some protection to high elevation Bicknell's thrush breeding habitat (Ragenovich and Mitchell 2006, p. 9). There is the potential, however, for the balsam woolly adelgid to have deleterious effects on the Bicknell's thrush breeding habitat quality (Lambert *et al.* 2005, p. 7; IBTCG 2010, p. 14) if overall temperatures rise as modeled by the IPCC.

Summary of Climate Change—Results of the empirical studies we discuss above suggest that breeding habitat within the United States, and possibly in Canada, may decrease with a warming climate. Although the impacts of a warming climate on the species' wintering range have not been quantified, habitat modeling indicates that continued warming may lead to the complete loss of the species' breeding habitat within the United States by the end of the 21st century. In addition, the predicted warming trends may result in more favorable conditions for forest pests such as the spruce budworm and balsam woolly adelgid. Therefore, information presented in the petition and readily available in our files indicates that environmental impacts associated with climate change may be a threat to the Bicknell's thrush.

Atmospheric Acid and Nitrogen Deposition and Ground-Level Ozone

The petition asserts that deposition of acid and nitrogen poses a serious threat to Bicknell's thrush habitat throughout its high-elevation habitat (Petition 2010, pp. 33–36). Acid deposition, commonly referred to as acid rain, is mostly derived from the burning of fossil fuels, such as coal and gas, that results in the production of sulfur dioxide and nitrogen oxides that in turn react with atmospheric water, oxygen, and other chemicals to form various acidic compounds (U.S. Environmental Protection Agency (EPA) 2012, *http://www.epa.gov/acidrain/*). The deposition of these acidic compounds in high-elevation montane habitats occurs in either rain or cloud water. The pH values for these waters have been measured at 2.1, which is extremely acidic (DeHayes *et al.* 1999, p. 789). Air pollution also results in the deposition and accumulation of sulfur and nitrogen (nitrates or ammonia or both) in forest soils, which can impact soil health (Driscoll *et al.* 2001, p. 12; Driscoll *et al.* 2003, p. 357, ITBCG 2010, p. 13). Regulations have been passed to reduce acid deposition, and while the Acid Rain Program, established under Title IV of the 1990 Clean Air Act Amendments, has reduced sulfur dioxide and nitrogen oxide emissions and average ambient concentrations, high levels of acid deposition continue in the northeastern United States (EPA 2009, p. 1; Driscoll *et al.* 2001, p. 6).

Information in our files suggests that deposition of acid may have several implications for the Bicknell's thrush and its habitat. First, deposition of acidic ions is known to reduce soil calcium, which likely leads to calcium deficiencies that render red spruce needles vulnerable to freezing damage. This damage reduces a tree's tolerance to low temperatures and increases the occurrence of winter injury and subsequent mortality (DeHayes *et al.* 1999, p. 798). Second, acidic deposition may also increase soil aluminum availability, which may limit the ability of red spruce trees to take up water and nutrients through their roots (Cumming and Brown 1994, p. 597).

Information in our files also suggests that deposition of nitrogen, a major plant nutrient, may also affect Bicknell's thrush habitat when the nitrogen deposition acts in concert with increased spruce-fir mortality resulting from deposition of acid; deposition of nitrogen, a major plant nutrient, may also affect Bicknell's thrush habitat. In high elevation spruce-fir forests, nutrient cycling is naturally low due to slower decomposition and low biological nitrogen demand; however, high-elevation areas receive greater amounts of atmospheric nitrogen than do low-elevation areas (McNulty *et al.* 1991, p. 16). Several research studies document a shift in species vegetation that favors hardwood tree species when montane spruce-fir stands were exposed to naturally occurring and artificially manipulated levels of atmospheric nitrogen (McNulty *et al.* 2005, p. 290; McNulty *et al.* 1996, p. 109; Beckage *et al.* 2008, p. 4201). The resulting vegetation shift towards more hardwoods may decrease the quality of foraging or nesting areas for the Bicknell's thrush (IBTCG 2010, p. 13).

The petition goes on to suggest, without providing any supporting references, high spruce mortality, as a result of acid and nitrogen deposition, provides a more open canopy and may expose adult Bicknell's thrush to greater risk of predation. The petitioner states the increase in exposure requires resident thrushes to spend more time being vigilant for predators instead of spending more time and energy on other vital life functions (Petition, p. 33). There is no evidence presented with the petition to support this concern. In fact, information in our files indicates that Bicknell's thrush frequently sing from exposed perches atop dead snags (Rimmer *et al.* 2001, p. 12). Furthermore, Rimmer *et al.* (2004, pp. 27, 30) found no significant differences in adult survivorship or breeding productivity of Bicknell's thrush between ski areas, which provide greater openings than would a solitary red spruce snag, and more natural areas. This study suggests that there is little risk of increased predation of Bicknell's thrush in the presence of red spruce snags, as a result of increased spruce mortality, and a more open canopy (Rimmer *et al.* 2004. pp. 22–27).

The petition suggests that ground-level ozone is another air pollutant that is putting Bicknell's thrush habitat at risk of long-term and potentially irreversible decline (Petition, p. 35). Ozone is the product of a reaction of sunlight on nitrogen oxide and hydrocarbons, which can cause foliage damage and lead to reduced growth in plants (Lovett and Tear 2008, pp. 4–5). To support this position, the petition provides information regarding the impacts that ground-level ozone has had on western conifers (Petition, p. 35). However, the petition acknowledges that ozone impacts to montane red spruce and balsam fir are not described. Likewise, we are also unaware of any information suggesting that ground-level ozone is impacting Bicknell's thrush habitat.

Summary of Atmospheric Deposition and Ground-Level Ozone—The results of the studies we discuss above suggest that Bicknell's thrush breeding habitat within the United States may decrease as a result of atmospheric acid and nitrogen deposition. Researchers have suggested that this deposition contributes to declines in red spruce and balsam fir in montane habitats, and may facilitate the establishment of hardwood species. Also, atmospheric deposition of acid and nitrogen is occurring throughout the species' breeding range. Therefore, information presented in the petition and readily available in our files indicates that the present or threatened destruction, modification, or curtailment of its range by impacts caused by atmospheric deposition of acid and nitrogen may be

a threat to the Bicknell's thrush. Conversely, information provided by the petitioner and readily available information in our files does not indicate that the present or threatened destruction, modification, or curtailment of its range by ground-level ozone may be a threat to Bicknell's thrush. However, the potential for ground-level ozone to threaten habitat for the Bicknell's thrush will be further investigated during our 12-month status review.

Recreational, Telecommunication, and Wind Energy Development

The petitioner asserts that development for recreation (i.e., ski areas), especially the cumulative effect of multiple ski areas, directly results in the loss and fragmentation of Bicknell's thrush breeding habitat (Petition, pp. 35–36). Information in our files demonstrates that this concern is shared by others; however, the cumulative effects of these threats across the range of the Bicknell's thrush are poorly known (Rimmer *et al.* 2001, p. 21; Bredin and Whittam 2009, pp. 12, 13; COSEWIC 2009, p. 32), and the assessment of this threat is typically based on localized studies.

In Vermont, 13 mountains that are greater than 915 m (3,000 ft) elevation are developed for recreational skiing, and many of these ski areas offer mountain bike activities during the Bicknell's thrush breeding season (Rimmer *et al.* 2001, p. 21). Similar pressures may occur in New Hampshire and Maine, but less so in the Catskills and Adirondacks in New York (Rimmer *et al.* 2001, p. 21) and in Canada (COSEWIC 2009, p. 32). In the short term, construction of these recreational developments resulted in the loss of some amounts of Bicknell's thrush habitat (Rimmer *et al.* 2001, p. 21). For example, the proposed expansion of the Whiteface Mountain trail system in New York's Adirondack Mountains was expected to remove up to 4.8 ha (11.8 ac) of the Bicknell's thrush breeding habitat and isolate an additional 1.8 ha (4.4 ac) (Rimmer *et al.* 2004, p. 8). This loss constitutes up to 0.26 percent of the suitable habitat in the Adirondack Park's Whiteface Mountain Habitat Unit that includes high-elevation songbird habitat on Whiteface Mountain, Little Whiteface Mountain, Esther Mountain, Lookout Mountain, and Baldwin Hill, and less than 0.001 percent of the total breeding habitat available in the northeastern United States (Rimmer *et al.* 2004, p. 10).

Information in our files provides variable data on these developments' long-term impacts on local populations of the Bicknell's thrush. For example, research at the Stowe Mountain Resort on Mount Mansfield and the Stratton Mountain Resort in Vermont demonstrates that there are few differences in various Bicknell's thrush population and reproductive parameters (including nest predation, nest success, parental care, movement patterns, survivorship, or productivity) between habitat patches at the ski areas and natural forests on each of the respective resorts' mountains (Rimmer *et al.* 2004, p. 2). Radio telemetry data reveals that adult thrushes avoid trail crossings wider than 50 m (164 ft), while trails 35 to 40 m (115 ft to 131 ft) in width exhibit some restrictions on the movement of Bicknell's thrush (Rimmer *et al.* 2004, p. 2). Yet, in a different study, Glennon and Karasin's (2004, p. 1) investigations of existing ski trails and glades on Whiteface Mountain in New York show no statistical differences in abundance of Bicknell's thrush. We interpret Glennon and Karasin's (2004) study to mean that, although the species may not cross some wider ski trails, Bicknell's thrush still successfully reproduces in the surrounding habitat. Therefore, these results suggest that while the construction of ski areas produces an immediate loss of Bicknell's thrush habitat, the birds may be able to adapt by shifting to reproduce in adjacent habitat if the ski trails do not completely fragment habitat to a degree that adult Bicknell's thrush movements are inhibited.

In addition to ski area development, the petitioner asserts that infrastructure development for telecommunication and wind energy projects poses a threat to Bicknell's thrush habitat (Petition, p. 37). Wind and telecommunications structures are often placed on exposed high-elevation areas (Petition, p. 37), which may include areas of suitable Bicknell's thrush breeding habitat. Information in our files indicates that construction of wind and telecommunication facilities potentially impacts the species through habitat removal.

Limited information is available from existing or proposed wind turbine sites (MacFarland *et al.* 2008, p. 5). In some instances, construction of these facilities, including their associated infrastructure (e.g., roads), can directly impact Bicknell's thrush habitat (Rimmer *et al.* 2001, p. 21; MacFarland *et al.* 2008, p. 1; COSEWIC 2009, p. 32). For example, Noble Environmental Power (2008, in. litt) calculates that their Granite Reliable wind power project, located on Owlhead Mountain and Mount Kelsey in New Hampshire, will result in the removal of approximately 23.5 ha (58 ac) of high-elevation spruce and spruce-fir forest, some of which is known to be occupied by Bicknell's thrush. In addition, several wind power projects are located within Bicknell's thrush habitat in Quebec and New Brunswick (COSEWIC 2009, p. 32). Although these projects result in the direct loss of habitat due to removal, secondary impacts may also be caused by these projects, including habitat fragmentation and possibly behavioral impacts, such as avoidance of turbine sites due to noise (COSEWIC 2009, p. 32).

There are few examples of completed wind turbine construction projects in Bicknell's thrush habitat, but MacFarland *et al.* (2008, p. 8) assess the relationship of Bicknell's thrush breeding habitat to available wind resources. The authors determine that nearly 94 percent of the potential Bicknell's thrush habitat found in the Northeastern Highlands region of Vermont overlaps areas of Class 4 (> 7 mps (15.7 mph)) or higher wind power, which are considered good resources for generating wind power with large turbines. However, the area of overlap between Bicknell's thrush habitat and Class 4 or higher wind areas represents only 7 percent of the total available high-value wind resource area. The MacFarland *et al.* (2008, p. 8) analysis suggests that a large portion (93 percent) of the potentially suitable wind power terrain could be developed without directly impacting Bicknell's thrush habitat. A visual comparison of modeled Bicknell's thrush habitat with wind resource data from throughout the Bicknell's range yields a similar assessment as MacFarland *et al.'s* (2008) regional study (A. Tur, pers. comm. 2012). Loss of Bicknell's thrush habitat from wind power development may be a threat to the species if the development sites do not occur outside the area of overlap discussed above.

Summary of Recreational, Telecommunication, and Wind Energy Development—Development of recreational areas (including ski areas), wind turbines, and telecommunication facilities and their associated infrastructure (i.e., roads) has resulted in the loss and fragmentation of Bicknell's thrush habitat (IBTCG 2010, p. 12). The Bicknell's thrush may show some ability to adapt and persist in the vicinity of ski resorts (Rimmer *et al.* 2004, p. 1). The species may adapt similarly to the construction of wind turbines. Information presented in the petition and readily available in our files indicates that the present or threatened destruction, modification, or

curtailment of its range by impacts attributed to recreational, telecommunication, and wind energy development may be a threat to the Bicknell's thrush.

Logging and Forest Fragmentation

The petition asserts that logging in Canada and northern Maine is ''a prime threat'' to Bicknell's thrush breeding habitat (Petition, pp. 37–39). Specifically, the petitioner suggests that dramatic drops in Bicknell's thrush presence at Canadian monitoring sites over the last 1 to 2 decades provide a clear indication that logging damages habitat and threatens the long-term survival of the species. However, information in our files suggests that the Bicknell's thrush is often found in managed forests, and it is unclear how forestry practices alter the amount and suitability of breeding habitat in Canada and northern Maine (IBTCG 2010, p. 11).

Throughout the industrial highlands of Canada and northern Maine, the practice of clearcutting may impact Bicknell's thrush by temporarily removing forest habitat. But, the petitioner acknowledges, and information in our files suggests, that regeneration of balsam fir and spruce in these areas is known to result in the creation of breeding habitat (Ouellet 1993, p. 566; Chisholm and Leonard 2008, p. 218; COSEWIC 2009, p. 31; IBTCG 2010, p. 11; Petition 2010, p. 38). Following clearcutting, dense regeneration of spruce and fir often follows, resulting in the creation of suitable Bicknell's thrush breeding habitat (Nixon *et al.* 2001, p. 34; Chisholm and Leonard 2009, p. 218; IBTCG 2010, p. 11). Although Bicknell's thrush occupy 25- to 40-year-old second growth stands, optimal conditions for Bicknell's thrush occur in 5- to 12-year-old clear cuts that have high densities of the 5- to 10-cm-diameter (2 to 4 inches (in.)) stem class (Nixon *et al.* 2001, p. 39; Connolly *et al.* 2002, p. 338; Chisholm and Leonard 2008, p. 222). Despite the species' presence in managed forests, it is difficult to assess the immediate impacts of clearcutting on Bicknell's thrush because little work has been done to determine the extent to which the species makes use of mature forest habitat prior to the implementation of forestry practices (COSEWIC 2009, p. 31).

Information in our files suggests other forestry practices may also impact Bicknell's thrush habitat. Specifically, precommercial thinning that reduces stem densities to maximize growth in remaining trees results in the reduced abundance of Bicknell's thrush (Chisholm and Leonard 2008, p. 222). Precommercial thinning could also directly destroy Bicknell's thrush nests because thinning is often conducted during the bird's nesting season (Makepeace and Aubry, unpubl. data in COSEWIC 2009, p. 31).

In addition to the petitioner's discussion of the impacts of forestry practices on breeding range habitat, information in our files indicates an ongoing loss and degradation of important forested wintering habitat through logging, subsistence farming, and human-caused fires (Rimmer *et al.* 2001, p. 4; Rimmer *et al.* 2005b, p. 228; Townsend and Rimmer 2006, p. 454; COSEWIC 2009, p. 32). As discussed above in the Species Information section, the Bicknell's thrush winters exclusively in the Greater Antilles. The overall loss of winter forest habitat, including the Bicknell's thrush preferred montane forests, has been severe (Rimmer *et al.* 2001, p. 4), and this loss may impact the species despite its flexibility in selection of wintering habitat types and elevation. For example, there is some evidence in the Dominican Republic that Bicknell's thrush exhibits sexual segregation based on geography and the segregation may be the result of birds moving from areas of disturbed habitat (Rimmer *et al.* 2001, p. 9). Indeed, less than 1.5 percent of original montane forest habitat remains in Haiti, and about 10 percent remains in the Dominican Republic (Rimmer *et al.* 2001, p. 4). Jamaica has lost 75 percent of its original forest, and Cuba has lost 80 to 85 percent (Rimmer *et al.* 2001, p. 4). While the Dominican Government has established a number of areas to protect important forest habitat (Latta *et al.* 2003, p. 180), habitat loss due to illegal logging and slash-and-burn agriculture continues both there and in Haiti (Rimmer *et al.* 2005b, p. 1; Rimmer *et al.* 2005d, unnumbered page; Townsend and Rimmer 2006, p. 452; IBTCG 2010, p. 12). Furthermore, subsistence farming, involving free-ranging cattle and the presence of feral pigs, severely damages forest understory growth at some wintering sites in Hispaniola and degrades Bicknell's thrush wintering habitat quality (IBTCG 2010, p. 12).

Summary of Logging and Forest Fragmentation—Forestry practices may result in the loss and fragmentation of important Bicknell's thrush breeding habitat, particularly in the Canadian portion of the species range. Clearcutting may be beneficial by creating additional breeding habitat for the species, but this is difficult to assess because of a lack of information regarding habitat use of these forests prior to timber management (IBTCG 2010, p. 12). There is evidence that precommercial thinning occurring in occupied breeding habitat renders the area immediately unsuitable for nesting, thereby contributing to the loss of habitat. On the wintering grounds, habitat loss may be a serious concern, due to the species' restricted wintering habitat, as well as the historical and continuing loss of habitat to logging, subsistence farming, and fire (IBTCG 2010, p. 12). Therefore, information presented in the petition and readily available in our files indicates that the present or threatened destruction, modification, or curtailment of its range by logging and forest fragmentation may be a threat to the Bicknell's thrush.

Summary of Factor A—Information presented in the petition and readily available in our files indicates that the present or threatened destruction, modification, or curtailment of the Bicknell's thrush range caused by: (1) Climate change; (2) atmospheric deposition of acid and nitrogen; (3) recreational (ski areas), telecommunication, and wind energy development; and (4) logging and forest fragmentation may be a threat to the Bicknell's thrush. Information presented in the petition and readily available in our files does not indicate that the present or threatened destruction, modification, or curtailment of the species' range as a result of ground-level ozone may be a threat to the Bicknell's thrush. However, the potential for ground-level ozone to threaten habitat for the Bicknell's thrush will be further investigated during our 12-month status review.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioner did not present information suggesting that overutilization is affecting Bicknell's thrush populations.

Evaluation of Information Provided in the Petition and Available in Service Files

One reference in our files indicates that 3 of 108 Vermont nests monitored during the period of 1992 to 2000 were abandoned and that abandonment may be caused by researcher disturbance (Rimmer *et al.* 2001, p. 21). This appears to be an isolated circumstance, and we are unaware of any other instances of overutilization for commercial, recreational, scientific, or educational purposes.

Summary of Factor B—Information presented in the petition and readily available in our files does not indicate that overutilization for commercial, recreational, scientific, or educational purposes may be a threat to the Bicknell's thrush. However, whether this factor is a threat to the species will be further investigated during our 12-month status review.

C. Disease or Predation

Information Provided in the Petition

Disease

The petitioner asserts that disease (e.g., avian malaria) could have a substantial effect on the population viability of the Bicknell's thrush (Petition, p. 40).

Predation

The petitioner states that climate change may increase predation of the Bicknell's thrush by altering environmental conditions currently limiting the distribution of predators, and allowing ''novel predators'' to access the bird's habitat (Petition, pp. 39–40). The petitioner also states that the red squirrel (*Tamiasciurus hudsonicus*), a known Bicknell's thrush nest predator, may become more abundant as a result of climate change, which the petitioner suggests will bring about increased production of balsam fir cones (Petition, p. 40). The petitioner asserts that red squirrel populations are closely tied to balsam fir cone crop production. As climate change progresses cyclical production of heavy cone crops is expected to increase in frequency. This may result in increasing numbers of squirrels and, with it, increasing depredation of the Bicknell's thrush eggs and nestlings (Petition, p. 40).

Evaluation of Information Provided in the Petition and Available in Service Files

Disease

The petitioner asserts that disease (e.g., avian malaria) could have a substantial effect on the population viability of the Bicknell's thrush (Petition, p. 40). While the petitioner provides information regarding the presence of avian malaria in New England and some bird species, the petitioner acknowledges that ''bird populations have largely adapted to malarial parasites'' and provides no information indicating that avian malaria or other diseases may be a threat to the Bicknell's thrush. In addition, we are unaware of any information that may substantiate this speculation. Therefore, the information presented in the petition and readily available in our files does not indicate that disease may be a threat to the Bicknell's thrush. However, disease impacts to the Bicknell's thrush will be further investigated as part of our 12-month status review.

Predation

Documented predation of adult Bicknell's thrush is limited to only a few predators. Of 8 depredation events on radio-tagged breeding adults, 7 were attributed to the sharp-shinned hawk (*Accipiter striatus*) and 1 to the long-tailed weasel (*Mustela frenata*) (Rimmer *et al.* 2001, pp. 13–14). On the wintering grounds, of 53 radio-tagged individuals, 5 were depredated by introduced Norway (*Rattus norvegicus*) and black (*Rattus rattus*) rats, presumably while the birds were sedentary on their nocturnal roosts (Townsend *et al.* 2009a, p. 565). The available information suggests that predation of adult Bicknell's thrush is not a threat to the species on a population level, although it may influence winter roost site selection (Townsend *et al.* 2009a, p. 568).

The sharp-shinned hawk, American marten (*Martes americana*), long-tailed weasel, deer mouse (*Peromyscus maniculatus*), and blue jay (*Cyanocitta cristata*) are known to be predators of bird eggs and nestlings. The red squirrel is the only predator known to have a major impact on the demographic characteristics of the Bicknell's thrush (Wallace 1949, p. 216; COSEWIC 2009, p. 19; IBTCG 2010, p. 6). Wallace (1949, p. 215) suggests that high mortality and low breeding rate contribute to the restricted distribution of the Bicknell's thrush. He notes that 9 of 13 observed nests on Vermont's Mount Mansfield failed, while only 2 of the remaining nests were fully successful. While acknowledging the limitations of his small, 1-year sample size, Wallace (1949, p. 215) at the time concludes that the Bicknell's thrush population is either no more than stable or more likely declining because the production of 0.85 young fledged per pair constitutes a rate at which adults are unable to replace themselves during two seasons.

Since Wallace's observations, additional evidence demonstrates a somewhat loose 2-year (biennial) cycle in nest survival rates on Stratton Mountain and Mount Mansfield, Vermont (Rimmer *et al.* 2001, p. 19). This Bicknell's thrush biennial pattern is attributed to the biennial pattern of balsam fir cone crop production and red squirrel abundance. A fall season with abundant cone production is followed by a spring and summer with high numbers of red squirrels, and results in high nest predation rates and low productivity in Bicknell's thrush. In some years, no Bicknell's thrush young are produced (COSEWIC 2009, p. 17). The second part of the biennial cycle is explained when years of abundant cone production are followed by years when few cones are produced; accordingly, red squirrel numbers drop, along with nest predation rates, and Bicknell's thrush nesting success can reach as high as 90 percent (Rimmer *et al.* 2001, p. 19).

The petitioner asserts, with no supporting information, climate change may alter this biennial cycle of balsam fir cone production and red squirrel abundance (Petition, p. 40). Information in our files suggests balsam fir cone production has been linked to climatic variables (Messaoud *et al.* 2007). For example, two variables that may be associated with increased balsam fir reproduction potential are the number of growing degree days greater than 5 °C (41 °F) and the maximum temperature of the warmest month in the year prior to cone production (Messaoud *et al.* 2007, p. 753). As a consequence, it may be reasonable to assume that increased temperatures attributed to climate change may lead to increased cone production. However, we have no information to suggest that taking that assumption further, to link the increase in balsam fir cone production to an increase in squirrel densities and a resulting decrease in Bicknell's thrush productivity throughout the bird's breeding range, is reasonable, because it is unclear if or when this climate change-induced alteration of the biennial cycle may occur.

In addition to biennial cycle disruptions, the petition also asserts that climate change will allow ''novel'' predators (i.e., previously unknown), such as the raccoon (*Procyon lotor*), to move into previously unoccupied habitat as vegetation types shift (Petition, p. 40). Information in our files indicates that the red fox (*Vulpes vulpes*), coyote (*Canis latrans*), bobcat (*Lynx rufus*), and raccoon have all been observed in Bicknell's thrush breeding habitat, and no predation by these species is mentioned (Wallace 1949, p. 215; Rimmer *et al.* 2001, p. 14). These observations do not suggest that climate change may increase exposure of Bicknell's thrush to novel predators.

Summary of predation—We have no information to suggest that adult Bicknell's thrush predation or predation by novel predators may be a threat to the species. In addition, there is no information to suggest existing nest

predation by red squirrels may increase to a level impacting the species throughout its breeding range if climate change-induced warmer temperatures result in an increase in balsam fir cone production and subsequent red squirrel numbers. However, we will fully investigate predation in our 12-month status review.

Summary of Factor C—Information presented in the petition and readily available in our files does not indicate that disease or predation may be a threat to the Bicknell's thrush.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition states that existing Federal, state, or international regulatory mechanisms protecting the Bicknell's thrush or its habitat are inadequate. More specifically, the petition states that existing international and U.S. regulatory mechanisms to reduce global greenhouse gas emissions are inadequate to safeguard the Bicknell's thrush against extinction resulting from climate change (Petition, p. 40).

Evaluation of Information Provided in the Petition and Available in Service Files

Species-Specific Regulatory Mechanisms

The petitioner cites national and international regulatory mechanisms that are generic to migratory birds, as well as some that are specific to the Bicknell's thrush (Petition, pp. 41–42, 44). For example, the petitioner asserts that existing Federal regulatory mechanisms, including the Migratory Bird Treaty Act of 1918, as amended (MBTA), do not protect habitat for migratory birds, including the Bicknell's thrush. In the United States, under the MBTA, it is unlawful to take, capture, kill, or possess migratory birds, their nests, eggs, and young. The MBTA was not crafted to specifically protect habitat, although it may provide indirect benefits to migratory bird habitat, and, therefore, cannot be considered an inadequate existing regulatory mechanism for habitat protection. In addition, the petitioner further states that the Migratory Bird Conservation Act, the Neotropical Migratory Bird Conservation Act, and the identification of birds of management concern through the Birds of Conservation Concern apply to the Bicknell's thrush. These various actions are intended to foster proactive conservation, are nonregulatory (Petition, pp. 41–42; USFWS 2008, p. 30) and, therefore, cannot be considered inadequate existing regulatory mechanisms.

As for international regulatory mechanisms, the Bicknell's thrush is protected in Canada under the Migratory Birds Convention Act of 1994. In addition, the Committee on the Status of Endangered Wildlife in Canada designated the bird as threatened in Quebec, New Brunswick, and Nova Scotia (COSEWIC 2009, pp. iii, vi). The COSEWIC is a panel of species experts who evaluate the conservation status of Canadian species according to a set of criteria and recommend which species should be protected under Canada's Species at Risk Act (SARA). While COSEWIC has evaluated the Bicknell's thrush as a threatened species, the Minister of Environment has not yet added the species to SARA's Schedule 1 (threatened and endangered wildlife). Bicknell's thrush is considered a SARA Schedule 3 Species of Concern, which means the Schedule 1 protection and conservation provisions of SARA do not apply. With regard to the Dominican Republic and Haiti, the petitioner asserts that current protections are minimal and confined to the designation of several national parks that provide limited protection to a small portion of the bird's wintering habitat where habitat degradation due to human activities continues (Petition, pp. 55–56). Although not specifically stated by the petition under Factor D, the petition asserts in Factor E that wintering habitat in Cuba is inadequately managed (Petition, p. 56). We have no readily available information in our files that addresses the regulatory mechanisms that may or may not be protective of Bicknell's thrush in Canada or the Greater Antilles. We will further investigate Canadian and Greater Antilles regulations during our 12-month status review.

The petitioner provides no information regarding any action taken by a state or provincial entity that specifically protects the Bicknell's thrush under existing authorities for threatened or endangered wildlife, but does provide information on how forested habitat, which may be occupied by Bicknell's thrush, is managed in each state (Petition, pp. 47–54). Information in our files indicates that the Bicknell's thrush has been identified as a species of special concern in Maine, New York, Vermont, and New Hampshire (IBTCG 2010, p. 7). Species afforded this designation receive no legal status under existing state endangered species statutes. Similarly, the species is considered ''vulnerable'' in Nova Scotia and ''may be at risk'' in New Brunswick and Quebec, but these designations provide little to no additional protection (IBTCG 2010, p. 7; Petition, p. 44).

In the Puerto Rican portion of its wintering range, the Bicknell's thrush is protected under the MBTA, as described previously. The petitioner provides no information, and we are not aware of any information, regarding the legal status of Bicknell's thrush in the Dominican Republic, Haiti, Jamaica, or Cuba. In addition, we have no readily available information, either from the petition or in our files, on any existing regulatory mechanisms that would provide specific protections for the Bicknell's thrush in the national parks of Hispaniola.

Summary of Species-Specific Regulatory Mechanisms—We will further investigate whether inadequate regulatory mechanisms that result in habitat loss in its wintering range may be a threat to the Bicknell's thrush during our 12-month status review.

Atmospheric Acid, Nitrogen Deposition, Mercury, and Ground-Level Ozone Regulatory Mechanisms

The petitioner asserts that amendments to the Clean Air Act in 1990 have strengthened regulations to control the emission of airborne pollutants, but it has not been effective in alleviating the harmful effects of mercury, acid deposition, ground-level ozone, or nitrogen nutrification in Bicknell's thrush habitat (Petition, p. 42). Specifically, the petitioner asserts that EPA has delayed regulating mercury emissions as a result of legal actions against the agency, while regulations to control acid deposition have not been ambitious enough to address the problem (Petition, p. 43). Furthermore, the petitioner asserts that, while the 1990 Clean Air Act amendments have helped reduce nitrogen dioxide emissions that lead to ozone pollution, greater reductions are needed to prevent ongoing ozone pollution that the petitioner states is damaging the habitat of Bicknell's thrush (Petition, p. 43). The petitioner also states that an international agreement to regulate mercury pollution is being developed, but has not yet been implemented (Petition, p. 44).

As discussed above in Factor A, information presented in the petition and readily available in our files does not indicate that ground-level ozone may be threat to the Bicknell's thrush. Therefore, ground-level ozone may be adequately regulated.

Summary of Atmospheric Acid, Nitrogen Deposition, Mercury, and Ground-Level Ozone Regulatory Mechanisms—As discussed in Factor A, deposition of acid precipitation and

nitrogen nutrification may be threats to the species' habitat. As discussed in Factor E, deposition of mercury may also be a threat to the species. While the Clean Air Act amendments have reduced the overall levels of mercury, acid deposition, and ground-level ozone, the Clean Air Act amendments have not alleviated the harmful effects of those pollutants on the Bicknell's thrush and its habitat (see Factors A and E). Therefore, the information presented in the petition and readily available in our files indicates that inadequate regulatory mechanisms for atmospheric acid, nitrogen deposition, and mercury impacts to the Bicknell's thrush habitat may be a threat to the bird. However, information presented in the petition and readily available in our files does not indicate that inadequate regulatory mechanisms for ground-level ozone may be a threat to the Bicknell's thrush.

Climate Change Regulatory Mechanisms

Finally, the petitioner states that the effect of climate change on the montane habitat of the Bicknell's thrush is the most serious threat to its continued existence, and that existing international and U. S. regulatory mechanisms to reduce global greenhouse gas emissions are clearly inadequate (Petition, pp. 40, 44). The petitioner argues that national and international reductions in emissions are urgently needed to safeguard the Bicknell's thrush against extinction resulting from climate change.

The Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*), as amended, requires the EPA to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health. In 2007, the Supreme Court ruled that gases that cause global warming are pollutants under the Clean Air Act, and that the EPA has the authority to regulate carbon dioxide and other heat trapping gases (*Massachusetts et al.* v. *EPA* 2007 [Case No. 05–1120]). The EPA published a regulation to require reporting of greenhouse gas emissions from fossil fuel suppliers and industrial gas suppliers, direct greenhouse gas emitters, and manufacturers of heavy duty and off-road vehicles and engines (74 FR 56260; October 30, 2009). The rule, effective December 29, 2009, does not require control of greenhouse gases; rather it requires only that sources above certain threshold levels monitor and report emissions (74 FR 56260; October 30, 2009). On December 7, 2009, the EPA found under section 202(a) of the Clean Air Act that the current and projected concentrations of six greenhouse gases in the atmosphere threaten public health and welfare. The finding itself does not impose requirements on any industry or other entities but is a prerequisite for any future regulations developed by the EPA.

As of August 24, 2010, the time of the petition's receipt, it was not known what regulatory mechanisms would be developed in the future as an outgrowth of EPA's finding that the Clean Air Act is insufficient to regulate greenhouse gases or how effective they would be in addressing climate change. Climate change regulations, and to what extent they adequately address threats to Bicknell's thrush and its habitat, will be investigated in our 12-month status review.

Summary of Factor D—The inadequacy of existing regulatory mechanisms for (1) Factor A—the present or threatened destruction, modification, or curtailment of the species' habitat caused by climate change; atmospheric deposition of acid and nitrogen; and recreational (ski areas), telecommunication, and wind energy development; and (2) Factor E (see discussion below)—other natural or manmade factors affecting its continued existence resulting from: Atmospheric mercury deposition; decreased dietary calcium; increased interspecific competition facilitated by climate change; and collision with stationary and moving structures may be a threat to Bicknell's thrush.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioner asserts that mercury exposure and accumulation, decreased dietary calcium due to acid deposition, direct mortality caused by climate change, increased interspecific competition caused by climate change, and disturbance by recreationists are all threats to the Bicknell's thrush.

Evaluation of Information Provided in the Petition and Available in Service Files

Mercury

The petitioner discusses information regarding the atmospheric deposition of mercury, a potent neurotoxin, and the process by which it accumulates in the Bicknell's thrush (Petition, pp. 56–58). According to the petition, mercury originating mostly from coal-fired power plants accumulates in wildlife and is influencing some wildlife populations. The petitioner recognizes documentation of methylmercury burdens, the toxic form of mercury, in terrestrial montane songbirds is a recent discovery (Petition, p. 57). Among four evaluated songbirds, the Bicknell's thrush had the highest blood mercury concentrations, with birds in the southern portion of the species' range having higher loads than in northern areas. In addition, atmospheric deposition of mercury is two to five times higher in montane areas than in adjacent low-elevation areas (Petition, p. 57).

Elevated levels of toxic mercury have been found in Bicknell's thrush tissue and may be cause for concern (IBTCG 2010, p. 13). Mercury in the northeastern United States and eastern Canada is derived from local, regional, and global emissions; however, most estimates show that approximately 60 percent of mercury in this area is derived from sources located within the United States (Evers 2005, p. 5). Mercury toxicity is largely dependent upon whether it is converted to the bioavailable toxic form known as methylmercury, as well as an organism's trophic position (e.g., its level in the food chain). Trophic position influences mercury exposure due to the processes of bioaccumulation (increase in the body over time) and biomagnification (increase in concentration from one trophic level to another) (Evers 2005, p. 6). Generally, a species that is higher in the food chain has a greater exposure to mercury if its prey has mercury in its body when consumed as food.

Mercury deposition is highest on high mountain summits in comparison to other landscape positions primarily as a result of the summits' greater exposure to cloud-based mercury sources (Miller *et al.* 2005, p. 63). Compounding this problem, evergreen foliage generally exhibits higher mercury concentrations than deciduous foliage at the same site. These higher concentrations are due to the longer retention time of mercury in needles as compared to leaves, which are typically shed annually (Miller *et al.* 2005, p. 62). Consequently, the high-elevation montane insectivores, such as songbirds, that consume insects feeding on this vegetation contain relatively high levels of mercury when compared with other songbirds from low-elevation habitats. Of those montane insectivores, the Bicknell's thrush has the highest concentrations of mercury, ranging from 0.08 to 0.38 micrograms/gram across 21 distinct breeding sites (Rimmer *et al.* 2005c, pp. 227, 232). Although no clear pattern in mercury levels was observed, mercury concentrations in the blood and feathers of Bicknell's thrush from southern portions of the species' breeding range were highest, which implies greater atmospheric deposition

rates (Rimmer *et al.* 2005c, p. 235). In addition, blood mercury concentrations in wintering birds were generally 2 to 3 times higher than in birds sampled on their breeding sites (Rimmer *et al.* 2005c, p. 230). The authors state that this result is unexpected and counter to what they would have expected given the lack of local or regional industrial sources of mercury in the wintering range (Rimmer *et al.* 2005c, p. 235). Further studies of the Bicknell's thrush biochemical processes may illuminate the reason behind the higher mercury level in the wintering range. Although we do not know the exact cause of the elevated blood mercury levels, the information indicates that there may be a differing level of exposure between the breeding and wintering grounds, and that the source of the exposure mechanism, as well as the elevated blood mercury level itself, may pose a threat to the species.

The specific pathway by which the Bicknell's thrush consumes mercury and the effects that the burden has on the birds is unknown (Rimmer *et al.* 2005c, p. 237; Evers 2005, p. 16). Although species-specific responses to mercury concentrations make direct comparisons unreliable, studies of aquatic birds (e.g., mallard ducks and common loons) indicate changes in behavior, reproduction, and body chemistry are possible (Evers 2005, p. 6; IBTCG 2010, p. 13).

Summary of Mercury Effects—Information presented in the petition and readily available in our files indicates that atmospheric deposition of mercury may be a threat to the Bicknell's thrush.

Decreased Dietary Calcium

The petitioner asserts that acid deposition impacts the habitat of the Bicknell's thrush by reducing calcium availability that has been shown to influence survival of red spruce. The petitioner also asserts that acid deposition can directly alter calcium availability for breeding songbirds that may impact eggshell production (DeHayes *et al.* 1999, p. 798; Petition, p. 58; IBTCG 2010, p. 13). Acid deposition leaches calcium from red spruce forest soils, including soils from many Bicknell's thrush breeding sites (DeHayes *et al.* 1999, p. 798; Driscoll *et al.* 2001, p. 11). This reduction in the availability of calcium has been linked to declines in the calcium levels in some invertebrate prey items and reduced dietary calcium for songbirds, including the wood thrush in the eastern United States, through the bioaccumulation and biomagnifications processes mentioned above (Mand *et al.* 2000, p. 64; Hames *et al.* 2002, pp. 11238–11239). As discussed above in the *Species Information* section, insects are the primary food source for the Bicknell's thrush in its breeding range (Beal 1915 in Wallace 1939, p. 295; Rimmer *et al.* 2001, pp. 9–10). Although it has not been confirmed, calcium depletion and lower availability may affect egg formation and productivity in the Bicknell's thrush, as has been suggested for the wood thrush, especially in ''highland areas with thin and poorly buffered soils'' (King *et al.* 2008, p. 2697).

Summary of decreased dietary calcium—Information presented in the petition and readily available in our files indicates that decreased dietary calcium from soil leaching by acid precipitation may be a threat to the Bicknell's thrush.

Direct Mortality Due to Climate Change

The petitioner asserts that increased storm frequency and intensity have the potential to increase mortality in the Bicknell's thrush (Petition, p. 58). Information in our files suggest most Bicknell's thrush nesting failures are attributed to predation, but climate change scenarios predict increases in the frequency of wind and precipitation that may result in additional nest failures (Hayhoe *et al.* 2007, p. 389; IBTCG 2010, p. 14). In addition, more frequent tropical storms and increasing erratic weather caused by climate change (Angeles *et al.* 2007, p. 567) may increase mortality of migrating Bicknell's thrush (IBTCG 2010, p. 14; Petition, p. 58). The sources of information in the petition and our files do not contain an analysis or modeling of storm events to determine the extent to which the storm events may be a threat to the Bicknell's thrush species as a whole. We do not have information regarding whether mortality is occurring, or if it is occurring, whether impacts to individual Bicknell's thrushes relates to impacts to the species as a whole.

Summary of direct mortality—Information presented in the petition and readily available in our files does not indicate that direct mortality resulting from climate change may be a threat to the Bicknell's thrush. However, we will fully investigate direct mortality resulting from climate change during our 12-month status review.

Increased Interspecific Competition With Climate Change

The petitioner asserts that climate change will increase encroachment of the Bicknell's thrush by competitors that were formerly restricted to lower elevations (Petition, p. 58). The petition acknowledges that the Swainson's thrush (*Catharus ustulatus*) is the only potential competitor that has been discussed in the scientific literature (Petition, p. 58). The Bicknell's and Swainson's thrushes generally inhabit mutually exclusive elevation ranges. There are slight overlaps in the lower elevation portion of the Bicknell's thrush breeding range (Able and Noon 1976, p. 287), as well as in regenerating stands following commercial forestry operations in New Brunswick (Nixon *et al.* 2001, p. 34). Swainson's and Bicknell's thrushes may compete for nesting territories, and observations of the two species demonstrate occasional agonistic encounters on the breeding grounds, including chases and displacement from song-posts (Able and Noon 1976, p. 287; Rimmer *et al.* 2001, p. 13).

The Bicknell's thrush is considered to be better adapted to colder environments than is the Swainson's thrush (Holmes and Sawyer 1975 in Nixon *et al.* 2001, p. 38). Lambert et al. (2005, p. 7) suggest that a rise in summer temperatures could reduce separation between the two species by nullifying Bicknell's thrush's greater tolerance for cold, thereby facilitating the establishment of Swainson's thrush at higher elevations. Information in our files indicates that temperatures may be an important factor in the distribution of these two thrush species (Holmes and Sawyer 1975 in Nixon *et al.* 2001, p. 38), and climate change may allow Swainson's thrush to breed at higher elevations.

Summary of increased interspecific competition—Information presented in the petition and readily available in our files indicates that increased interspecific competition from Swainson's thrush as a result of increasing temperatures associated with climate change may be a threat to the Bicknell's thrush.

Disturbance by Recreationists

The petitioner asserts that recreational use (hiking and biking) in Bicknell's thrush habitat poses a threat to the species (Petition, p. 59; IBTCG 2010, p. 12). The petitioner states that the backcountry areas of the White Mountain National Forest in New Hampshire, including the high-elevation spruce-fir habitat occupied by the Bicknell's thrush, received about 31,400 visitors in 2005 (Petition, p. 59; King *et al.* 2008, p. 2698). Similar visitation is expected in New York's Adirondack Park (IBTCG, p. 12). Research suggests that nesting Bicknell's thrush are able to tolerate high or moderate levels of

human activity by becoming habituated to nearby disturbance, while females in undisturbed areas demonstrate greater sensitivity to disturbance (Rimmer *et al.* 2001, p. 21). Off-trail excursions by hikers into vegetation that may contain a Bicknell's thrush is unlikely, given the thick habitat preferred by the species (Wallace 1939, p. 285). As a result, most recreational use is confined to the existing trails (A. Tur, pers. observation 2012). Hiking trails impact a very small portion of the available Bicknell's thrush nesting habitat, and, therefore, it seems unlikely that recreational activities in the Bicknell's thrush breeding habitat may be a significant threat.

The petitioner cites Rimmer *et al.* (2001) as a source of research information regarding disturbance of nesting Bicknell's thrush by bicyclists. However, Rimmer *et al.* (2001, p. 21) merely acknowledge that mountain biking occurs on ski area trails during the summer months. The authors do not provide any analysis of whether mountain bike use causes disturbance to the species, and we have no other information to suggest that mountain biking may be a threat to the Bicknell's thrush.

Summary of disturbance by recreationists—Information presented in the petition and readily available in our files does not indicate that recreational disturbance may be a threat to the Bicknell's thrush. However, the role of recreational activities as a potential threat to the species will be further investigated during our 12-month status review.

Collision With and Disturbance by Stationary and Moving Structures

As previously described above in Factor A and as indicated in the petition, construction of telecommunications structures (stationary structures) and wind turbines (moving structures) on exposed high-elevation areas (Petition, p. 37) can directly impact Bicknell's thrush habitat (Rimmer *et al.* 2001, p. 21; MacFarland *et al.* 2008, p. 1; COSEWIC 2009, p. 32). In addition to habitat impacts, information in our files suggests that construction and operation of these facilities may also impact the species by increasing injury and direct mortality of individuals through take of Bicknell's thrush nests if construction occurs in occupied breeding habitat, and collisions occur with telecommunication towers and, if present, the guy wires used to support them (Rimmer *et al.* 2001, p. 20; MacFarland *et al.* 2008, p. 3). Mortality of birds resulting from collision with wind turbines has also been documented (Johnson *et al.* 2002, p. 879; USFWS 2003, p. 1), including thrush species (Erickson *et al.* 2001, pp. 59, 61; Jain *et al.* 2007, pp. 43–44). While we have no information on specific injury or mortality to Bicknell's thrush, we find that documented injury and mortality of similar species indicates that collision with stationary and moving structures may be a threat to the Bicknell's thrush.

Information in our files suggests that individual Bicknell's thrush may be disturbed by wind towers and exhibit avoidance of wind turbine areas in response to noise and movement from the spinning blades (MacFarland *et al.* 2008, p. 5). However, the impact of turbine construction and operation to Bicknell's thrush in the vicinity of these structures has not been assessed by the authors (MacFarland *et al.* 2008, p. 5) as a threat to the species as a whole, only a mention that some individuals may avoid turbines. Therefore, information presented in the petition and readily available in our files does not indicate that disturbance, as discussed above as active avoidance of wind turbine areas due to noise, may be a threat to the Bicknell's thrush.

Summary of collision with and disturbance by stationary and moving structures—Information presented in the petition and readily available in our files indicates that collision with stationary and moving structures may be a threat to the Bicknell's thrush, but does not indicate that disturbance from wind turbines may be a threat to the bird.

Summary of Factor E—Information presented in the petition and readily available in our files indicates that other natural or manmade factors affecting the Bicknell's thrush continued existence resulting from: atmospheric mercury deposition; decreased dietary calcium; increased interspecific competition facilitated by climate change; and collision with stationary and moving structures, may be threats to the bird. Information presented in the petition and readily available in our files does not indicate that other natural or manmade factors affecting the Bicknell's thrush continued existence resulting from more frequent storms caused by climate change, disturbance by recreationists, and disturbance by wind turbines, may be threats to the bird.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the Bicknell's thrush throughout its entire range may be warranted. This finding is based on information provided under factors A, D, and E. We determine that the information provided under factors B and C is not substantial.

Because the petition presents substantial information indicating that listing the Bicknell's thrush may be warranted, we will be initiating a status review to determine whether listing the Bicknell's thrush under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the New England Field Office (NEFO) (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the NEFO.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 31, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–19970 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 77, No. 158

Wednesday, August 15, 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

Agricultural Research Service

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting; Correction

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: The notice announced the USDA's August 27–28 meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The notice was published in the **Federal Register** on August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, 202–720–3817.

Correction

In the **Federal Register** of August 6, 2012 in FR Doc. 151, on page 46681 in the supplementary information section, correct, Para two, line six, to read as follows:

On August 27, 2012, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. Comments may also be provided by Email or by fax to Dr. Schechtman at the addresses indicated above by no later than August 22, 2012. Please include your full name, address, and relevant affiliation in any comments submitted.

Yvette Anderson,

Federal Register Liaison Officer for ARS, ERS, and NASS.

[FR Doc. 2012–19652 Filed 8–14–12; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer County Resource Advisory Committee will meet in Truckee and Nevada City, CA. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purposes of the meetings are to review and recommend projects authorized under title II of the Act.

DATES: The meetings will be held September 4, 2012 beginning at 9 a.m. in Truckee and on September 6, 2012 in Nevada City beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Forest Service Truckee District Ranger Station, 10811 Stockrest Springs Rd, Truckee, CA, 96161 and at the Tahoe National Forest Headquarters, 631 Coyote St., Nevada City, CA 95959.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Tahoe National Forest Headquarters, Nevada City. Please call ahead to 530–265–4531 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Public Affairs Officer, Tahoe National Forest, 530–478–6205, *awestling@fs.fed.us,* TDD 530–478–6118. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: welcome and introductions, project proposal review, public comments, and vote on project proposals. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by 8/24/2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ann Westling, 631 Coyote Street, Nevada City, CA, 95959. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/tahoe/home* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 8, 2012.

Tom Quinn,

Tahoe National Forest Supervisor.

[FR Doc. 2012–20027 Filed 8–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee will meet in Sierraville and/or Downieville, CA. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meetings are open to the public. The purposes of the meeting(s) are to review and recommend projects authorized under title II of the Act.

DATES: The meetings will be held September 7, 2012 beginning at 9 a.m. in Sierraville and on September 10, 2012 in Downieville beginning at 9 a.m. (if needed as a back-up meeting in case

the meeting in Sierraville was cancelled due to an emergency.)

ADDRESSES: The meetings will be held at the Forest Service Sierraville District Ranger Station, 317 S. Lincoln St. (Hwy 89), Sierraville, CA, 96126 and/or at the Downieville Community Hall, 327 Main St, Downieville, CA, 95936.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Tahoe National Forest Headquarters, Nevada City. Please call ahead to 530–265–4531 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Public Affairs Officer, Tahoe National Forest, 530–478–6205, *awestling@fs.fed.us,* TDD 530–478–6118. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Welcome and introductions, project proposal review, public comments, and vote on project proposals. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by 8/24/2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ann Westling, 631 Coyote Street, Nevada City, CA, 95959. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/tahoe/home* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 8, 2012.

Tom Quinn,

Tahoe National Forest Supervisor.

[FR Doc. 2012–20031 Filed 8–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northern New Mexico Resource Advisory Committee (NNM RAC) will meet in Albuquerque, New Mexico. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act and funds to be allocated and to discuss acquisition management instruments for implementation of title II projects, review monitoring report, review and approve administrative costs, provide opportunity for proponents to present proposals (5 minutes each), provide NNM RAC members opportunity to ask questions about proposals (3 minutes each), review proposal recommendation process, review and rank project proposal by Category Groups, provide recommendations for funding to Designated Federal Officials and provide for public comment.

DATES: The meeting will be held on September 10, 2012 beginning at 10 a.m. and ending at 5 p.m. and on September 11, 2012 beginning at 8 a.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the Cibola National Forest Supervisor's Office conference room located at 2113 Osuna Rd. NE., Albuquerque, NM 87113. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM 87508. Please call ahead to 505–438–5356 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ruben Montes, RAC Coordinator, Santa Fe. National Forest, 575–438–5356, *rmontes@fs.fed.us*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed in **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review the status of Title II and funds to be allocated, discuss acquisition management instruments for implementation of Title II projects, review monitoring report, review and approve administrative costs, provide opportunity for proponents to present proposals (5 minutes each), provide NNM RAC members an opportunity to ask questions about proposals (3 minutes each), review the proposal recommendation process, review and rank project proposals by Category Groups, provide recommendations for funding to the Designated Federal Official and provide for public comment. Further information can be found at *http://www.fs.usda.gov/detail/carson/home/?cid=STELPRDB5277099.*

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 31, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 11 Forest Lane, Santa Fe, New Mexico 87508, or by email to *rmontes@fs.fed.us,* or via facsimile to 505–438–5390. A summary of the meeting will be posted at *http://www.fs.usda.gov/detail/carson/home/?cid=STELPRDB5277099* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 3, 2012.

Diana M. Trujillo,

Designated Federal Official.

[FR Doc. 2012–20005 Filed 8–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie (MBS) Resource Advisory Committee (RAC) will meet in Sedro Woolley, Washington on August 27, 2012. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and rank 2013 Title II RAC proposals.

DATES: The meeting will be held on Monday, August 27, 2012 from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Mt. Baker Ranger District office located at 810 State Route 20, Sedro-Woolley, Washington, 98284. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mt. Baker Ranger District (below). Please call ahead to (360) 854–2601 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Jon Vanderheyden, District Ranger, Mt. Baker Ranger District, phone (360) 854–2601, email *jvanderheyden@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Written comments and requests for time for oral comments must be sent to Mt. Baker Ranger District, 810 State Route 20, Sedro-Woolley, Washington, 98284.

SUPPLEMENTARY INFORMATION: More information will be posted on the Mt. Baker-Snoqualmie National Forest Web site at: *http://www.fs.fed.us/r6/mbs/projects/rac.shtml.* Comments may be sent via email to *jvanderheyden@fs.fed.us* or via facsimile to (360) 856–1934. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mt. Baker Ranger District office at 810 State Route 20, Sedro-Woolley, Washington, during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

Dated: August 8, 2012.

Jennifer Eberlien,

Forest Supervisor.

[FR Doc. 2012–20025 Filed 8–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Central Idaho Resource Advisory Committee will meet in Jerome, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review project applications for funding.

DATES: The meeting will be held September 5, 2012, 9 a.m.

ADDRESSES: The meeting will be held at the Idaho Department of Fish and Game, 319 S 417 E, Jerome, Idaho 83338. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, Idaho. Please call ahead to (208) 737–3200 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, Designated Federal Official, Sawtooth National Forest, 208–737–3200, and *jathomas@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review project applications for funding. The meeting agenda may be previewed at the following Web site: *http://fs.usda.gov/sawtooth.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. This time will be set aside on the agenda as Public Forum. A summary of the meeting will be posted at *http://fs.usda.gov/sawtooth* within 21 days of the meeting.

Meeting Accomodations: If you are a person requiring reasonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 9, 2012.

Sharon LaBrecque,

Acting Forest Supervisor.

[FR Doc. 2012–20017 Filed 8–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Adivisory Committee will meet in Markleeville, CA. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 10th 2012 at 6 p.m.

ADDRESSES: The meeting will be held at the Alpine Early Learning Center, 100 Foothill Road, Markleeville, CA.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Carson Ranger District, 1536 S. Carson St, Carson City, NV. Please call ahead to 775–884–8140 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Daniel Morris, RAC Coordinator, Carson Ranger District, 775–884–8140, *danielmorris@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review and recommend funding allocation for proposed projects for 2012 funding (2) Public Comment. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to 1536 S. Carson St., Carson City, NV. 89701, or by email to *danielmorris@fs.fed.us,* or via facsimile to 775–884–8199. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation for access to the meeting please request this in advance by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 9, 2012.

David M. Palmer,

Acting District Ranger.

[FR Doc. 2012–20015 Filed 8–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Value-Added Producer Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: USDA announces the availability of grants through the Value-Added Producer Grant (VAPG) program for Fiscal Year 2012. Approximately $14 million in competitive grant funds for FY 2012 is available to help agricultural producers enter into value-added activities. At the discretion of the Secretary, additional funds may be made available to qualified ranking applications that respond to this announcement from prior year carry-over funds.

Awards may be made for either economic planning or working capital activities related to the processing and/or marketing of valued-added agricultural products. The maximum grant amount for a planning grant is $100,000 and the maximum grant amount for a working capital grant is $300,000.

There is a matching funds requirement of at least $1 for every $1 in grant funds provided by the Agency (matching funds plus grant funds must equal proposed total project costs). Matching funds may be in the form of cash or eligible in-kind contributions and may be used only for eligible project purposes. Matching funds must be available at time of application and must be certified and verified as described in 7 CFR 4284.931(b)(3) and (4). See 7 CFR 4284.923 and 7 CFR 4284.924 for examples of eligible and ineligible uses of matching funds.

Ten percent of available funds are reserved to fund applications submitted by Beginning Farmers or Ranchers and Socially Disadvantaged Farmers or Ranchers, and an additional 10 percent of available funds are reserved to fund applications from farmers or ranchers that propose development of Mid-Tier Value Chain projects (both collectively referred to as ''reserved funds''). See 7 CFR 4284.925 and 7 U.S.C. 1632(a).

DATES: You must submit your application by October 15, 2012 or it will not be considered for funding announced in this Notice. Paper applications must be postmarked and mailed, shipped or sent overnight by this date. Electronic applications are permitted via www.grants.gov only, and must be received before midnight on this date.

ADDRESSES: You should contact your USDA Rural Development State Office if you have questions about eligibility or submission requirements. You are encouraged to contact your State Office well in advance of the application deadline to discuss your project and to ask any questions about the application process. You may request technical assistance from your State Office up to 14 days prior to the application deadline. Application materials are available at *http://www.rurdev.usda.gov/BCP_VAPG.html.*

If you want to submit an electronic application, follow the instructions for the VAPG funding announcement on *http://www.grants.gov.* If you want to submit a paper application, send it to the State Office located in the State where your project will primarily take place. You can find State Office Contact information at *http://www.rurdev.usda.gov/recd_map.html* or see the following list:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

American Samoa (see Hawaii)

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, Denver Federal Center, Building 56, Room 2300, PO Box 25426, Denver, CO 80225–0426, (720) 544–2903.

Commonwealth of the Northern Marianas Islands-CNMI (see Hawaii)

Connecticut (see Massachusetts)

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Federated States of Micronesia (see Hawaii)

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Guam (see Hawaii)

Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/American Samoa/Commonwealth of the Northern Marianas Islands—CNMI

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

Marshall Islands (see Hawaii)

Maryland (see Delaware)

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 2229 Boot Hill Court, Bozeman, MT 59715–7914, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD 7–1–1.

New Hampshire (see Vermont)

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street NE, Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Northern Mariana Islands (see Hawaii)

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387.

Palau (see Hawaii)

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

Rhode Island (see Massachusetts)

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4321/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA

23229–5014, (804) 287–1550/TDD (804) 287–1753.

Virgin Islands (see Florida)

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4860/TDD (304) 284–4836.

Western Pacific (see Hawaii)

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW., MS–3250, Room 4016–South, Washington, DC 20250–3250, (202) 720–8460.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0039.

Overview

Federal Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Value-Added Producer Grants.

Announcement Type: Funding Announcement.

Catalog of Federal Domestic Assistance Number: 10.352.

I. Funding Opportunity Description

A. Purpose of the Program

The primary objective of this grant program is to help Independent Producers of agricultural commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures enter into value-added activities related to the processing and/or marketing of bio-based value-added agricultural products. Grants will be awarded competitively for either planning or working capital projects directly related to the processing and/or marketing of value-added products. Generating new products, creating and expanding marketing opportunities, and increasing producer income are the end goals. Applications that support aspects of regional strategic planning, cooperative development, sustainable farming, and local and regional food systems are encouraged. Proposals must demonstrate economic viability and sustainability in order to compete for funding.

As part of this funding initiative, funding priority will be available to Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, Operators of Small and Medium-Sized Farms and Ranches that are structured as a Family Farm, Farmer or Rancher Cooperatives, and projects proposing to develop a Mid-Tier Value Chain. See 7 CFR 4284.922(c) for Reserved Funding and 7 CFR 4284.922(d) for Priority Point categories and requirements.

The VAPG Program is authorized under section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), as amended by section 6202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (see 7 U.S.C. 1632a). Applicants must adhere to the program requirements contained in the program regulation, 7 CFR 4284, subpart J, which is incorporated by reference in this Notice.

B. Definition of Terms

The terms you need to understand are defined in 7 CFR 4284.902. In addition, there has been some confusion on the Agency's meaning of the terms ''Harvester,'' and ''Steering Committee,'' because these terms are only referenced as part of the Independent Producer definition and are not specifically defined in the regulation used for the program. Therefore, these terms are defined below and should be understood as follows.

Harvester: Harvesters are individuals or entities that demonstrate their legal right to access and harvest a primary agricultural commodity; and are not individuals or entities that merely glean, gather or collect residual commodities that result from an initial harvesting or production of a primary agricultural commodity. Examples of Harvesters may include, but are not limited to, a logger who has a legal right to access and harvest logs from the forest that are then converted into boards; a fisherman that has the legal right to access and harvest fish from the ocean or river that are then smoked. For clarification, it is the Agency's position that Harvesters may only apply as an Independent Producer applicant type because harvester operations do not meet Agency definition requirements for a Farm or Ranch. Harvester applicants will not be eligible to receive Reserve Funds for a Beginning Farmer or Rancher or a Socially Disadvantaged Farmer or Rancher; and will not be eligible to receive Priority Points for a Beginning Farmer or Rancher, a Socially Disadvantaged Farmer or Rancher, Operator of a Small or Medium-sized Farm or Ranch structured as a Family Farm, or a Farmer or Rancher Cooperative. However, Harvesters may request Reserve Funds and/or Priority Points for a qualifying Mid-Tier Value Chain project if eligibility is documented in the application.

Steering Committee: A Steering Committee is an unincorporated group of specifically identified Agricultural Producers that lacks a legal structure or identity and is in the process of organizing one of the four program eligible entity types that will operate a value-added venture and will supply the majority of the agricultural commodity for the value-added project. For clarification, it is the Agency's position that a Steering Committee may only apply as an Independent Producer applicant type and must be 100 percent comprised of Independent Producers at time of application submission. If selected for award of funds, and before the grant agreement will be approved by the Agency, the Steering Committee members must form a legally authorized organization that meets requirements for one of the four program eligible applicant types and provide the necessary documentation for approval by the Agency.

Finally, in support of the *Value-Added Agricultural Product* definition requirements in 7 CFR 4284.902, the Agency directs that applicants demonstrate expansion of customer base for the agricultural commodity by including a baseline of current customers for the commodity, and an estimated target number of customers that will result from the project; and demonstrate the estimated amount of the increased portion of the revenue derived from the marketing, processing or physical segregation of the agricultural commodity that will be available to the applicant's producers of the agricultural commodity, by including a baseline of current revenues from the sale of the agricultural commodity and an estimated target number of increased revenues that will result from the project.

II. Award Information

Type of Instrument: Grant.

Fiscal Year Funds: FY 2012.

Approximate Number of Awards: 120.

Available Total Funding: Approximately $14 million.

Minimum Award Amount: Not restricted for planning or working capital. In FY 2011, 49 percent of awards were $50,000 or less.

Maximum Award Amount: Planning—$100,000; Working Capital—$300,000.

Anticipated Award Date: January 18, 2013.

Grant Period Length: The maximum grant period is 3 years from date of award. Proposed grant periods should be scaled to the complexity of the objectives of the project.

III. Eligibility Information

A. Eligible Applicants

You must be an Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or a Majority Controlled Produced-Based Business to apply to this program; and you must meet all related requirements for Emerging Market (as applicable), Citizenship, Legal Authority and Responsibility, Multiple Grants and Active Grants. In addition, you must meet Departmental requirements related to debarment, suspension and exclusion from participation in Federal assistance programs, as well as requirements related to outstanding Federal income taxes, judgments and delinquencies. For detailed requirements, see 7 CFR 4284.920 and 7 CFR 4284.921.

As a special emphasis, Rural Development encourages applications from Federally Recognized Tribal Groups and corporations and subdivisions of Tribal Groups undertaking or planning to undertake eligible value-added projects. For further tribal eligibility questions, please contact your local Rural Development office.

As part of applicant eligibility, it is important to clarify that all four applicant types must meet the Independent Producer and Agricultural Producer definition requirements in 7 CFR 4284.902, including, but not limited to, production and ownership of the majority of the raw agricultural commodity that will be transformed into the proposed value-added product for the project. All applicants must maintain ownership of the raw agricultural commodity through the production and marketing of the value-added product, with one partial exception for Mid-Tier Value Chain projects noted in its definition in 7 CFR 4284.902. Businesses that contract out the production of an agricultural commodity are not considered Independent Producers, and businesses that produce the agricultural commodity under contract for another business and do not own the raw commodity or value-added product produced are not considered Independent Producers.

Finally, all applicants for working capital funds must document the quantity of the agricultural commodity that will be used for the value-added product, expressed in an appropriate unit of measure (acres, pounds, bushels, etc.) to demonstrate the scale of the applicant's project. This quantification must include an estimated total quantity of the agricultural commodity needed for the project, the quantity that will be provided (produced and owned) by the agricultural producers of the applicant organization, and the quantity that will be purchased or donated from third-party sources. The application must demonstrate that the amount of applicant commodity contributed to the project is the majority of the total agricultural commodity needed for the value-added project.

B. Project Eligibility

Your project must meet (1) Product Eligibility requirements related to the definition of Value-Added Agricultural Product, including value-added methodologies, expansion of customer base for the agricultural commodity, and increased revenues returning to the applicant's producers of the agricultural commodity as a result of the project; (2) Purpose Eligibility requirements related to maximum grant amounts, certification and verification of matching funds, eligible and ineligible uses of grant and matching funds for planning or working capital activities, including requirements related to conflicts of interest and ineligible expenses in excess of 10 percent of total project costs, a substantive work plan and budget, independent feasibility study and/or business plan requirements for working capital projects (subject to Agency concurrence of financial feasibility, as defined in 7 CFR 4284.902), including demonstration of readiness to implement the working capital activities, and identification of the number of jobs expected to be created or saved as a result of the project; (3) Reserved Funds Eligibility requirements if you choose to compete for Reserved Funds as a Beginning Farmer or Rancher, a Socially Disadvantaged Farmer or Rancher, or if you propose to develop a Mid-Tier Value Chain; and (4) Priority Status Eligibility requirements if you request priority points in the competition for a project that contributes to increasing opportunities for Beginning Farmers or Ranchers, Socially Disadvantaged Farmers or Ranchers, or if you are an Operator of a Small or Medium-sized farm or ranch that is structured as a Family Farm, propose a Mid-Tier Value Chain project, or are a Farmer or Rancher Cooperative. For detailed requirements, see 7 CFR 4284.922, 7 CFR 4284.923 and 7 CFR 4284.924.

Note: If you are applying for a working capital grant that requires a project-specific independent feasibility study and/or business plan, you must submit those documents with your application. In addition, you must summarize relevant results of the feasibility study and business plan in response to the scoring criteria, as applicable, because reviewers will not receive copies of your feasibility study or business plan when scoring your application. Based on the information presented in the application, including a feasibility study and/or business plan where required, the applicant must demonstrate that the project is financially feasible and can achieve the income, credit and cash flows to sustain the venture over the long term. Applications with inadequate information or projects deemed not financially feasible by the Agency will be deemed not eligible to compete for grant funding. See 7 CFR 4284.922(b)(6).

Note: If you request Reserve Funds, you must document eligibility for the requirements stated in 7 CFR 4284.922(c). Ten percent of available funds are reserved to fund applications submitted by Beginning Farmers or Ranchers and Socially Disadvantaged Farmers or Ranchers, as defined in 7 CFR 4284.902. An additional 10 percent of available funds are reserved to fund Mid-Tier Value Chain projects. If your application is eligible, but does not receive Reserve Funding, it will automatically be considered for general funds in that same fiscal year, as funding levels permit and in accord with project ranking. As previously noted, Harvester operations are not considered a Farm or Ranch and are not eligible for Reserve Funds for a Beginning Farmer or Rancher or a Socially Disadvantaged Farmer or Rancher; however, Harvester operations may request Reserve Funds for a qualifying Mid-Tier Value Chain project, as applicable.

C. Other Eligibility Requirements

1. Grant Period Eligibility

Your project timeframe or grant period can be a maximum of 36 months in length from the date of award. Your proposed grant period should begin no earlier than the anticipated award announcement date herein, January 18, 2013, and should end no later than 36 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the grant agreement is executed by the Agency—and your grant

period end date will be adjusted accordingly. Your project activities must begin within 90 days of that date of award. If you request funds for a time period beginning before January 18, 2013, and/or ending later than 36 months from that date, your application will be ineligible. The length of your grant period should be based on your project's complexity, as indicated in your application work plan. For example, it is expected that most planning grants can be completed within 12 months. If you cannot finish your project during the approved timeframe, you may request an extension of up to 1 year from your local Rural Development office. Extensions will be considered only if unavoidable or unforeseen circumstances prevent you from finishing your project. Extensions beyond 3 years from the actual date of award will not be considered.

2. Ineligible Expenses

Applications with ineligible expenses of more than 10 percent of total project costs will be ineligible to compete for funds. Eligible applications that are selected for award but contain ineligible expenses of 10 percent or less of total project costs must remove those ineligible expenses from the final project budget that is subject to approval by the Agency. See 7 CFR 4284.923 for examples of eligible planning and working capital use of funds, and see 7 CFR 4284.924 for examples of ineligible use of funds.

3. Completeness

If your application is incomplete, it is ineligible to compete for funds.

4. Registrations

(i) Please note that grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number pursuant to 2 CFR 25.200(b). You must provide your DUNS number in the application, or it will be ineligible for funding. A DUNS number can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *http://www.dnb.com.*

(ii) Please note also that pursuant to 2 CFR 25.200(b) grant applicants must register in the Central Contractor Registration (CCR) database, or its successor database known as the System for Award Management (SAM), prior to submitting an application; unless you are exempt under 2 CFR 25.110. Grant applicants must maintain an active CCR/SAM registration with current information at all times during which you have an active Federal award or an application under consideration by the Agency. An active CCR/SAM Registration Cage Code and expiration date must be included in your application or it will not be eligible for funding.

To register in the database, visit *https://www.sam.gov/* or call the Federal Service Desk for assistance by dialing 1–(866) 606–8220 and press '1' (See 2 CFR part 25). Since there are no specific fields for a Registration Cage Code and expiration date, please enter them in field 5(a) ''Federal Entity Identifier'' on Form SF 424.

(iii) Similarly, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

IV. Fiscal Year 2012 Application and Submission Information

A. Address To Request Applications

The application guide, government forms, regulation, and official program notifications for this funding opportunity can be obtained online at *http://www.rurdev.usda.gov/BCP_VAPG.html.* Or, you can contact your USDA Rural Development State Office by visiting *http://www.rurdev.usda.gov/recd_map.html.*

B. Form of Submission

You may submit your application in paper form or electronically through Grants.gov. Your application must contain all required information.

To submit an application electronically, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept emailed or faxed applications. You can locate the Grants.gov downloadable application package for this program by using a keyword, the program name, or the Catalog of Federal Domestic Assistance Number for this program. When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov. You must submit all of your application documents electronically through Grants.gov. After electronically submitting an application through Grants.gov, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.

If you want to submit a paper application, send it to the State Office located in the State where your project will primarily take place. You can find State Office Contact information at *http://www.rurdev.usda.gov/recd_map.html* or see the list of State Offices at the beginning of this Notice. An optional-use Agency application template is available online at *http://www.rurdev.usda.gov/BCP_VAPG.html.*

C. Application Contents

Your application must contain all of the required forms and proposal elements described in 7 CFR 4284.931, unless otherwise clarified in this notice. Specifically, your application must include (1) the required forms as described in 7 CFR 4284.931(a), except (i) you do not need to submit Form RD 1940–20, ''Request for Environmental Information,'' because planning and working capital requests in this program are generally excluded from the environmental review process, and (ii) corporate applicants must also complete Form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants''; and (2) the required proposal elements as described in 7 CFR 4284.931(b). Further clarification of application requirements is as follows:

In addition, you must include a one-page Executive Summary containing the following information: legal name of applicant entity, application type (planning or working capital), applicant type, amount of grant request, a summary of your project, whether you are submitting a simplified application, and whether you are competing for reserve funds.

Further, certifications for the following, among others specified elsewhere, must be included in the application:

1. Awards made under this Notice are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, Public Law 112–55, Division A sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all applicants must complete paragraph (A) of this representation, and all corporate applicants also must complete paragraphs (B) and (C) of this representation:

(A) Applicant, [insert applicant name], __ is __ is not (check one) an entity that has

filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands.

(B) Applicant, [insert applicant name], __ has __ has not (check one) been convicted of a felony criminal violation under Federal or state law in the 24 months preceding the date of application. Applicant __ has __ has not (check one) had any officer or agent of the Applicant convicted of a felony criminal violation for actions taken on behalf of the Applicant under Federal or State law in the 24 months preceding the date of the signature on the application.

(C) Applicant, [insert applicant name], __ has __ does not have (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. To satisfy this certification requirement, you should include this statement in your application: ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.

D. Simplified Applications

If you are requesting less than $50,000 in working capital grant funds, you may submit a simplified application. See 7 CFR 4284.932. You are not required to provide an independent feasibility study or business plan. You are required to provide information to show the increases in customer base and revenues expected to be derived from the project that will benefit the producer applicants supplying the majority of the agricultural commodity for the project. References to information from third-party sources that support your conclusions will enhance your application and improve scoring. Also see 7 CFR 4284.922(b)(6)(ii).

If you are an Independent Producer applicant type applying for a working capital grant of $50,000 or more, and your project is for market expansion of an existing value-added product(s) that you have successfully produced and marketed for at least 2 years prior to the submission of the application, and is a value-added product that you have produced from more than 50 percent of your own agricultural commodity, you must submit a business or marketing plan for the project, but are not required to submit a feasibility study. Your application must contain adequate information to demonstrate the increases in customer base and revenues expected to be derived from the project that will benefit the applicant producers supplying the majority of the agricultural commodity for the project. References to information from third-party sources that support your conclusions will enhance your application and improve scoring. See 7 CFR 4284.922(b)(6)(i).

E. Funding Restrictions

Funding limitations and reservations found in the program regulation will apply. See 7 CFR 4284.925.

1. Use of Funds

Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount. Grant and matching funds may only be used for eligible purposes (see 7 CFR 4284.923) and may not be used for ineligible purposes (see 7 CFR 4284.924). If Program Income is earned during the grant period as a result of the project activities, it is subject to the requirements in 7 CFR 3019.24, and must be managed and reported accordingly.

2. Majority Controlled Producer-Based Business

The aggregate amount of awards to Majority Controlled Producer-Based Businesses in response to this announcement shall not exceed 10 percent of the total funds obligated for the program during the fiscal year.

3. Reserved Funds

In response to this announcement, 10 percent of total funding available will be used to fund projects that benefit Beginning Farmers or Ranchers, or Socially-Disadvantaged Farmers or Ranchers. In addition, 10 percent of total funding available will be used to fund projects that propose development of Mid-Tier Value Chains as part of a Local or Regional Supply Chain Network. See related definitions in 7 CFR 4284.902.

4. Disposition of Reserved Funds Not Obligated

For this announcement, any Reserved Funds that have not been obligated by June 30, 2012, will be available to the Secretary to make VAPG grants from the fund categories addressed at 7 CFR 4284.922 (c). After awards have been selected from each Reserved Fund, any excess unobligated funds will revert to general funds.

F. Intergovernmental Review

Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments that have chosen to participate in that process. Those states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of states that maintain an SPOC, please see the White House Web site: *http://www.whitehouse.gov/omb/grants_spoc*. If your state has an SPOC, you must submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application.

V. Application Review Information

Applications will be reviewed and processed as described at 7 CFR 4284.940.

A. Application Eligibility and Notifications

The Agency will conduct a review of your application to determine if it is complete and eligible. If the Agency determines that your application is ineligible at any time, then you will be notified in writing as to the reasons it was determined ineligible and you will be informed of any review or appeal rights.

If, at any time after you have submitted your application, you decide that you no longer want to request grant funding, you must notify the Agency in writing. Upon receipt of your notification, the Agency will rescind the award or withdraw the application, as applicable.

B. Application Scoring

The Agency will only score applications in which the applicant and project are eligible, which are complete and sufficiently responsive to program requirements, and in which the Agency agrees on the likelihood of financial feasibility for working capital requests. We will score your application according to the procedures and criteria specified in 7 CFR 4284.942, and with tiered scoring thresholds as specified below.

For each criterion, you must show how the project has merit and why it is likely to be successful. If you do not address all parts of the criterion, or do

not sufficiently communicate relevant project information, you will receive lower scores. The maximum number of points that can be awarded to your application is 100. For this announcement, there is no minimum score requirement for funding. Note: If you are submitting a working capital application that requires a feasibility study and/or business plan, you must submit those documents along with your application. In addition, you must summarize within your application relevant results of the feasibility study/business plan in response to the scoring criteria, as applicable, because reviewers will not receive copies of your feasibility study/business plan when evaluating your proposal and assigning scores. The Agency application package provides additional instruction to help you to respond to the criteria below.

1. Nature of the Proposed Venture (Graduated Score 0–30 Points)

For both planning and working capital grants, you should discuss the technological feasibility of the project, as well as the operational efficiency, profitability, and overall economic sustainability resulting from the project. In addition, demonstrate the potential for expanding the customer base for the agricultural commodity or value-added product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw agricultural commodity to the project. You should reference third-party information that specifically supports your value-added project; discuss the value-added process you are proposing; potential markets and distribution channels; the value to be added to the raw commodity through the value-added process; cost and availability of inputs, your experience in marketing the proposed or similar product; business financial statements; and any other relevant information that supports the viability of your project. Working capital applicants should demonstrate these concepts that will result from the project. Planning grant applicants should describe the expected results, and the reasons supporting those expectations.

Points will be awarded as follows:

(i) 0 points will be awarded if you do not substantively address this criterion.

(ii) 10 points will be awarded if the criterion is poorly addressed.

(iii) 20 points will be awarded if the criterion is partially addressed.

(iv) 30 points will be awarded if you clearly articulate the rationale for the project and show a high likelihood of success based on technological feasibility and economic sustainability.

2. Qualifications of Project Personnel (Graduated Score 0–20 Points)

You should identify and describe the qualifications of each person responsible for leading or managing the total project, as well as the people responsible for actually conducting the individual tasks in the work plan. You should discuss the credentials, education, capabilities, experience, availability and commitment of each person working on the project. If staff or consultants have not been selected at the time of application, you should describe the qualifications required for the positions to be filled. Points will be awarded as follows:

(i) 0 points will be awarded if you do not substantively address this criterion.

(ii) 10 points will be awarded if at least one of the identified staff or consultants demonstrates 5 or more years of relevant experience; or, if no project personnel have been identified but necessary qualifications for the positions to be filled are clearly described.

(iii) 20 points will be awarded if all of the identified staff demonstrates relevant qualifications and experience.

3. Commitments and Support (Graduated Score 0–10 Points)

Your application must show that the project has strong direct financial, technical and logistical support from agricultural producers, end-users, and other third party contributors who are necessary for the successful completion of the project. All cash or in-kind contributions from producers, end users, or other contributors should be discussed. End-user commitments may include contracts or letters of intent or interest in purchasing the value-added product. Third-party commitments may include evidence of critical partnerships, logistical, or technical support necessary for the project to succeed. Points will be awarded as follows:

(i) 0 points will be awarded if you do not show that you have quality commitments or support from producers, end-users or other critical third party contributors.

(ii) 5 points will be awarded if you partially show real, high quality direct support or commitments from at least one producer, end user, or other third party contributor.

(iii) 10 points will be awarded if you show real, high quality direct support or commitments from multiple producers, end-users and critical third-party contributors.

4. Work Plan and Budget (Graduated Score 0–20 Points)

You must submit a comprehensive work plan and budget (for full details, see 7 CFR 4284.922(b)(5)). Your work plan must provide specific and detailed descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs of project activities and allocate those costs among the listed tasks. You must show the source and use of both grant and matching funds for all tasks. Matching funds must be spent at a rate equal to, or in advance of, grant funds. An eligible start and end date for the project and for individual project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. Working Capital applications must include an estimate of Program Income expected to be earned during the grant period (see 7 CFR 3019.24).

(i) 0 points will be awarded if the work plan and budget do not substantively address this criterion.

(ii) 10 points will be awarded if the work plan and budget only partially address this criterion.

(iii) 20 points will be awarded if a detailed, comprehensive work plan and budget is provided.

5. Priority Points (Lump Sum Score 0 or 10 Points)

Priority points may be awarded in both the general funds competition, as well as the Reserve Funds competitions. You may request priority points if you meet the requirements for one of the following categories and provide the documentation described in 7 CFR 4284.922(d), as applicable:

Beginning Farmer or Rancher, or

Socially Disadvantaged Farmer or Rancher, or

Operator of a Small or Medium-sized farm or ranch that is structured as a Family Farm, or

Farmer or Rancher Cooperative, or

Mid-Tier Value Chain project.

It is recommended that you use the Agency application package when applying for priority points and refer to the documentation requirements specified in 7 CFR 4284.922(d). Harvester operations are not considered a Farm or Ranch and are not eligible for priority points for a Beginning Farmer or Rancher, a Socially Disadvantaged Farmer or Rancher, an Operator of a Small or Medium-sized farm or ranch that is structured as a Family Farm, or a Farmer or Rancher Cooperative; however, Harvester operations may request priority points for a qualifying

Mid-Tier Value Chain project, as applicable. All qualifying applicants will receive 10 points. If you do not provide sufficient documentation you will receive 0 points.

6. Administrator Priority Categories (Graduated Score 0–10 Points)

The Administrator of USDA Rural Development Business-Cooperative Service (RBS) may choose to award up to 10 points to an application to improve the geographic diversity of awardees in a fiscal year.

C. Selection of Applications

The Agency will select applications for award under this Notice in accordance with the provisions specified in 7 CFR 4284.950(a).

We will first review your application for eligibility and to determine if it is complete and sufficiently responsive to the requirements of the program to allow for an informed review (see 7 CFR 4284.940).

If your application is eligible and complete, it will be scored by two reviewers based on criteria specified in section V.B. of this Notice. One of these reviewers will be a Rural Development employee from your servicing State Office and the other reviewer will be a non-Federal, independent reviewer. The State Office may enlist the support of technical experts, qualified as described below and approved by the State Director, to assist the State Office scoring process. All reviewers must meet the following qualifications. Reviewers must have at least a bachelor's degree in one or more of the following fields: agri-business, business, economics, finance, or marketing. They must also have a minimum of 3 years of experience in an agriculture-related field (e.g. farming, marketing, consulting, university professor, research, officer for trade association, government employee for an agricultural program). If the reviewer does not have a degree in one of those fields, he/she must have at least 5 years of working experience in an agriculture-related field.

Both reviewers will score evaluation criteria 1 through 4 and the totals for each reviewer will be added together and averaged. The Rural Development reviewer will also assign priority points based on criterion 5 in section V.B. of this Notice. These will be added to the average score. The sum of these scores will be ranked high to low and this will comprise the initial ranking.

The Administrator of RBS may choose to award up to 10 Administrator priority points based on criterion 6 in section V.B. of this Notice. These points will be added to the cumulative score for a total possible score of 100.

A final ranking will be obtained based solely on the scores received for criteria 1 through 6. Applications for reserved funding will be funded in rank order until funds are depleted. Unfunded reserve category applications will be returned to the general funds category where applications will be funded in rank order until the funds are depleted. Funding for Majority Controlled Producer-Based Business Ventures (MAJ) is limited to 10 percent of total grant funds expected to be obligated as a result of this Notice. MAJ applications will be funded in rank order until the funding limitation has been reached. Grants to MAJ applicants from reserved funds will count against this funding limitation.

If your application is ranked, but not funded, it will not be carried forward into the next competition. We will notify you in writing if your application is not selected for funding and inform you of any appeal rights. You may submit an updated application for consideration during the next round of funding.

VI. Award Administrative Information

A. Award Notices

If your application is successful, you will receive notification regarding funding from the State Office where your application is submitted or where the project will primarily take place if you submit your application via Grants.gov. You must comply with all applicable statutes, regulations, and notice requirements before the grant award will be approved. See 7 CFR 4284.951. If your application is not successful, you will receive notification, including review, mediation procedures and appeal rights, by mail. See 7 CFR part 11.

B. Administrative and National Policy Requirements

1. Review or Appeal Rights

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11.

2. Transparency Act Requirements

All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Transparency Act reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

3. Compliance With Other Laws and Regulations

The provisions of 7 CFR 4284.905 applies to this Notice, which includes requiring applicants to be in compliance with other applicable Federal laws.

4. Monitoring and Reporting Program Performance

The provisions of 7 CFR 4284.960 applies to this Notice.

5. Grant Servicing

All grants awarded under this Notice shall be serviced in accordance with 7 CFR part 1951, subparts E and O as applicable, and the Departmental Regulations (7 CFR parts 3000–3099), with the exception that delegation of the post-award servicing of the program does not require the prior approval of the Administrator.

6. Transfer of Obligations

Any transfer of funds obligated under this Notice from an applicant to a different applicant must comply with the requirements specified in 7 CFR 4284.962.

7. Grant Close-Out and Related Activities

The provisions of 7 CFR 4284.963 applies to this Notice.

8. Exception Authority

The provisions of 7 CFR 4284.904 applies to this Notice.

9. Departmental Regulations

Unless specifically stated otherwise in this Notice or in 7 CFR part 4284, subpart J, this Notice incorporates by reference the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, 7 CFR part 3052, and 2 CFR parts 25, 170 and 417; and successor regulations to these parts.

10. Cost Principles

This Notice incorporates by reference the cost principles found in 2 CFR part 230 and in 48 CFR 31.2.

D. Environmental Review

All recipients under this Notice are subject to the requirements of 7 CFR part 1940, subpart G and any successor regulations. However, 7 CFR 1940.333, 7 CFR 1940.310(c)(1) and 7 CFR 1940.317(g)(2) generally exclude applications for both planning and working capital grants.

VII. Agency Contacts

If you have questions about this Notice, please contact the State Office as identified in the **ADDRESSES** section of this Notice. You are also encouraged to visit the application Web site for application tools, including an application guide and templates. The web address is: *http://www.rurdev.usda.gov/BCP_VAPG.html.*

VIII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. Not all prohibited bases apply to all programs. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Dated: August 8, 2012.

Curtis A. Wiley,

Acting Administrator, Rural Business—Cooperative Service.

[FR Doc. 2012–20082 Filed 8–14–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Evaluation of Interpretative Signs Located Along the California Coastline Part of the California Signage Plan Initiative.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 400.

Average Hours per Response: 7 to 8 minutes.

Burden Hours: 50.

Needs and Uses: This request is for a new information collection.

The California Signage Plan is an organized and systematic way to develop and install graphic signs along the California coastline and inland that interpret the natural and cultural resources of a particular location and its connection to the sanctuaries located within California. To date, a strategic approach to evaluating interpretive signs produced by the Office of National Marine Sanctuaries has not been developed; therefore, we do not know if the messages we are trying to convey to our audiences are effective. We are proposing to conduct an online and onsite survey of approximately 400 visitors to the locations where signs are currently installed. The questions outlined in the survey examine the public's use of the signs, understanding of the signs' content, understanding and awareness of protected areas/zones and how those messages are portrayed in regulatory signs, demographics of the target audience, interest in alternate sources of interpretive content, perception of the National Marine Sanctuaries identity, and awareness of the national marine sanctuary system.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 9, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–19967 Filed 8–14–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–63–2012]

Foreign-Trade Zone 133—Quad-Cities, Iowa/Illinois Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Quad-City Foreign-Trade Zone, Inc., grantee of FTZ 133, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 8, 2012.

FTZ 133 was approved by the Board on October 29, 1986 (Board Order 338, 51 FR 40238, 11–5–1986) and expanded on March 31, 2011 (Board Order 1749, 76 FR 19746, 4–8–2011).

The current zone includes the following sites: *Site 1* (223 acres)—River Cities Industrial Center, 200 East 90th Street, Davenport, Iowa; *Site 2* (33 acres)—Rock Island Arsenal, 1775 East Street, Rock Island, Illinois; *Site 3* (55 acres)—Modern Warehousing, 801 1st Street East, Milan, Illinois; *Site 4* (200 acres)—Eastern Iowa Industrial Center, Northeast of I–80 and Highway 130, Davenport, Iowa; and, *Site 5* (187 acres)—Iowa Research Commerce & Technology Park, Northwest of I–80 and Highway 61, Davenport, Iowa.

The grantee's proposed service area under the ASF would be Henderson, Henry, Mercer, Rock Island and Warren Counties, Illinois as well as Cedar, Clinton, Des Moines, Dubuque, Henry, Jackson, Johnson, Jones, Lee, Louisa, Muscatine, Scott and Washington Counties, Iowa, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Davenport, Iowa-Moline and Rock Island, Illinois Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to

include all of the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 133's previously authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 15, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 29, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 8, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–19946 Filed 8–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2012]

Foreign-Trade Zone 12—McAllen, TX Notification of Proposed Export Production Activity TST NA Trim, LLC (Fabric/Leather Lamination and Cutting) Hidalgo, TX

The McAllen Foreign Trade Zone, Inc., grantee of FTZ 12, submitted a notification of proposed production activity on behalf of TST NA Trim, LLC (TST), located in Hidalgo, Texas. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on July 25, 2012.

A separate application for subzone status at the TST facility was submitted and will be processed under Section 400.31 of the Board's regulations. Activity at the facility involves the lamination and cutting of automotive upholstery material for export (no shipments for U.S. consumption would occur). Production under FTZ procedures could exempt TST from customs duty payments on the foreign status upholstery materials used in export production (100% of shipments). Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Upholstery fabrics and material sourced from abroad include: laminated (polyurethane coated) polyester knit, polyester warp knit (pile), polyester and nylon warp knit, and leather (duty rate ranges from free to 17.2%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 24, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: August 8, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–19949 Filed 8–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Order Temporarily Denying Export Privileges

In the matter of:

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;
Zarand Aviation a/k/a GIE Zarand Aviation, 42 Avenue Montaigne, 75008 Paris, France;
and
112 Avenue Kleber, 75116 Paris, France;
Gatewick LLC, a/k/a Gatewick Freight & Cargo Services a/k/a/Gatewick Aviation Services, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;
and
P.O. Box 52404, Dubai, United Arab Emirates;
and
Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;
Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;
Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;
and
P.O. Box 52404, Dubai, United Arab Emirates;
and
Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;
Kerman Aviation, a/k/a GIE Kerman Aviation, 42 Avenue Montaigne 75008, Paris, France;
Sirjanco Trading, P.O. Box 8709, Dubai, United Arab Emirates;
Ali Eslamian, 4th Floor, 33 Cavendish Square, London, W1G0PW, United Kingdom;
and
2 Bentinck Close, Prince Albert Road St. Johns Wood, London NW87RY, United Kingdom;
Mahan Air General Trading LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates;
Skyco (UK) Ltd., 4th Floor, 33 Cavendish Square, London, W1G 0PV, United Kingdom;
Equipco (UK) Ltd., 2 Bentinck Close, Prince Albert Road, London, NW8 7RY, United Kingdom.

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2012) (''EAR'' or the ''Regulations''), I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the February 15, 2012 Order Temporarily Denying the Export Privileges of Mahan Airways, Zarand Aviation, Gatewick LLC, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian, as modified by an order dated April 9, 2012, adding Mahan Air General Trading LLC, Skyco (UK) Ltd., and Equipco (UK) Ltd. as related persons. I find that renewal of the Temporary Denial Order (''TDO'') is necessary in the public interest to prevent an imminent violation of the EAR.[1]

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed a TDO denying Mahan Airways' export privileges for a period of 180 days on the grounds that its issuance was

[1] The August 24, 2011 Order was published in the **Federal Register** on August 31, 2011. *See* 76 FR 54198.

necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The TDO was issued *ex parte* pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the **Federal Register**.

The TDO subsequently has been renewed in accordance with Section 766.24(d), including most recently on February 15, 2012, with modifications and the additions of related persons having been made to the TDO during 2010, 2011, and most recently on April 9, 2012.[2] As of March 9, 2010, the Balli Group Respondents and Blue Airways were no longer subject to the TDO. As part of the February 25, 2011 TDO renewal, Gatwick LLC, Mahmoud Amini, and Pejman Mahmood Kasarayanifard (''Kosarian Fard'') were added as related persons in accordance with Section 766.23 of the Regulations. On July 1, 2011, the TDO was modified by adding Zarand Aviation as a respondent in order to prevent an imminent violation. Specifically, Zarand Aviation owned an Airbus A310, an aircraft subject to the Regulations, that was being operated for the benefit of Mahan Airways in violation of both the TDO and the Regulations. As part of the August 24, 2011 renewal, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian were added to the TDO as related persons. Mahan Air General Trading LLC, Skyco (UK) Ltd., and Equipco (UK) Ltd. were added as related persons on April 9, 2012.

On July 24, 2012, BIS, through its Office of Export Enforcement (''OEE''), filed a written request for renewal of the TDO. The current TDO dated February 15, 2012, will expire, unless renewed, on August 13, 2012. Notice of the renewal request was provided to Mahan Airways and Zarand Aviation by delivery of a copy of the request in accordance with Sections 766.5 and 766.24(d) of the Regulations. Although not required by the Regulations, courtesy copies of the renewal request were sent to the other parties, originally named to the TDO as related persons. No opposition to any aspect of the renewal of the TDO has been received from either Mahan Airways or Zarand Aviation. Furthermore, no appeal of the related person determinations I made as part of the of the September 3, 2010, February 25, 2011, August 24, 2011, and April 9, 2012 Renewal Orders has been made by Gatewick LLC, Kosarian Fard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Ali Eslamian, Mahan Air General Trading LLC, Skyco (UK) Ltd., or Equipco (UK) Ltd.[3]

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue or renew an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 776.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that ''the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and the TDO renewals in this matter and the evidence developed over the course of this investigation indicating a blatant disregard of U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (''Aircraft 4–6'') to Iran.

As discussed in the September 17, 2008 TDO Renewal Order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[4] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. Moreover, as discussed in the March 16, 2009, September 11, 2009 and March 9, 2010 Renewal Orders, Mahan Airways registered Aircraft 1–3 in Iran, obtained Iranian tail numbers for them (including EP–MNA and EP–MNB), and continued to operate at least two of them in violation of the Regulations and the TDO,[5] while also committing an additional knowing and willful violation of the Regulations and the TDO when it negotiated for and acquired an additional U.S.-origin aircraft. The additional acquired aircraft was an MD–82 aircraft, which subsequently was painted in Mahan Airways' livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 Renewal Order also noted that a court in the United Kingdom (''U.K.'') had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents had been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, *inter alia,* that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 ''forward bookings'' for these

[2] The TDO was renewed on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 24, 2011, August 24, 2011, and February 15, 2012. The August 24, 2011 renewal followed the modification of the TDO on July 1, 2011, which, as discussed above, added Zarand Aviation as a respondent. Each renewal or modification order was published in the **Federal Register**.

[3] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with Section 766.23(c).

[4] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[5] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 Renewal Order.

aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 Renewal Order pointed out that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft in violation of the TDO and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the UAE, in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick LLC, which not only participated in the transaction, but also has stated to BIS that it is Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

Moreover, in a January 24, 2011 filing in the U.K. Court, Mahan Airways asserted that Aircraft 1–3 were not being used, but stated in pertinent part that the aircraft were being maintained in Iran especially ''in an airworthy condition'' and that, depending on the outcome of its U.K. Court appeal, the aircraft ''could immediately go back into service.* * * on international routes into and out of Iran.'' Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, paragraphs 108,110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrated the need to renew the TDO in order to prevent imminent future violations.

More recently, as noted in the July 1, 2011 and August 24, 2011 Orders, Mahan Airways has continued to evade U.S. export control laws by operating two Airbus A310 aircraft [6] bearing Mahan Airways' livery, colors and logo on flights into and out of Iran. The aircraft are owned, respectively, by Zarand Aviation and Kerman Aviation, entities whose corporate registrations both list Mahan Air General Trading as a member of their Groupement D'interet Economique (''Economic Interest Group'').[7]

At the time of the July 1, 2011 and August 24, 2011 Orders, these Airbus A310s were registered in France, with tail numbers F–OJHH and F–OJHI, respectively. After the August 24, 2011 renewal, Mahan Airways and Zarand Aviation worked in concert, along with Kerman Aviation, to de-register the two Airbus A310 aircraft in France and to register both aircraft in Iran (with, respectively, Iranian tail numbers EP–MHH and EP–MHI).

OEE has presented evidence with its current renewal request indicating that apparently some time after the February 15, 2012 renewal, the registration switch for these A310s was cancelled, and that these two aircraft are flying with Mahan livery under French registration (with tail numbers F–OJHH and F–OJHI, respectively), instead of Iranian registration. Most significantly, OEE's evidence indicates that both aircraft are active in Mahan Airways' fleet on flights in and out of Iran. These violations of the TDO, including those involving the Zarand Aviation aircraft, indicate that the aircraft likely will continue to operate in a manner contrary to U.S. export control laws.

OEE also has obtained and submitted new evidence that Mahan Airways has obtained another Airbus A310 aircraft. This aircraft (Manufacturer Serial Number 499) is listed on Mahan's Air Fleet list with the Iranian registered tail number EP–VIP and referred to as a ''VIP Aircraft'' with a former registration number of ''1022.'' Open source information submitted by OEE indicates that an A310 with a German Air Force designation of 10–22 served as the German ''presidential'' aircraft, was sold in Germany as surplus in late 2011, re-sold shortly thereafter to what was identified as an Eastern European investment group, and then re-sold and transported to Mahan Airways in Iran via the Ukraine. This acquisition and reexport by and/or for Mahan Airways violated the TDO and the Regulations. In addition, although the Mahan Air Fleet list submitted by OEE indicates that this aircraft was parked in Tehran as of mid-July 2012, OEE reasonably believes that additional reexport violations are imminent in connection with this aircraft.

OEE's renewal request also includes additional evidence relating to previously discussed efforts by related persons to procure aircraft and aircraft parts for Mahan Airways in violation of the TDO and the Regulations. As detailed in prior orders, Ali Eslamian was added as a related person on August 24, 2011. Among other pertinent activities, he formed Skyco (UK) Ltd. (''Skyco''), which buys and sells aircraft, aircraft engines and other aviation related services, with Mahan Airways' Managing Director (Hamid Arabnejad) and its Vice-President for Business Development (Ghulam Redha Khodra Mahmoudi a/k/a Gholemreza Mahmoudi), in order to carry out transactions on behalf of Mahan Airways and acquire items that Mahan could not obtain on its own due to the U.S. embargo against Iran.[8]

Eslamian's involvement in Mahan Airways' original conspiracy to acquire U.S.-origin Boeing 747s that led to the initial issuance of the TDO included inspecting the 747s and participating in the initial meetings between Mahan and the Balli Group principals during which it was proposed that the Balli Group or Balli entities would act as a front for Mahan in its scheme to acquire U.S.-origin aircraft. Eslamian has admitted longstanding business relationships and connections to senior Mahan Airways officers and/or directors, including Mr. Arabnejad and Mr. Mahmoudi, and has detailed insight into how Mahan Airways maintains and repairs its aircraft through the use of facilities in third countries.

Prior orders in this matter also discuss the evidence that Eslamian has negotiated, including through his company Equipco (UK) Ltd. (''Equipco''), with a Brazilian airline for the purchase of two Airbus A–320 aircraft and one aircraft engine, all items that are subject to the Regulations and require U.S. Government authorization for re-export to Iran.[9] Eslamian signed a letter of intent with the Brazilian airline on November 20, 2009, and subsequently signed a sales and purchase agreement for the engine in April 2010. In spite being added to the TDO on August 24, 2011, Eslamian signed a second letter of intent with the Brazilian airline regarding these two A–320 aircraft on September 28, 2011, and

[6] The Airbus A310s are powered with U.S.-origin engines. The engines are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The Airbus A310s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Section 746.7 of the Regulations.

[7] Kerman Aviation's corporate registration also lists Mahan Aviation Services Company as an additional member of its Economic Interest Group.

[8] Eslamian is a Skyco shareholder and managing director. In addition, Skyco's corporate registration lists Mr. Eslamian and Mr. Mahmoudi as directors of Skyco. Mr. Eslamian also is listed as Skyco's corporate secretary.

[9] The Airbus A320s are powered with U.S.-origin engines. The engines are subject to the EAR and classified under ECCN 9A991.d. The Airbus A320s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified as ECCN 9A991.b. The re-export of these aircraft to Iran would require U.S. Government authorization pursuant to Section 746.7 of the Regulations, as would the re-export of the aircraft engine.

at least as recently as December 2011, his efforts to acquire both the aircraft and the engine continued.[10]

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the record here, I find that the evidence presented by BIS convincingly demonstrates that Mahan Airways has continually violated the EAR and the TDO, that such knowing violations have been significant, deliberate and covert, and that there is a likelihood of future violations. Additionally, Zarand Aviation's Airbus A310 continues to be operated on routes into and out of Iran in violation of the Regulations and the TDO itself, and as discussed in prior orders, Zarand Aviation has acted in concert with Mahan Airways in an effort to evade the TDO and U.S. export control laws. Therefore, renewal of the TDO is necessary to prevent imminent violation of the EAR and to give notice to companies and individuals in the United States and abroad that they should continue to cease dealing with Mahan Airways, Zarand Aviation, and the other denied persons under the TDO in export transactions involving items subject to the EAR. The conduct of Mahan Airways, Zarand Aviation, and those related to them or acting in concert with them, such as Kerman Aviation, Ali Eslamian, Skyco (UK) Ltd. and Equipco (UK) Ltd., raise significant ongoing concerns relating to the acquisition and use of aircraft, aircraft engines or other parts, and aircraft services in violation of the Regulations and the TDO.

IV. Order

It is therefore ordered:

First, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; ZARAND AVIATION A/K/A GIE ZARAND AVIATION, 42 Avenue Montaigne, 75008 Paris, France, and 112 Avenue Kleber, 75116 Paris, France; GATEWICK LLC, A/K/A GATEWICK FREIGHT & CARGO SERVICES, A/K/A GATEWICK AVIATION SERVICE, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; KERMAN AVIATION A/K/A GIE KERMAN AVIATION, 42 Avenue Montaigne 75008, Paris, France; SIRJANCO TRADING LLC, P.O. Box 8709, Dubai, United Arab Emirates; ALI ESLAMIAN, 4th Floor, 33 Cavendish Square, London W1G0PW, United Kingdom, and 2 Bentinck Close, Prince Albert Road St. Johns Wood, London NW87RY, United Kingdom; MAHAN AIR GENERAL TRADING LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates; SKYCO (UK) LTD., 4th Floor, 33 Cavendish Square, London, W1G 0PV, United Kingdom; and EQUIPCO (UK) LTD., 2 Bentinck Close, Prince Albert Road, London, NW8 7RY, United Kingdom, and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) of the EAR, Mahan Airways and/or Zarand Aviation may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Gatewick LLC, Mahmoud Amini, Kosarian Fard, Kerman Aviation, Sirjanco Trading LLC, Ali Eslamian, Mahan Air General Trading LLC, Skyco

[10] Equipco, which was added to the TDO by the April 9, 2012 related persons order, is owned and operated by Mr. Eslamian. In conversations with the Brazilian Airline, Eslamian stated that the items were being acquired on behalf of ''a very dear customer of another company of ours, Skyco UK Ltd.''

As set forth in the April 9, 2012 order, Mahan Air General Trading's articles of incorporation list Mahan Airways' Managing Director, Hamid Arabnejad, as an owner. Mahan Air General Trading also shares the same Dubai address and fax number with Sirjanco Trading LLC, another denied party that is related to Mahan Airways and acquires and resells aircraft parts and components. Sirjanco is owned in part by Mr. Mahmoudi, Mahan's Vice-President for Business Development.

(UK) Ltd., and/or Equipco (UK) Ltd. may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways and/or Zarand Aviation as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways, Zarand Aviation and each related person and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect for 180 days.

Dated: August 9, 2012.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2012–20007 Filed 8–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 31, 2012, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) results of third redetermination pursuant to the CIT's remand in *Atar, S.r.l.* v. *United States,* 791 F. Supp. 2d 1368 (CIT 2011) (*Atar III*).[1]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (CAFC 1990) (*Timken*) as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (CAFC 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final determination and is amending the final results of the ninth administrative review of the antidumping duty order on certain pasta from Italy with respect to the margin assigned to Atar S.r.L. (Atar) covering the period of review July 1, 2004, through June 30, 2005.[2]

DATES: *Effective Date:* August 10, 2012.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Office 3, Import Administration—International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5973.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2007, the Department published its final results of the ninth administrative review of the antidumping duty order on certain pasta from Italy.[3] The period covered by the review was July 1, 2004, through June 30, 2005.

Atar challenged the Department's *Final Results.* After a full briefing of all the issues, on June 5, 2009, the Court upheld the Department's *Final Results,* except with respect to its calculation of Atar's constructed value (CV) indirect selling expense (ISE) and profit rates.[4] The Department had calculated Atar's CV ISE and profit rates using the weighted-average profit and indirect selling expense rates from sales of foreign like product sold in the home market in the ordinary course of trade (*e.g.,* above-cost sales) by the six respondents from the prior administrative review (the eighth administrative review).[5] The Court remanded the *Final Results,* directing the Department to reconsider and redetermine, as necessary, its calculations for Atar's CV ISE and profit rate and its exclusion from those calculations of the data from home market sales of the six respondents in the *Eighth Administrative Review* that occurred outside the ordinary course of trade, and explain why the remand redetermination satisfied the reasonable method requirement of section 773(e)(2)(B)(iii) of the Tariff Act of 1930, as amended (the Act).[6]

On September 3, 2009, the Department filed its first remand redetermination with the CIT, recalculating CV profit and ISE using a weighted average of the sales data from two of the six respondents in the prior review because only those two respondents had earned a profit when the Department included sales made outside the ordinary course of trade in the profit calculation.[7] On April 20, 2010, the Court again remanded the case to the Department, holding that the Department had not complied with the profit cap requirement contained in section 773(e)(2)(B)(iii) of the Act.[8] The Court directed the Department to reconsider and redetermine CV profit for Atar in a way that satisfies both the profit cap and reasonable method requirements of section 773(e)(2)(B)(iii) of the Act.[9]

On July 19, 2010, the Department filed its second remand redetermination with the CIT.[10] In that remand, under respectful protest, the Department recalculated the profit cap using data from the home market sales made both within and outside the ordinary course of trade by the only two profitable respondents in the *Eighth Administrative Review.*[11] The profit rate calculated in the First Remand Redetermination did not exceed the profit cap calculated in the Second Remand Redetermination. Therefore, where the profit rate did not exceed the profit cap and the profit rate satisfied the reasonableness requirement of section 773(e)(2)(B)(iii) of the Act, the Department continued to apply the profit rate it had calculated in the First Remand Redetermination.[12] Also, the CV ISE rate remained the same, as

[1] *See Atar S.r.l.* v. *United States,* Court No. 07–86, Slip Op. 12–101 (CIT July 31, 2012) (*Atar IV*); Final Results of Third Redetermination Pursuant to Court Remand, dated December 5, 2011 (Third Remand Redetermination) (found at *http://ia.ita.doc.gov/remands*). The CIT's prior decisions in this case can be found at *Atar S.r.l.* v. *United States,* 637 F. Supp. 2d 1068 (CIT 2009) (*Atar I*) and *Atar, S.r.l.* v. *United States,* 703 F. Supp. 2d 1359 (CIT 2010) (*Atar II*).

[2] *See Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 72 FR 7011 (February 14, 2007) (*Final Results*), and accompanying Issues and Decision Memorandum (Decision Memorandum).

[3] *See Final Results.*

[4] *See Atar I,* 637 F. Supp. 2d 1092–1093.

[5] *See* Decision Memorandum at Comment 2; *see also Notice of Final Results of Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy and Determination to Revoke in Part,* 70 FR 71464 (November 29, 2005) (*Eighth Administrative Review*).

[6] *See Atar I,* 637 F. Supp. 2d 1092–1093.

[7] *See* Results of Redetermination Pursuant To Court Remand (September 3, 2009) (First Remand Redetermination).

[8] *See Atar II,* 703 F. Supp. 2d at 1370.

[9] *Id.*

[10] *See* Final Results of Redetermination Pursuant to Court Remand (July 15, 2010) (Second Remand Redetermination).

[11] *See* Second Remand Redetermination at 6.

[12] *See* Second Remand Redetermination at 7.

recalculated in the First Remand Redetermination.

The CAFC subsequently issued a decision in *Thai I–Mei Frozen Foods Co., Ltd.* v. *United States,* 616 F.3d 1300 (CAFC 2010), upholding the Department's exclusion of sales made outside the ordinary course of trade in determining CV profit pursuant to the third alternative. On September 7, 2011, the Court again remanded this case to the Department.[13] The Court held that the Second Remand Redetermination did not satisfy the profit cap requirement contained in section 773(e)(2)(B)(iii) of the Act.[14] The Court found the Department's construction of the statute to be unreasonable because, according to the Court, only a ''strained reading'' of the statute could restrict the profit cap calculation to data from respondents that experienced a profit over a significant period of time.[15] Additionally, the Court held that the profit cap calculation was not supported by the record because the Department's calculation ignored data from home market sales ''that were material and probative of the general conditions in the home market of Italy affecting the profitability of domestic pasta producers operating there.'' [16] The Court therefore directed the Department to submit a redetermination that complies with section 773(e)(2)(B)(iii) of the Act and specifically incorporates a lawfully-determined profit cap that is in accordance with all directives and conclusions set forth in its opinion.

Pursuant to the Court's remand order in *Atar III,* the Department revised the calculation of Atar's CV profit rate, the profit cap, and Atar's CV ISE. Specifically, the Department: (1) Calculated Atar's CV ISE rate by weight-averaging the ISE rates of all six of the eighth-review respondents; (2) calculated the CV profit rate by weight-averaging data from all six of the eighth-review respondents' home market sales that were made within the ordinary course of trade; and (3) only for purposes of the Third Remand Redetermination and under protest calculated the CV profit cap using the weighted-average data from all six of the eighth-review respondents' home market sales that were made both within and outside the ordinary course of trade.[17] In the Third Remand Redetermination, the Department calculated a revised dumping margin for Atar of 11.76 percent.[18] The CIT affirmed the Department's Third Remand Redetermination on July 31, 2012.[19]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(c) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's judgment in *Atar IV* on July 31, 2012, affirming the Department's decision in the Third Remand Redetermination constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, the weighted-average dumping margin for Atar for the period July 1, 2004, through June 30, 2005, is 11.76 percent. However, in accordance with the Section 129 Determination, Atar's cash deposit rate is 0.00 percent.[20] The Department will instruct U.S. Customs and Border Protection (CBP) to collect cash deposits for Atar at the rate indicated.

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to assess antidumping duties on entries of the subject merchandise during the POR from Atar based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(c), 751(a), and 777(i)(1) of the Act.

Dated: August 8, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–19954 Filed 8–14–12; 8:45 am]

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[13] *Atar III.*

[14] *Atar III,* 791 F. Supp. 2d at 1380.

[15] *Atar III,* 791 F. Supp. 2d at 1376.

[16] *Atar III,* 791 F. Supp. 2d at 1377.

[17] *See Third Remand Redetermination* at 20–21.

[18] *See* Third Remand Redetermination at 21.

[19] *See Atar IV.*

[20] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act: Stainless Steel Plate in Coils From Belgium, Steel Concrete Reinforcing Bars From Latvia, Purified Carboxymethylcellulose From Finland, Certain Pasta From Italy, Purified Carboxymethylcellulose From the Netherlands, Stainless Steel Wire Rod From Spain, Granular Polytetrafluoroethylene Resin From Italy, Stainless Steel Sheet and Strip in Coils From Japan,* 77 FR 36257, 36258 (June 18, 2012) (*Section 129 Determination*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Scope Ruling and Notice of Amended Final Scope Ruling in Accordance With Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 27, 2012, in *King Supply Co. LLC* v. *United States,* 674 F.3d 1343 (Fed. Cir. Mar 27, 2012) (''*King Supply III''*), the U.S. Court of Appeals for the Federal Circuit (''CAFC'') reversed the decision of the U.S. Court of International Trade (''CIT'') in *King Supply Co. LLC* v. *United States,* Slip Op. 11–2, Court No. 09–477 (January 06, 2011) (''*King Supply II''*). In *King Supply II,* pursuant to the CIT's remand order, the Department of Commerce's (''Department'') results of redetermination construed the scope of the *Order* [1] as excluding carbon steel butt-weld pipe fittings from the People's Republic of China (''PRC'') used in structural applications. In *King Supply III,* the CAFC, reversing the CIT, held that: (1) The Department in its original scope ruling reasonably determined that the scope of the *Order* did not give rise to an end use restriction, (2) the Department's original scope ruling was supported by substantial evidence, and (3) the CIT gave insufficient deference to the Department in interpreting the Order. 674 F.3d at 1345, 1349, 1350–51. As there is now a final and conclusive court decision with respect to the litigation pertaining to this proceeding, we are hereby publishing the final scope ruling that pipe fittings imported by King Supply are within the scope of the order and amending our January 26,

[1] *See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China,* 57 FR 29702 (July 6, 1992) (''*Order''*).

2011, amended final scope ruling consistent with the CAFC decision.[2]

DATES: *Effective Date:* August 15, 2012.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION: On July 13, 2009, the Department issued a final scope ruling on carbon steel butt-weld pipe fittings from the PRC used in structural applications.[3] In the Final Scope Ruling, the Department found that carbon steel butt-weld pipe fittings from the PRC used in structural applications were covered by the *Order* because they met the physical description of subject merchandise.[4]

In *King Supply Co. LLC* v. *United States,* Slip Op. 10–111, Court No. 09–00477 (September 30, 2010) (''*King Supply I*''), the CIT determined that the scope language of the Order contains an end-use element that results in the exclusion of pipe fittings used to join sections in structural applications from the *Order.* Therefore, the CIT ordered the Department to issue a scope determination that construes the scope of the *Order* as excluding carbon steel butt-weld pipe fittings used in structural applications.[5] On December 1, 2010, the Department issued its final results of redetermination pursuant to *King Supply I.* Pursuant to the remand order in *King Supply I,* we construed the scope of the *Order* as excluding carbon steel butt-weld pipe fittings used only in structural applications. The CIT sustained the Department's scope redetermination on January 6, 2011.[6]

As noted above, the CAFC subsequently reversed the CIT's decision in *King Supply II,* and found that it was reasonable for the Department to have read the scope language at issue as not constituting an end-use restriction, such that King's imported pipe fittings are within the scope of the order.

Amended Final Scope Ruling

In accordance with the CAFC's decision in *King Supply Co. LLC* v. *United States,* pipe fittings imported by King Supply are within the scope of the order. Accordingly, the Department will instruct U.S. Customs and Border Protection to continue to suspend entries of carbon steel butt-weld pipe fittings from the PRC used only in structural applications at the cash deposit rates currently in effect.

This notice is issued and published in accordance with section 516A(c)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.225.

Dated: August 3, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19956 Filed 8–14–12; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* Memorandum from Edward C. Yang, Senior NME Coordinator to John M. Andersen, Acting Deputy Assistant Secretary, Final Scope Ruling: Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, dated October 20, 2009 (''Final Scope Ruling''); *see also Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision,* 76 FR 4633 (January 26, 2011).

[3] *See* Final Scope Ruling.

[4] *See* Final Scope Ruling, at 6.

[5] *See King Supply I,* at 3.

[6] *See King Supply II.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: August 15, 2012.

SUMMARY: On April 12, 2012, the U.S. Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on saccharin from the People's Republic of China (''PRC'') for the period of review (''POR'') July 1, 2010, through June 30, 2011.[1] We invited interested parties to comment on the preliminary results but received no comments. Therefore, our final results remain unchanged from the preliminary results of review.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2012, the Department published the preliminary results of this administrative review in the **Federal Register**. In these results, we preliminarily determined to rescind the review with respect to Kingchem LLC (''Kingchem''). We also preliminarily determined that four companies did not demonstrate that they were entitled to a separate rate. We invited parties to comment on the preliminary results but received no comments or requests for a hearing.

Period of Review

The period of review is July 1, 2010 through June 30, 2011.

Scope of the Order

The product covered by the antidumping duty order is saccharin. Saccharin is defined as a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service (''CAS'') Registry 128–44–9); (2) calcium saccharin (CAS Registry 6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry 81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms. The merchandise subject to the order is currently classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'') and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of the order remains dispositive.

Final Results

Rescission in Part

In the preliminary results of this review the Department stated that it intended to rescind this review with respect to Kingchem, for which the request for review was timely withdrawn.[2] Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the day of publication of notice of initiation of the requested review. The aforementioned request for review was withdrawn within the 90-day period.

[1] *See Saccharin From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind in Part,* 77 FR 21966 (April 12, 2012) (''*Preliminary Results*'').

[2] *See Preliminary Results,* 77 FR at 21967.

Because the request for review was withdrawn and because no other party requested a review of Kingchem, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to this company.

The PRC-Wide Entity

In the *Preliminary Results,* the Department preliminarily found that Fine Chemical, Changjie Chemical, North Food, and Embaiking Pharmaceutical did not demonstrate that they were entitled to a separate rate.[3] Therefore, the Department preliminarily found that they should be considered part of the PRC-wide entity for this review. No party commented on the Department's preliminary finding. For the final results the Department continues to find that these companies should be considered part of the PRC-wide entity for this review.

Third-Country Exporters

In the *Preliminary Results,* the Department preliminarily found that because Escalade, High Trans Corporation, Seicheng Chemical, Yuan Shan, Sin-Ho Trading, Long Hwang Chemicals, and Sun Disc are third-country exporters located outside of the PRC, and they do not have individual exporter rates, their entries of subject merchandise should be assessed at the rate applicable to their PRC suppliers. No party commented on the Department's preliminary finding. For these final results, the Department continues to find that their entries of subject merchandise should be assessed at the rate applicable to their PRC suppliers.

Assessment Rates

For all shipments of the subject merchandise by the PRC-wide entity entered, or withdrawn from warehouse, for consumption during the POR we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties at the *ad valorem* PRC-wide entity rate of 329.94 percent.[4] For all non-PRC exporters of subject merchandise which have not received their own rate, we will instruct CBP to assess the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. The Department intends to issue assessment instructions directly to CBP 15 days after the publication of the final results in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (''the Act''): (1) For previously investigated or reviewed PRC and non-PRC exporters that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide entity rate of 329.94 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Notifications to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 8, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–20053 Filed 8–14–12; 8:45 am]

BILLING CODE 3510–DS–P

[3] *Id.*

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China,* 68 FR 35383 (June 13, 2003).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC067

Marine Mammals; File No. 17350

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to the North Slope Borough Department of Wildlife Management, P.O. Box 69, Barrow, AK 99723 [Taqulik Hepa, Responsible Party; Dr. John C. George, Principal Investigator] to collect, import, export, and receive marine mammal parts for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On June 19, 2012 notice was published in the **Federal Register** (77 FR 36488) that a request for a permit to collect, receive, import and export specimens for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes the collection, receipt, import and export of samples of marine mammals taken by Alaskan Native subsistence hunters; and the receipt, import, and export of specimens from legal foreign (Russia and Canada) and domestic subsistence-collected marine mammals of the following species: bearded seal (*Erignathus*

barbatus), ringed seal (*Phoca hispida*), spotted seal (*Phoca larga*), ribbon seal (*Phoca fasciata*), bowhead whale (*Balaena mysticetus*), beluga whale (*Delphinapterus leucas*), minke whale (*Balaenoptera acutorostrata*), grey whale (*Eschrichtius robustus*), and harbor porpoise (*Phocoena phocoena*). Import and export activities for sample analysis may occur world-wide. No takes of live animals are authorized. The permit will expire August 8, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 9, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–20064 Filed 8–14–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on October 4, 2012, from 10 a.m. to 1 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230 or emailed to *spectrumadvisory@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/CSMAC.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. (*See* charter, at *http://www.ntia.doc.gov//page/2011/csmac-charter*). This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/CSMAC.*

Matters to Be Considered: The Committee will receive recommendations from subcommittees on matters related to the accomplishment of the President's ten-year goal of identifying 500 megahertz of radio spectrum for wireless broadband. The Sharing, Unlicensed, and Spectrum Management Improvements Subcommittees will report on the status of their determinations and findings and facilitate discussion on recommended next steps. In addition, the Committee will receive reports from designated committee members on the progress of the following five working groups to repurpose the 1695–1710 MHz and 1755–1850 MHz bands for wireless broadband:

1. WG1 1695–1710 MHz Weather Satellite Receive Earth Stations,
2. WG2 1755–1850 MHz Law Enforcement Surveillance and other short-range fixed,
3. WG3 1755–1850 MHz Satellite Control Links and Electronic Warfare,
4. WG4 1755–1850 MHz Fixed Point-to-Point and Tactical Radio Relay, and
5. WG5 1755–1850 MHz Airborne Operations.

NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the advisory committee regarding agenda items. During the portion of the meeting when the public may make an oral presentation, speakers may address only matters the subject of which are on the agenda. (See policy: *http://www.ntia.doc.gov/category/csmac.*)

Time and Date: The meeting will be held on October 4, 2012 from 10 a.m. to 1 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov,* at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received by close of business on September 28, 2012, to provide sufficient time for review. Comments received after September 28, 2012 will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word, or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC

office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/category/CSMAC.*

Dated: August 10, 2012.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2012–20023 Filed 8–14–12; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday September 7, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–20115 Filed 8–13–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday September 21, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–20117 Filed 8–13–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday September 21, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–20119 Filed 8–13–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURE TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday September 28, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield

Assistant Secretary of the Commission.

[FR Doc. 2012–20118 Filed 8–13–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday September 14, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–20116 Filed 8–13–12; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the U.S. Marine Corps Basing of MV–22 and H–1 Aircraft in Support of III Marine Expeditionary Force Elements in Hawaii

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Record of Decision.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 United States Code (U.S.C) 4321–4374, as implemented by the Council on Environmental Quality regulations, 40 Code of Federal Regulations (CFR) Parts 1500–1508, Department of the Navy (DoN) NEPA regulations (32 CFR part 775), and Marine Corps Order P5090.2A (with Changes 1 and 2) Marine Corps Environmental Compliance and Protection Manual, Chapter 12, the DoN announces its decision to base and operate up to two Marine Medium Tiltrotor (VMM) squadrons (up to 12 MV–22 Osprey per squadron, for a total of 24 aircraft) and one Marine Light Attack Helicopter (HMLA) squadron (15 AH–1 Cobra attack and 12 UH–1 Huey utility helicopters, for a total of 27 aircraft) in support of III Marine Expeditionary Force elements in Hawaii.

SUPPLEMENTARY INFORMATION: The tiltrotor MV–22 Osprey aircraft provides the ''next generation equipment'' offering increased speed, longer range, and greater mission versatility than a helicopter. The MV–22 also satisfies the medium-lift capability needed for assault support transport of combat troops, equipment, and supplies. The HMLA squadron will be relocated from Marine Corps Base (MCB) Camp Pendleton to provide rotary-wing light-lift and attack capabilities not currently based in Hawaii and routine training with infantry. The 3d Regiment at MCB Hawaii Kaneohe Bay is the only infantry regiment within the Marine Corps that

does not routinely train with rotary-wing light-lift and attack support.

In support of the proposed action to base and operate up to two VMM squadrons and one HMLA squadron in Hawaii, the DoN will: (1) Implement facilities projects at MCB Hawaii Kaneohe Bay to accommodate the squadrons, to include demolition, new construction, and renovation; (2) conduct aviation training, readiness, and special exercise operations at training facilities and federally obligated state airports statewide; and (3) construct improvements at selected training facilities.

All practical means to avoid or minimize environmental harm from the selected alternative have been adopted.

The complete text of the Record of Decision is available for public viewing on the project Web site at *www.mcbh.usmc.mil/mv22h1eis* along with the Final Environmental Impact Statement and the Programmatic Agreement negotiated under Section 106 of the National Historic Preservation Act. For further information, contact Naval Facilities Engineering Command, Pacific Division, Attn: EV21, MV–22/H–1 EIS Project Manager, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134. Telephone 808–472–1196.

Dated: August 6, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–20024 Filed 8–14–12; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of Public Meeting and Hearing.

SUMMARY: Pursuant to the provisions of the ''Government in the Sunshine Act''

(5 U.S.C. 552b), and as authorized by 42 U.S.C. 2286b, notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public meeting and hearing described below. The Board invites interested persons or groups to present comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: Session I: 1 p.m.—5 p.m., October 2, 2012; Session II: 6:30 p.m.—9 p.m., October 2, 2012.

PLACE: Knoxville Convention Center, 701 Henley Street, Knoxville, Tennessee 37902.

STATUS Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: In Session I of this public meeting and hearing, the Board will examine the National Nuclear Security Administration's (NNSA) efforts to mitigate risks to public and worker safety posed by aging defense nuclear facilities at the Y–12 National Security Complex. The Board will receive testimony from NNSA and its contractors concerning the operations at existing Y–12 defense nuclear facilities, including Building 9212, Building 9204–2E, and Building 9215. The Board is interested in actions taken to address recent issues with conduct of operations, maintenance, and work planning; the contractor's processes for identifying and resolving safety issues; and the effectiveness of NNSA's oversight for nuclear operations. The Board will also examine the status of emergency preparedness at Y–12 and will receive testimony concerning how well NNSA and its contractor are prepared to respond to severe events and site emergencies. The Board is interested in lessons learned from the events at the Fukushima Daiichi complex and the actions taken to incorporate these lessons learned at the site-wide level and in defense nuclear facility operations. During Session II, the Board will receive testimony regarding factors that could affect the timely execution and safety of the Uranium Processing Facility (UPF) project. These factors include the federal project team's strategy for identifying and resolving safety issues in a timely manner. The Board is also interested in exploring the potential safety impacts of NNSA's decision to accelerate the acquisition of select processing capabilities and defer others to a later date, as well as the potential for weaknesses in technology development to impact safety. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

CONTACT PERSON FOR MORE INFORMATION: Debra Richardson, Deputy General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the hearing is invited. The Board is setting aside time at the end of each session of the hearing for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on September 28, 2012, will be scheduled to speak at the session of the hearing most relevant to their presentations. At the beginning of Session I, the Board will post a schedule for speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing or may be sent to the Board's Washington, DC, office. The Board will hold the record open until November 2, 2012, for the receipt of additional materials. The hearing will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the hearing, along with a DVD video recording, will be made available by the Board for inspection and viewing by the public at the Board's Washington, DC, office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue SW, Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: August 10, 2012.

Peter S. Winokur,

Chairman.

[FR Doc. 2012–20087 Filed 8–13–12; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Federal Student Aid; 2013–2014 Federal Student Aid Application

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice

requests comments on the 2013–2014 versions of the forms used by individuals applying for federal student aid including the Free Application for Federal Student Aid (FAFSA) and the Student Aid Report (SAR).

DATES: Interested persons are invited to submit comments on or before October 15, 2012.

ADDRESSES: Comments may be submitted electronically by emailing *FAFSA.Comments@ed.gov*. Any comments received after this date will be retained for consideration in the next annual review of the federal student aid application.

SUPPLEMENTARY INFORMATION: The Secretary is publishing this request for comment under the Provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. Under that Act, the Department must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, the Department must first obtain public comment of the proposed form, and to obtain that comment, the Department must publish this notice in the **Federal Register**. In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Request for Comments: Comments should be submitted to the Department as indicated. All comments will become a matter of public record. Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04899. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Title of Collection: 2013–2014 Federal Student Aid Application.

OMB Control Number: 1845–0001.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 46,099,008.

Total Estimated Number of Annual Burden Hours: 25,959,853.

Abstract: Section 483 of the Higher Education Act of 1965, as amended (HEA), mandates that the Secretary of Education ''* * * shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance * * *''.

The determination of need and eligibility are for the following Title IV, HEA, federal student financial assistance programs: the Federal Pell Grant Program; the Campus-Based programs (Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and the Federal Perkins Loan Program); the William D. Ford Federal Direct Loan Program; the Teacher Education Assistance for College and Higher Education Grant; and the Iraq and Afghanistan Service Grant.

Federal Student Aid, an office of the U.S. Department of Education (hereafter ''the Department''), subsequently developed an application process to collect and process the data necessary to determine a student's eligibility to receive Title IV, HEA program assistance. The application process involves an applicant's submission of the *Free Application for Federal Student Aid* (FAFSA). After submission of the FAFSA, an applicant receives a *Student Aid Report* (SAR), which is a summary of the data they submitted on the FAFSA. The applicant reviews the SAR, and, if necessary, will make corrections or updates to their submitted FAFSA.

The Department seeks OMB approval of all application components as a single ''collection of information''. The aggregate burden will be accounted for under OMB Control Number 1845–0001. The specific application components, descriptions and submission methods for each are listed in Table 1.

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS

Component	Description	Submission method
Initial Submission of FAFSA		
FAFSA on the Web (FOTW)	Online FAFSA that offers applicants a customized experience.	Submitted by the applicant via *www.fafsa.gov*.
FOTW—Renewal	Online FAFSA for applicants who have previously completed the FAFSA.	
FOTW—EZ	Online FAFSA for applicants who qualify for the Simplified Needs Test (SNT) or Automatic Zero (Auto Zero) needs analysis formulas.	
FOTW—EZ Renewal	Online FAFSA for applicants who have previously completed the FAFSA and who qualify for the SNT or Auto Zero needs analysis formulas.	
FAFSA on the Phone (FOTP)	The Federal Student Aid Information Center (FSAIC) representatives assist applicants by filing the FAFSA on their behalf through FOTW.	Submitted through *www.fafsa.gov* for applicants who call 1–800–4–FED–AID.
FOTP—EZ	FSAIC representatives assist applicants who qualify for the SNT or Auto Zero needs analysis formulas by filing the FAFSA on their behalf through FOTW.	

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS—Continued

Component	Description	Submission method
FAA Access	Online tool that a financial aid administrator (FAA) utilizes to submit a FAFSA.	Submitted through *www.faaacess.ed.gov* by a FAA on behalf of an applicant.
FAA Access—Renewal	Online tool that a FAA can utilize to submit a Renewal FAFSA.	
FAA Access—EZ	Online tool that a FAA can utilize to submit a FAFSA for applicants who qualify for the SNT or Auto Zero needs analysis formulas.	
FAA Access—EZ Renewal	Online tool that a FAA can utilize to submit a FAFSA for applicants who have previously completed the FAFSA and who qualify for the SNT or Auto Zero needs analysis formulas.	
Electronic Other	This is a submission done by a FAA, on behalf of the applicant, using the Electronic Data Exchange (EDE).	The FAA may be using their mainframe computer or software to facilitate the EDE process.
PDF FAFSA or Paper FAFSA	The paper version of the FAFSA printed by the Department for applicants who are unable to access the Internet or the online PDF FAFSA for applicants who can access the Internet but are unable to complete the form using FOTW.	Mailed by the applicant.
Correcting Submitted FAFSA Information and Reviewing FAFSA Information		
FOTW—Corrections	Any applicant who has a Federal Student Aid PIN (FSA PIN)—regardless of how they originally applied—may make corrections using FOTW Corrections.	Submitted by the applicant via *www.fafsa.gov*.
Electronic Other—Corrections	With the applicant's permission, corrections can be made by a FAA using the EDE.	The FAA may be using their mainframe computer or software to facilitate the EDE process.
Paper SAR—This is a SAR and an option for corrections.	The full paper summary that is mailed to paper applicants who did not provide an e-mail address and to applicants whose records were rejected due to critical errors during processing. Applicants can write corrections directly on the paper SAR and mail for processing.	Mailed by the applicant.
FAA Access—Corrections	An institution can use FAA Access to correct the FAFSA	Submitted through *www.faaacess.ed.gov* by a FAA on behalf of an applicant.
Internal Department Corrections	The Department will submit an applicant's record for system-generated corrections.	There is no burden to the applicants under this correction type as these are system-based corrections.
FSAIC Corrections	Any applicant, with their Data Release Number (DRN), can change the postsecondary institutions listed on their FAFSA or change their address by calling FSAIC.	These changes are made directly in the CPS system by a FSAIC representative.
SAR Electronic (eSAR)	The eSAR is an online version of the SAR that is available on FOTW to all applicants with a PIN. Notifications for the eSAR are sent to students who applied electronically or by paper and provided an e-mail address. These notifications are sent by e-mail and include a secure hyperlink that takes the user to the FOTW site.	Cannot be submitted for processing.
SAR Acknowledgment	This is the condensed paper SAR that is mailed to applicants who applied electronically but did not provide an e-mail address and do not meet the criteria for a full paper SAR.	

This information collection also documents an estimate of the annual public burden as it relates to the application process for federal student aid. The Applicant Burden Model (ABM), measures applicant burden through an assessment of the activities each applicant conducts in conjunction with other applicant characteristics and in terms of burden, the average applicant's experience. Key determinants of the ABM include:

- The total number of applicants that will potentially apply for federal student aid;
- How the applicant chooses to complete and submit the FAFSA (e.g., by paper or electronically via FOTW);
- How the applicant chooses to submit any corrections and/or updates (e.g., the paper SAR or electronically via FOTW Corrections);
- The type of SAR document the applicant receives (eSAR, SAR acknowledgment, or paper SAR);
- The formula applied to determine the applicant's expected family contribution (full need analysis formula, Simplified Needs Test or Automatic Zero); and
- The average amount of time involved in preparing to complete the application.

The ABM is largely driven by the number of potential applicants for the application cycle. The total application projection for 2013–2014 is based upon two factors—estimates of the total enrollment in all degree-granting

institutions and the percentage change in FAFSA submissions for the last completed or almost completed application cycle. The ABM is also based on the application options available to students and parents. The Department accounts for each application component based on web trending tools, survey information, and other Department data sources.

For 2013–2014, the Department is reporting a net burden reduction of 3,398,000 hours. The reduction is a reflection of the effects of simplifying FAFSA on the Web, which is utilized by the majority of applicants who apply for aid. Simplification of the application is demonstrated by (1) the average completion times for initial submissions and; (2) fewer corrections being made to the application.

The projected average completion times for initial submissions has decreased by 11 minutes for 2013–14. In data reported in the 2012–2013 supporting statement, first-time filers using FOTW would take approximately 1.30 hours (78 minutes) to submit an application. The data from 2011–12 indicate that the same user would be able to submit their application in 1.12 hours (67 minutes), reducing their burden by .18 hours (11 minutes).

Corrections are also projected to decrease by 760,696 responses for 2013–14. Fewer corrections mean that more comprehensive and accurate data was captured in the initial submission of the application.

Updated completion times were calculated for each component and have been used to estimate the burden, excluding the change in the applicant volume. The results demonstrate that the burden for all applicants would have decreased by almost 13 percent or 3,758,702 hours, if the application volume had remained constant.

If the Department had not simplified the application process, thus reducing the time required to complete the FAFSA, the new burden estimates would only need to account for the change in applicants. The 1.43% increase in applicants would result in an increase in burden of 347,945 hours.

Accounting for both the increase in total applicants and the decrease in individual applicant burden, the net change is an overall decrease of almost 12 percent or 3,398,000 hours. The following Table shows the net burden change and total cost for applicants. The change in total annual responses is also listed in the Table. Total annual responses include the original FAFSA submission and corrections.

TABLE 2—NET BURDEN CHANGE

	2012–2013	2013–2014	Change	% Change	Burden disposition
	Accounting for change in applicant burden and change in applicants.				
Total Applicants	24,705,864	25,053,809	+347,945	+1.41	Net decrease in burden. The 1.41% increase in applicants is offset by the results of the simplification changes implemented by the Department. This has resulted in an overall decrease in burden of 11.57% or 3,397,545 hours.
Total Applicant Burden	29,357,853	25,959,853	−3,398,000	−11.6	
Total Annual Responses	46,447,024	46,099,007	−348,017	−.75	
Cost for All Applicants	$234,804.24	$190,224.76	$44,579.48	−18.99	

The Department takes pride in the continued efforts to simplify the FAFSA submission process and the continued decrease in burden associated with the application process, even as the Department serves more students each year. The results confirm the significant improvements that have been made to the application process. The Department believes that these changes will lead to more students completing the FAFSA and will assist more students with their pursuit of postsecondary education through access to Title IV, HEA program assistance.

The Secretary is publishing this request for comment under the Provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, the Department must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, the Department must first obtain public comment of the proposed form, and to obtain that comment, the Department must publish this notice in the **Federal Register**. In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 2, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–19943 Filed 8–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Vocational and Adult Education; Perkins Discretionary Grant Performance Report

SUMMARY: The Perkins Discretionary Grant Performance Report will be used for interim and final performance reporting. The Perkins Discretionary Grant Performance Report form will also be used by grant recipients for other interim reporting such as quarterly or semi-annual performance and/or financial reporting.

DATES: Interested persons are invited to submit comments on or before October 15, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be

accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04912. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Perkins Discretionary Grant Performance Report.

OMB Control Number: 1830–NEW.

Type of Review: New.

Total Estimated Number of Annual Responses: 88.

Total Estimated Number of Annual Burden Hours: 1,556.

Abstract: The Perkins Discretionary Grant Performance Report form and instructions will be used by grantees to meet Department of Education deadline dates for submission of performance and financial reports for the Office of Vocational Adult Education office (OVAE) Division of Academic and Technical Education (DATE) discretionary grant programs, as required by the Education Department General Administrative Regulations (EDGAR 34 CFR 74.51, 74.52, 75.118, 75.253, 75.590, and 80.40). The Perkins Discretionary Grant Performance Report will be used by OVAE discretionary grant recipients in lieu of the ED 524B Grant Performance Report and instructions because the ED 524B is not compatible with OVAE–DATE's new Perkins Information Management System. Recipients of multi-year discretionary grants must submit interim performance reports, usually annually, for each year funding has been approved in order to receive a continuation award. The annual performance report should demonstrate whether substantial progress has been made toward meeting the approved goals and objectives of the project. OVAE also requires recipients of ''forward funded'' grants that are awarded funds for their entire multi-year project up-front in a single grant award to submit an annual performance report. The Perkins Discretionary Grant Performance Report will be used for interim and final performance reporting. In both the annual and final performance reports, grantees are required to provide data on established performance measures for the grant program (e.g., Government Performance and Results Act measures) and on project performance measures that were included in the grantee's approved grant application, in order to demonstrate project success, impact and outcomes. The Perkins Discretionary Grant Performance Report form will also be used by grant recipients for other interim reporting such as quarterly or semi-annual performance and/or financial reporting.

Dated: August 9, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–19947 Filed 8–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Comprehensive Centers Program (CFDA 84.283B); Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On June 6, 2012, we published in the **Federal Register** (77 FR 33564) a notice inviting applications for new awards using fiscal year (FY) 2012 funds for the Comprehensive Centers program (2012 notice). The 2012 notice erroneously listed deadline dates for intergovernmental review under Executive Order (EO) 12372 and its implementing regulations in 34 CFR part 79. The Secretary had decided to waive the EO 12372 review of the 2012 notice, as authorized under part 79, but the notice did not reflect that decision. The Secretary made the decision to waive this review because we would otherwise not be able to make timely grant awards for the Comprehensive Centers program for FY 2012. We are correcting the 2012 notice to remove the requirement that applicants submit their applications for intergovernmental review.

FOR FURTHER INFORMATION CONTACT: Fran Walter, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W115, Washington, DC 20202–0001. Telephone: (202) 205–9198 or by email: *fran.walter@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *We make the following corrections:*

1. On page 33564, first column, under the heading **DATES**, we are removing the last sentence, which reads ''Deadline for Intergovernmental Review: October 4, 2012''.

2. On page 33567, second column, under the heading ''3. *Submission Dates and Times'',* we are removing the last sentence, which reads ''Deadline for Intergovernmental Review: October 4, 2012''.

3. On page 33567, second column, under the heading ''4. *Intergovernmental Review'',* we are removing the second sentence.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in

text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 9, 2012.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–19937 Filed 8–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–131–000.
Applicants: Spion Kop Wind, LLC.
Description: Application for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration and Waivers of Spion Kop Wind, LLC.
Filed Date: 8/7/12.
Accession Number: 20120807–5156.
Comments Due: 5 p.m. ET 8/28/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1933–002.
Applicants: Interstate Power and Light Company.
Description: IPL Market-Based Rate Tariff—Revised to be effective 8/1/2012.
Filed Date: 7/26/12.
Accession Number: 20120726–5102.
Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–1946–000; ER12–1948–000; ER12–1951–000; ER12–1954–000; ER12–1956–000; ER12–1958–000; ER12–1959–000; ER12–1961–000.
Applicants: Duke Energy Beckjord, LLC, Duke Energy Conesville, LLC, Duke Energy Dicks Creek, LLC, Duke Energy Killen, LLC, Duke Energy Miami Fort, LLC, Duke Energy Piketon, LLC, Duke Energy Stuart, LLC, Duke Energy Zimmer, LLC.
Description: Response to Staff Request for Additional Detail of Duke Energy Beckjord, LLC, *et al.*
Filed Date: 8/8/12.
Accession Number: 20120808–5075.
Comments Due: 5 p.m. ET 8/29/12.

Docket Numbers: ER12–2420–000.
Applicants: Southwest Power Pool, Inc.
Description: 2465 Owl Feather War Bonnet, LLC GIA to be effective 7/30/2012.
Filed Date: 8/7/12.
Accession Number: 20120807–5151.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER12–2421–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3357; Queue No. X2–035 to be effective 7/20/2012.
Filed Date: 8/8/12.
Accession Number: 20120808–5044.
Comments Due: 5 p.m. ET 8/29/12.

Docket Numbers: ER12–2422–000.
Applicants: Prairie Rose Transmission, LLC.
Description: Prairie Rose Transmission, LLC submits tariff filing per 35.1: Prairie Rose Transmission, LLC TSA to be effective 10/1/2012.
Filed Date: 8/8/12.
Accession Number: 20120808–5078.
Comments Due: 5 p.m. ET 8/29/12.

Docket Numbers: ER12–2423–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 3378; Queue Nos. W2–010 & W2–011 to be effective 7/9/2012.
Filed Date: 8/8/12.
Accession Number: 20120808–5083.
Comments Due: 5 p.m. ET 8/29/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–19998 Filed 8–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–929–000.
Applicants: Trunkline LNG Company, LLC.
Description: Misc. Revenue Surcharge Report filed 8–7–12.
Filed Date: 8/7/12.
Accession Number: 20120807–5063.
Comments Due: 5 p.m. ET 8/20/12.

Docket Numbers: RP12–930–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Removal of Expiring Agreements to be effective 9/7/2012.
Filed Date: 8/7/12.
Accession Number: 20120807–5117.
Comments Due: 5 p.m. ET 8/20/12.

Docket Numbers: RP12–931–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: 2012–08–07 NC Contracts Mieco, CIMA to be effective 8/8/2012.
Filed Date: 8/7/12.
Accession Number: 20120807–5136.
Comments Due: 5 p.m. ET 8/20/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP10–1402–001.
Applicants: Natural Gas Pipeline Company of America.
Description: Baseline Compliance Filing—Volume No. 2 to be effective 8/7/2012.
Filed Date: 8/7/12.
Accession Number: 20120807–5072.
Comments Due: 5 p.m. ET 8/20/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–19999 Filed 8–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–32–000]

NorthWestern Corporation; Notice of Petition for Rate Approval

Take notice that on July 31, 2012, NorthWestern Corporation (NorthWestern) filed a Rate Election pursuant to 284.123(b)(1) of the Commissions regulations and to revise its Statement of Operating Conditions. NorthWestern proposes to utilize rates that are the same as those contained in NorthWestern's storage and transportation rate schedules for comparable intrastate service on file with the Montana Public Service Commission as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday August 17, 2012.

Dated: August 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–19997 Filed 8–14–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0612; FRL–9359–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from July 1, 2012 to July 20, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before September 14, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0612, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from July 1, 2012 to July 20, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—35 PMNS RECEIVED FROM 07/01/12 TO 07/20/12

Case No.	Received date	Projected notice end date	Manufacturer/Importer	Use	Chemical
P–12–0438	07/02/2012	09/29/2012	CBI	(S) Intermediate for synthesis of specialty monomer.	(G) Aminoalkyl substituted bicyclic olefin.
P–12–0439	07/02/2012	09/29/2012	CBI	(G) Surfactant for emulsifier	(G) Glycolipid.
P–12–0440	07/03/2012	09/30/2012	Innovative Resin Systems.	(G) epoxy adhesive flexibilizer	(G) Phenol capped urethane prepolymer.

TABLE I—35 PMNS RECEIVED FROM 07/01/12 TO 07/20/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ Importer	Use	Chemical
P–12–0441	07/05/2012	10/02/2012	Syngenta Crop Protection, Inc.	(S) An inert ingredient used in the manufacture of a registered pesticide.	(G) A glucopyranose.
P–12–0442	07/03/2012	09/30/2012	CBI	(G) Binder	(G) Carboxylic acid, alkenyl ester, polymers with alkyl acrylate, me methacrylate and polyethylene glycol hydrogen sulfate substituted alkyl branched alkoxy methyl substituted (alkoxy)alkyl ethers salts.
P–12–0443	07/03/2012	09/30/2012	CBI	(G) Coating additive	(G) Benzene, ethenyl-, polymer with substituted alkane.
P–12–0444	07/06/2012	10/03/2012	CBI	(G) Colorants	(G) Carbopolycyclic-alkyl-[[[[[[(haloalkyl-aryl]diazenyl]aryl]diazenyl]-carbopolycyclic]diazenyl.
P–12–0445	07/06/2012	10/03/2012	CBI	(G) Colorants	(G) Morpholine, [[[[(haloaryl)diazenyl]-alkylaryl]-diazenyl]aryl]-.
P–12–0446	07/06/2012	10/03/2012	CBI	(G) Colorants	(G) Morpholine, [[[[(haloaryl)diazenyl]-alkylaryl]-diazenyl]aryl]-.
P–12–0447	07/05/2012	10/02/2012	CBI	(G) Paint thickner; additive for cements.	(G) Hydrophobic modified acrylic swellable emulsion.
P–12–0448	07/08/2012	10/05/2012	CBI	(S) Catalyst component for olefin polymerisation.	(S) Zirconium, dichloro[[(1,2,3,4,5-.eta.)-3-(1,1-dimethylethyl)-2,4-cyclopentadien-1-ylidene] (1-methylethylidene) [(1,2,3,3a,7a-.eta.)-2-methyl-1*H*-inden-1-ylidene]]-.
P–12–0449	07/08/2012	10/05/2012	CBI	(S) Industrial polymer manufacture for coatings.	(S) Hexanedioic acid, polymer with *N*1-(2-aminoethyl)-1,2-ethanediamine, 1,6-hexanediol, hydrazine, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis[4-isocyanatocyclohexane], 2-hydroxyethyl methacrylate-blocked, compounds with triethylamine.
P–12–0450	07/08/2012	10/05/2012	CBI	(G) Coating additive; surface active agent.	(G) Partially fluorinated alcohol, reaction products with phosphorus oxide (P205), amine salts.
P–12–0451	07/08/2012	10/05/2012	CBI	(G) Coating additive; surface active agent.	(G) Partially fluorinated alcohol, reaction products with phosphorus oxide (P205), amine salts.
P–12–0452	07/09/2012	10/06/2012	Interplastic Corporation.	(S) Vinyl ester resin for coatings and composites.	(S) 2,5-furandione, polymer with 2-(chloromethyl)oxirane and 4,4′-(1-methylethylidene)bis[phenol], 2,2-bis[(2-propen-1-yloxy)methyl]butyl ester, 2-methyl-2-propenoate.
P–12–0453	07/09/2012	10/06/2012	Ineos Chlor Americas.	(G) Additive	(G) chlorinated alkane, chlorinated paraffin, medium chain chlorinated paraffin.
P–12–0454	07/05/2012	10/02/2012	New Polymer Systems, Inc.	(G) Additive for polymers	(G) Modified lignocellulose.
P–12–0455	07/10/2012	10/07/2012	Dow Chemical Company.	(S) Hardener for epoxy floor coating.	(G) Epoxy amine adduct.
P–12–0456	07/11/2012	10/08/2012	Henkel Corporation	(S) A site limited intermediate used to prepare novel endcapped polyisobuylene polymers.	(S) Benzene, 1,3-bis(1-chloro-1-methylethyl)-, reaction products with butadiene-isobutylene polymer.
P–12–0457	07/11/2012	10/08/2012	Rational Energies, Inc.	(S) Fuel or fuel blending stock	(G)Naptha.
P–12–0458	07/11/2012	10/08/2012	Rational Energies, Inc.	(S) Refinery feedstock; fuel blend	(G)Petroleum.
P–12–0459	07/12/2012	10/09/2012	CBI	(G) Catalyst	(G) Phosphazene.

TABLE I—35 PMNS RECEIVED FROM 07/01/12 TO 07/20/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ Importer	Use	Chemical
P–12–0460	07/12/2012	10/09/2012	BASF Corporation ...	(G) Photoinitiated resin for ultra violet or electron beams curable clear coatings, overprint varnishes, laminating adhesives and inks.	(G) Acrylate functional aliphatic isocyanate polymer blocked with hydroxy aromatic monomer.
P–12–0461	07/12/2012	10/09/2012	Akzo Nobel Coatings, Inc.	(S) Use in coatings intended for airplanes.	(G)polymer with dipropyleneglycol, propyleneglycol adipic acid, glycidylester of Versatic acid 10, diethylmalonate ethylacetate.
P–12–0462	07/13/2012	10/10/2012	CBI	(G) Pigment dispersant	(G) Anhydride, polymer with substituted alkylbenzene and polyalkyl glycol, 2-butanol- and substituted acrylate hetermonocycle reaction products and substituted carbomonocyclic homopolymer alkyl ester and polyethylene glycol mono-me ether-blocked.
P–12–0463	07/13/2012	10/10/2012	CBI	(S) Coating for wood, plastic and leather.	(S) Hexanedioic acid, polymer with 1,6-diisocyanatohexane, 1,2-ethanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, and 1,1′-methylenebis[4-isocyanatocyclohexane], compound with *N,N*-diethylethanamine.
P–12–0464	07/16/2012	10/13/2012	CBI	(G) Raw material for the manufacturing of release coatings.	(S) Iodonium, diphenyl-, 4,4′-di-c10–13 alkyl derivatives., (oc-6–11)-hexafluoroantimonates(1-).
P–12–0465	07/17/2012	10/14/2012	CBI	(G) Adhesive for electrical industry use.	(G) Latex polymer.
P–12–0466	07/17/2012	10/14/2012	CBI	(G) Adhesive for electrical industry use.	(G) Latex polymer.
P–12–0467	07/17/2012	10/14/2012	International Specialty Products.	(S) Scale inhibitor	(S) Phosphonic acid, *P,P′*-[[(2-hydroxy-ethyl)imino]bis(methylene)]bis-, sodium salt (1:2).
P–12–0468	07/17/2012	10/14/2012	CBI	(G) Destructive use—intermediate precipitate.	(G) Doped yttrium oxalate.
P–12–0469	07/17/2012	10/14/2012	CBI	(G) Destructive use—intermediate precipitate.	(G) Yttrium europium oxalate.
P–12–0470	07/18/2012	10/15/2012	CBI	(G) Prep of PCV for adhesive tape	(G) Hexanedioic acid, polymer with glycols and 2-ethylhexyl ester.
P–12–0471	07/20/2012	10/17/2012	CBI	(G) Destructive use	(S) Butanedioic acid, 2-methylene-, 1,4-dimethyl ester.
P–12–0472	07/20/2012	10/17/2012	CBI	(S) Additive for electrolyte mixtures for batteries and other electrical and electronic devices.	(G) Fluoroalkyl alkanesulfonate.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—22 NOCS RECEIVED FROM 07/01/12 TO 7/20/12

Case No.	Received date	Commencement notice end date	Chemical
J–11–0005	07/19/2012	06/20/2012	(G) Modified trichoderma reesei.
J–11–0006	07/19/2012	06/20/2012	(G) Modified trichoderma reesei.
P–09–0102	07/02/2012	06/26/2012	(G) Acrylate polymer with vinyl ether.
P–10–0185	07/16/2012	06/26/2012	(G) Alkyl phosphate salt.
P–10–0314	07/13/2012	06/16/2012	(S) Aluminum, (2-butanolato) bis[ethyl-3(oxo-, .kappa.,o)butanoato-,.kappa.,o']-.
P–11–0181	07/12/2012	06/26/2012	(G) Fluorosurfactant.
P–11–0245	07/10/2012	06/28/2012	(G) Alkoxylate polymer, mono(alkenyl) ether.

TABLE II—22 NOCS RECEIVED FROM 07/01/12 TO 7/20/12—Continued

Case No.	Received date	Commencement notice end date	Chemical
P–11–0279	07/05/2012	06/14/2012	(S) Neodecanoic acid, 2-oxiranylmethyl ester, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexahydro-1,3-isobenzofurandione and 2-oxepanone.
P–12–0165	07/19/2012	06/29/2012	(G) Modified *N*-vinylformamide polymer.
P–12–0171	07/05/2012	07/03/2012	(G) Alkyl acrylate, polymer with alkyl phenylalkoxy-piperidinone and alkenylpyridine.
P–12–0175	07/11/2012	07/10/2012	(G) Hydroxyalkanoic acid, compound with aminoheterocycle polymer with hydroxyalkanoic acid, alkyltriamine, lactone, and lactone.
P–12–0180	07/10/2012	06/21/2012	(G) Aqueous acrylic resin.
P–12–0204	07/18/2012	07/05/2012	(S) Soybean oil, oleic acid-high.
P–12–0206	07/10/2012	07/05/2012	(G) Reaction products of sulfonated, hydrogenated rosin and copper phthalocyanine with mixed chlorides.
P–12–0214	07/12/2012	06/15/2012	(G) Carbohydrate, polymers with acrylic acid and maleic anhydride, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–12–0215	07/12/2012	06/18/2012	(G) Carbohydrate, polymers with acrylic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfoate (1:1), sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–12–0216	07/12/2012	06/18/2012	(G) Carbohydrate, polymers with acrylic acid and maleic anhydride, maltodextrin and methacrylic acid, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–12–0217	07/12/2012	06/13/2012	(G) Carbohydrate, polymers with acrylic acid maltodextrin, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–12–0218	07/12/2012	06/22/2012	(G) Carbohydrate, telomers with acrylic acid, iso-pr alc., maltodextrin, 3-mercaptopropanoic acid and styrene, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–12–0219	07/12/2012	06/13/2012	(G) Carbohydrate, polymers with acrylic acid and maleic anhydride, maltodextrin, and methacrylic acid, ammonium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–12–0226	07/16/2012	06/19/2012	(G) Alkyl ketimines; polymeric ketimines.
P–12–0285	07/10/2012	06/30/2012	(S) Copper(2+), tetraamine-, dichloride.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: August 6, 2012.

Darryl S. Ballard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–20035 Filed 8–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9716–2]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by American Bottom Conservancy in the United States District Court for the Southern District of Illinois: *American Bottom Conservancy* v. *Jackson,* No. 3:12–cv–00296–GPM–SCW (S.D. IL). On August 16, 2011, Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Illinois Environmental Protection Agency for U.S. Steel Corporation's Granite City Works facility. Under the terms of the proposed consent decree, EPA would agree to respond to the petition by December 3, 2012, or within 30 days of the entry date of this Consent Decree, whichever is later.

DATES: Written comments on the proposed consent decree must be received September 14, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0577, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kaytrue Ting, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–6380; fax number (202) 564–5603; email address: *ting.kaytrue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Illinois Environmental Protection

Agency for U.S. Steel Corporation's Granite City Works facility. Under the terms of the proposed consent decree, EPA would agree to respond to the petition by December 3, 2012, or within 30 days of the entry date of this Consent Decree, whichever is later. In addition, the proposed consent decree further states that following signature, EPA shall promptly deliver notice of such action to the Office of the Federal Register for prompt publication and, if EPA's response contains an objection in whole or in part, transmit the signed response to the Illinois Environmental Protection Agency. In addition, under the proposed consent decree, EPA would agree to pay a specified amount to settle all claims for attorneys' fees, costs and expenses in the lawsuit. The proposed consent decree also states that after EPA fulfills its obligations under the decree, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0577) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 7, 2012.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–19963 Filed 8–14–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to

further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before September 14, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0580.

Title: Section 76.1710, Operator Interests in Video Programming.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,500 respondents; 1,500 responses.

Estimated Time per Response: 15 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 22,500 hours.

Total Annual Costs: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR 76.1710 requires cable operators to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services. The records must be made available to members of the public, local franchising authorities and the Commission on reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the Commission to monitor compliance with channel occupancy limits in respective local franchise areas.

OMB Control Number: 3060–0854.

Title: Section 64.2401, Truth-in-Billing Format, CC Docket No. 98–170 and CG Docket No. 04–208.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,484 respondents; 49,542 responses.

Estimated Time per Response: 2 to 243 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), and section 258, 47 U.S.C. 258, Public Law 104–104, 110 Stat. 56. The Commission's implementing rules are codified at 47 CFR 64.2400.

Total Annual Burden: 4,047,134 hours.

Total Annual Cost: $15,918,200.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In 1999, the Commission released the Truth-in-Billing and Billing Format, CC Docket No. 98–170, First Report and Order and Further Notice of Proposed Rulemaking, (1999 TIB Order); published at 64 FR 34488, June 25, 1999, which adopted principles and guidelines designed to reduce telecommunications fraud, such as slamming and cramming, by making bills easier for consumers to read and understand, and thereby, making such fraud easier to detect and report. In 2000, Truth-in-Billing and Billing Format, CC Docket No. 98–170, Order on Reconsideration, (2000 Reconsideration Order); published at 65 FR 43251, July 13, 2000, the Commission, granted in part petitions for reconsideration of the requirements that bills highlight new service providers and prominently display inquiry contact numbers. On March 18, 2005, the Commission released Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98–170, CG Docket No. 04–208, (2005 Second Report and Order and Second Further Notice); published at 70 FR 29979 and 70 FR 30044, May 25, 2005, which determined, inter alia, that Commercial Mobile Radio Service providers no longer should be exempted from 47 CFR 64.2401(b), which requires billing descriptions to be brief, clear, non-misleading and in plain language. The 2005 Second Further Notice proposed and sought comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications service providers.

On April 27, 2012, the Commission released the Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (''Cramming''), Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 11–116, CG Docket No. 09–158, CC Docket No. 98–170, FCC 12–42 (Cramming Report and Order and Further Notice of Proposed Rulemaking); published at 77 FR 30972, May 24, 2012, which determined that additional rules are needed to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as ''cramming.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–20020 Filed 8–14–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011325–040.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd./APL Co. Pte Ltd.(withdrawal from agreement effective September 1, 2012); COSCO Container Lines Company Limited; Evergreen Line Joint Service Agreement.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq., Cozen O'Connor, 627 I Street NW., Suite 1100, Washington, DC 20006.

Synopsis: This amendment deletes American President Lines, Ltd. and APL Co. PTE Ltd. (operating as a single carrier) from the Agreement effective September 1, 2012.

Agreement No.: 012181.

Title: HLAG/HSDG Latin America Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and Hamburg Sud KG.

Filing Party: Wayne R. Rohde, Esquire, Cozen O'Connor, 1627 I Street NW., Suite 1100, Washington, DC 20006–4007.

Synopsis: The agreement would authorize the parties to exchange space on their respective services in the trades between the U.S. Gulf Coast and ports in Argentina, Brazil, Colombia, the Dominican Republic, Mexico, and Uruguay. The parties requested expedited review.

Agreement No.: 201218.

Title: Bi-State Marine Terminal Discussion Agreement.

Parties: South Carolina State Ports Authority and Georgia Ports Authority.

Filing Party: Warren L. Dean, Jr., Esq., Thompson Coburn LLP, 1909 K Street, NW., Washington, DC 20006–1167.

Synopsis: The agreement would authorize the parties to discuss, among other things, terminal rates, charges, rules, conditions of service, terminal congestion, and methods for relieving terminal congestion. The parties requested expedited review.

Dated: August 10, 2012.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–20084 Filed 8–14–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *The Sutton Bank Employee Stock Ownership/401K Plan (Sutton Bancshares, Inc.), Attica, Ohio; Eric A. Gillett, James A. Gorrell; as Co-Trustees; The Eric A. Gillete Family Control Group which consists of Eric A. Gillett Revocable Trust, and Denise E. Gillett Revocable Trust, both of Attica, Ohio; Ronald L. and Jean E. Hamilton, both of Huron, Ohio; John A. Pour Revocable Living Trust, Yvenna E. Pour Revocable Living Trust, Cheryl S. Beaver, all of Troy, Ohio; Valeria A. Darling, and Fred W. Darling, both of Attica, Ohio; Theresa M. Henderson, Piqua, Ohio; Michelle R. Powell, Troy, Ohio; and The James A. Gorrell Family Control Group which consist of James A. Gorrell, Tiffin, Ohio; and Barbara M. Gorrell,* Dayton, Ohio; collectively to acquire voting shares of Sutton Bancshares, Inc., and thereby indirectly acquire voting shares of Sutton Bank, both in Attica, Ohio.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Robert Wayne Lowe,* Warner Robbins, Georgia; to acquire additional voting shares of Mid State Banks, Inc., Hawkinsville, Georgia, and thereby indirectly acquire additional voting shares of PlantersFIRST Bank, Cordele, Georgia.

2. *James Brawner Little, III,* Birmingham, Alabama; to acquire voting shares of The Southern Banc Company, Inc., and thereby indirectly acquire voting shares of The Southern Bank Company, both in Gadsden, Alabama.

Board of Governors of the Federal Reserve System, August 10, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012–20029 Filed 8–14–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Hana Financial Group Inc.,* Seoul, Korea; to become a bank holding company by acquiring 71.37 percent of the voting shares of BNB Financial Services Corporation, New York, New York, and thereby indirectly acquire voting shares of BNB Bank, National Association, Fort Lee, New Jersey.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Frandsen Financial Corporation,* Arden Hills, Minnesota; to acquire 100 percent of the voting shares of Clinton Bancshares, Inc., and thereby indirectly acquire voting shares of Clinton State Bank, Clinton, Minnesota.

Board of Governors of the Federal Reserve System, August 10, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012–20028 Filed 8–14–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records Notice

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice to alter existing systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, HHS gives notice of a proposed alteration to two existing systems of records covering payroll records: 09–40–0006 entitled ''Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS,'' and 09–40–0010 entitled ''Pay, Leave and Attendance Records, HHS/PSC/HRS.'' The systems are being amended to revise an existing routine use covering disclosures to contractors and to add a new routine use pertaining to system security. The routine use changes are described in more detail in the Supplementary Information section below.

DATES: The routine use changes described in this notice will become effective without further notice 30 days after publication of this notice in the **Federal Register**, unless comments received on or before that date result in revisions to this notice.

ADDRESSES: The public should address written comments to: Office of the Surgeon General (OSG), Division of Systems Integration (DSI), Tower Oaks Building, Plaza Level 100, 1101 Wootton Parkway, Rockville, Maryland 20852. Comments will be available for public viewing at that location. To review comments in person, please contact the Office of the Surgeon General (OSG), Division of Systems Integration, at 240–453–6085.

FOR FURTHER INFORMATION CONTACT: For system 09–40–0006, contact CAPT Eric Shih, Office of the Surgeon General (OSG), Division of Systems Integration (DSI) Tower Oaks Building, Plaza Level 100, 1101 Wootton Parkway, Rockville, Maryland 20852, 240–453–6085, *Eric.Shih@hhs.gov.* For system 09–40–0010, contact Charles Dietz, Program Support Center (PSC), Payroll Services Division, 5600 Fishers Lane, Room 17–01, Rockville, Maryland 20857, 301–504–3219, *Charles.Dietz@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. The Privacy Act

The Privacy Act (5 USC 552a) governs the means by which the U.S. Government collects, maintains, and uses information about individuals in a system of records. A ''system of records'' is a group of any records under the control of a Federal agency from which information about an individual is retrieved by the individual's name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses information about individuals in the system, the routine uses for which the agency discloses such information outside the agency, and how individual record subjects can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them).

I. The Proposed Routine Use Changes

The payroll systems proposed to be altered are described in System of Records Notices (SORNs) published on December 11, 1998 (see 63 FR 68596). System 09–40–0006 covers payroll records for HHS Commissioned Corps personnel, and system 09–40–0010 covers payroll records for HHS civilian personnel. In reviewing the SORNs, it was determined that the following changes in routine uses should be made for both systems. Both changes are compatible with the purposes for which personally identifiable information (PII) is collected in each system, as explained below:

- *Contractor routine use:* The routine use authorizing disclosures to contractors (numbered as routine use 7 in system number 09–40–0006 and as routine use 6 in system number 09–40–0010) should be revised to state that records may be disclosed to ''federal agencies and Department contractors that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of the system (i.e., providing payroll services) and that need to have access to the records in order to assist HHS.'' As currently worded, the routine use includes ''contractors'' but not ''federal agencies'' and describes the purposes for which a contractor would be engaged as ''collating, analyzing, aggregating or otherwise refining records in the system.'' Disclosing PII to a federal agency or Department contractor assisting HHS in providing payroll services is compatible with the purposes for which PII is collected in the system, because the PII is collected in the system for payroll-related purposes and the contractor, private firm or other federal agency would be using the PII for such purposes.
- *Breach response routine use:* A new routine use should be added (as routine use 13 in system number 09–40–0006 and as routine use 26 in system number 09–40–0010) to authorize HHS to disclose PII from the system to appropriate parties in the course of responding to a data security breach incident involving the system. Disclosing PII to appropriate parties in the course of responding to a data security breach incident involving the system is compatible with the purposes for which PII is collected in the system, because individuals whose PII is in the system expect their information to be secured, and the routine use will help HHS protect the security of the system. The Office of Management and Budget (OMB) has recommended that federal agencies publish such a routine use for their Privacy Act systems, to facilitate their ability to respond to data security breach incidents (see OMB Memorandum M–07–16 ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information,'' issued May 22, 2007).

Because they represent significant changes to the systems, a report on these proposed routine use changes was sent

to Congress and to OMB in accordance with 5 U.S.C. 552a(r).

For the reasons set forth above, HHS is establishing the following routine uses for these systems:

1. Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS (09–40–0006)

Revised Routine Use 7: Records may be disclosed to federal agencies and Department contractors that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of the system (i.e., providing payroll services) and that need to have access to the records in order to assist HHS. Any contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

New Routine Use 13: Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of the information maintained in this system of records, if the information disclosed is relevant and necessary for that assistance.

2. Pay, Leave and Attendance Records, HHS/PSC/HRS (09–40–0010)

Revised Routine Use 6: Records may be disclosed to federal agencies and Department contractors that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of the system (i.e., providing payroll services) and that need to have access to the records in order to assist HHS. Any contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

New Routine Use 26: Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of the information maintained in this system of records, if the information disclosed is relevant and necessary for that assistance.

Dated: July 24, 2012.

Eric Shih,

USPHS, Acting Director, Division of Systems Integration, Office of the Surgeon General.

[FR Doc. 2012–19951 Filed 8–14–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting of the ICD–9–CM Coordination and Maintenance Committee

The National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff announces the following meeting:

Name: ICD–9–CM Coordination and Maintenance (C&M) Committee meeting.

Time and Date: 9 a.m.–5 p.m., September 19, 2012.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 240 people.

Security Considerations: Due to increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Attendees will need to present valid government-issued picture identification, and sign-in at the security desk upon entering the building. Attendees who wish to attend a specific ICD–9–CM C&M meeting on September 19, 2012, must submit their name and organization by September 10, 2012, for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting.

Participants who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Please register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/*.

Please contact Mady Hue (410–786–4510 or *Marilu.hue@cms.hhs.gov*), for questions about the registration process.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification, the International Classification of Diseases, Tenth-Revision, Clinical Modification and ICD–10–Procedure Coding System.

Matters To Be Discussed: Tentative agenda items include: September 19, 2012.

ICD–10 Topics:

ICD–10 Implementation Announcements

Expansion of Thoracic Aorta Body Part Under Heart and Great Vessels System

Addendum Issues (Temporary Therapeutic Endovascular Occlusion of Vessel, changing body part from thoracic aorta to abdominal aorta)

ICD–10 MS–DRGs

ICD–10 HAC Translations

ICD–10 MCE Translations

ICD–10–CM Diagnosis Topics:

Age related macular degeneration

Bilateral mononeuropathy

Bilateral option for cerebrovascular codes

Chronic Fatigue Syndrome

Complications of urinary devices

Diabetic macular edema

Food Protein Induced Enterocolitis Syndrome (FPIES)

Maternal care for previous Cesarean section/previous uterine incision

Metatarsus varus (congenital metatarsus adductus)

Microscopic colitis

Mid-cervical region and coding of spinal cord injuries

Multifocal motor neuropathy

Parity to supervision of pregnancy codes

Proliferative diabetic retinopathy

Retinal vascular occlusions

Salter Harris fractures

Sesamoiditis

Shin splints

Spontaneous rupture/disruption of tendon

Agenda items are subject to change as priorities dictate.

Note: CMS and NCHS will no longer provide paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS Web sites prior to the meeting at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage* and *http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm*.

Contact Persons for Additional Information: Donna Pickett, Medical Systems Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2337, Hyattsville, Maryland 20782, email *dfp4@cdc.govmailto:*, telephone 301–458–4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, email *marilu.hue@cms.hhs.gov,* telephone 410–786–4510 (procedures).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 2012.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–20019 Filed 8–14–12; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Member Conflict Review, Program Announcement (PA) 07–318, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., October 30, 2012 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, Telephone: (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Member Conflict Review, PA 07–318.''

Contact Person for More Information: Joan Karr, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, Century Center, Atlanta, Georgia 30333; Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–20033 Filed 8–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10320]

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) 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:* Revision of a currently approved collection; *Title:* Health Care Reform Insurance Web Portal Requirements 45 CFR part 159; *Use:* This information collection is mandated by Sections 1103 and 10102 of The Patient Protection and Affordability Care Act, Public Law 111–148 (ACA). Once all of the information is collected from insurance issuers of major medical health insurance (hereon referred to as issuers) and other affected parties, it will be displayed at *http://www.healthcare.gov.* Issuers are required to provide information quarterly, and healthcare.gov will be updated on a periodic schedule during each quarter. The information provided will help the general public make educated decisions about organizations providing private health care insurance.

In accordance with the provisions of the ACA referenced above, the U.S. Department of Health and Human Services created a Web site called healthcare.gov to meet these and other provisions of the law, and data collection was conducted for six months based upon an emergency information collection request. The interim final rule published on May 5, 2010 served as the emergency **Federal Register** notice for the prior Information Collection Request (ICR). The Office of Management and Budget (OMB) reviewed this ICR under emergency processing and approved the ICR on April 30, 2010. The original 60-day comment period began on June 5, 2012 and pertained to the Health Care Reform Insurance Web Portal Requirements, and closed on August 6, 2012. We received a total of 9 public comments. The majority of the comments regarded Essential Health Benefits (EHB), with 1 public comment on Healthcare.gov. Most public comments addressed multiple issues. We have taken into consideration all the proposed suggestions and strive to minimize duplicate data entry and to maximize the flexibility of users. In addition, to help adjust to the new data system, weekly calls are held with issuers to address any other questions which may emerge. Detailed user guides have been prepared and only await finalization of collection authority before dissemination. Help desk service and email are also available for questions. Furthermore, CMS reviews and notifies issuers of any problematic links submitted. Additionally, we are seeking ways to reduce emails to data attesters while continuing to ensure these individuals, as well as the various submitters and data validators, are informed moving forward.

We are currently updating a system (hereon referred to as web portal) where State Departments of Insurance and issuers may log in using a custom user ID and password validation. The states may be asked to provide information on issuers in their state and various web sites maintained for consumers. The issuers will be tasked with providing information on their major medical insurance products and plans. They will ultimately be given the choice to download a basic information template to enter data then upload into the web portal; to manually enter data within the web portal itself; or to submit .xml files containing their information. Once the states and issuers submit their data, they will receive an email notifying them of any errors, and that their submission was received. We are mandating the issuers verify and update their information on a quarterly basis, and are requesting that states verify state-submitted information on an annual basis. In the event that an issuer enhances its existing plans, proposes new plans, or deactivates plans, the organization would be required to update the information in the web portal. Changes occurring during the three month quarterly periods will be allowed utilizing effective dates for both

the plans and rates associated with the plans.

Information that is to be collected from state high risk pools will be collected from The National Association of State Comprehensive Health Insurance Plans (NASCHIP) at this time. Updates to this information may be submitted voluntarily. The estimated hour burden on issuers for the Plan Finder data collection in the first year is estimated as 90,400 total burden hours, or 113 hours per organization. This estimate is based on an assumed average of 450 individual plan issuers and 700 small group plan issuers per each of the four quarterly collections. It includes 30 hours per organization for training and communication. Additionally, for each of the issuers it includes 11 hours of preparation time, one hour of login and upload time, two hours of troubleshooting and data review, and one half hour for attestation per organization per quarterly refresh. The estimated hour burden on the states is informed by the fact that they have already submitted the data once and only need to update. The overall hours estimate is 575, or 11.5 per Department of Insurance. This is premised on 2 hours of training and communication, 8 hours for data collection, and one half hour of submission. *Form Number:* CMS–10320 (OCN: 0938–1086); *Frequency:* Annually, quarterly; *Affected Public:* Business or other for-profits and States; *Number of Respondents:* 850; *Total Annual Responses:* 3,051; *Total Annual Hours:* 91,225. (For policy questions regarding this collection, contact Joe Mercer at (301) 492–4265. 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.

Interested parties are invited to send comments regarding the burden or any other aspect of these collections of information requirements. To ensure consideration of your comments and recommendations, they must be submitted in one of the following ways by September 13, 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: CMS–10320/OCN 0938–1086), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 10, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–20050 Filed 8–14–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–284]

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:* Medicaid Statistical Information System (MSIS). *Use:* The Balanced Budget Act of 1997 mandated that states report their Medicaid data via MSIS. MSIS is used by states and other jurisdictions to report fundamental statistical data on the operation of their Medicaid program. Data provided on eligibles, beneficiaries, payments and services are vital to those studying and assessing Medicaid policies and costs. Medicaid statistical data are routinely requested by CMS, Department agencies, the Congress and their research offices, state Medicaid agencies, research organizations, social service interest groups, universities and colleges, and the health care industry. The data provides the only national level information available on enrollees, beneficiaries, and expenditures. It also provides the only national level information available on Medicaid utilization. This information is the basis for analyses and for cost savings estimates for the Department's cost sharing legislative initiatives to the Congress. The data is also crucial to CMS and HHS actuarial forecasts. *Form Number:* CMS–R–284 (OCN 0938–0345). *Frequency:* Quarterly. *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 51. *Total Annual Responses:* 204. *Total Annual Hours:* 2,040. (For policy questions regarding this collection contact Kay Spence. at 410–786–1617. 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 October 15, 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: CMS–R–284 (OCN 0938–0345), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 10, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–20051 Filed 8–14–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0871]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Studies on Consumer Responses to Nutrient Content Claims on Fortified Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a study entitled ''Experimental Studies on Consumer Responses to Nutrient Content Claims on Fortified Foods.''

DATES: Submit either electronic or written comments on the collection of information by October 15, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Studies on Consumer Responses to Nutrient Content Claims on Fortified Foods (OMB Control Number 0910–NEW)

I. Background

The Nutrition Labeling and Education Act gave FDA the authority to promulgate regulations which require almost all packaged foods to bear nutrition labeling. The law also allows manufacturers to provide other nutrition information on labels in the form of various types of statements, including claims, as long as such statements comply with the regulatory limits that govern the use of each type of statement. There are three types of claims that the food industry can voluntarily use on food labels: (1) Health claims, (2) nutrient content claims, and (3) structure/function claims. All claims must be truthful and not misleading (Ref. 1).

The FDA's policy on fortification (21 CFR 104.20) establishes a set of principles that serve as a model for the rational addition of nutrients to foods. The FDA has an interest in the American public achieving and maintaining diets with optimal levels of nutritional quality, wherein healthy diets are composed of foods from a variety of nutrient sources. The FDA does not encourage the addition of nutrients to certain food products (including sugars or snack foods such as [cookies] candies, and carbonated beverages). FDA is interested in studying whether fortification of these foods could cause consumers to believe that substituting fortified snack foods for more nutritious foods would ensure a nutritionally sound diet.

Research suggests consumer product perceptions and purchase decisions can be influenced by labeling statements and different labeling statements may have different influences (Refs. 2 through 5). The FDA, as part of its effort to promote public health, proposes to conduct two related studies to explore consumer responses to expressed and implied nutrient content claims on the labels of snack foods such as cookies, carbonated beverages, and candy. Both studies will be controlled, randomized experiments. Study 1 will use a 15-minute Web-based questionnaire to collect information from 4,000 English-speaking adult members of an online consumer panel maintained by a contractor. Study 2 will use the same questionnaire and draw a sample of 1,000 English-speaking adult participants from the same online consumer panel to test a subset of the experimental conditions employed in Study 1. Participants in Study 2 will also access the survey on the Web but will use a grocery-shopping simulation software program to participate in the study. Study 2 is expected to last 15 minutes as well.

The purpose for using both the regular Web-based application and the simulated shopping program is to be able to compare the two modes of data collection. One critique of experimental studies is that they may lack external validity—the ability to generalize the findings beyond the study setting because the study is very different from real life (Ref. 6). The grocery-shopping simulation software program may more closely mimic consumers' real-life shopping experiences compared to the regular Web-based application and would therefore be expected to elicit survey responses similar to real-life food shopping. One study comparing simulated shopping with actual behavior concluded that consumers' simulated purchase behaviors are highly predictive of their actual behavior (Ref. 7). If proposed Study 1 and Study 2 results are comparable, this will lend support to the external validity of online experimental study results. Researchers will endeavor to collect samples that reflect the U.S. Census on gender,

education, age, and ethnicity/race for both modes of administration.

Potential conditions for the studies include the following: (1) A mock snack product with a claim similar to ''[a]s much [nutrient] as a serving of [food product];'' (2) a mock candy with the claim ''[g]ood source of [nutrient];'' and (3) a mock carbonated beverage with the claim, ''product name] plus [nutrient].'' Each participant in each study will be randomly assigned to view a label image. Each participant in each study will also be randomly allowed or disallowed to access the Nutrition Facts label of the product. All label images will be mock products resembling actual food labels found in the marketplace.

Participants will view label images and answer questions about their perceptions and reactions to the label. Product perceptions (e.g., healthiness, potential health benefits, levels of nutrients), label perceptions (e.g., helpfulness and credibility), and purchase/choice questions will constitute the measures of response in the experiment. To help understand the data, the survey will also collect information about participants' background, such as purchase and consumption of similar products; nutrition knowledge; dietary interests; motivation regarding label use; health status and demographic characteristics.

The studies are part of the Agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. Results of the studies will be used primarily to inform the Agency's understanding of how claims on the packages of fortified food may affect how consumers perceive a product or a label, which may in turn affect their dietary choices. The results of the studies will neither be used to develop population estimates nor be directly used to inform policy.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of Responses per respondent	Total annual responses	Average burden per response	Total hours
Study 1 Cognitive interview screener	75	1	75	0.083 (5 minutes)	6
Study 2 Cognitive interview screener	75	1	75	0.083 (5 minutes)	6
Study 1 Cognitive interview	9	1	9	1 hour (60 minutes)	9
Study 2 Cognitive interview	9	1	9	1 hour (60 minutes)	9
Study 1 Pretest invitation	1,600	1	1,600	0.033 (2 minutes)	53
Study 2 Pretest invitation	800	1	800	0.033 (2 minutes)	26
Study 1 Pretest	200	1	200	0.25 (15 minutes)	50
Study 2 Pretest	100	1	100	0.25 (15 minutes)	25
Study 1 Survey invitation	32,000	1	32,000	0.033 (2 minutes)	1,056
Study 2 Survey invitation	8,000	1	8,000	0.033 (2 minutes)	264
Study 1 Survey	4,000	1	4,000	0.25 (15 minutes)	1,000
Study 2 Survey	1,000	1	1,000	0.25 (15 minutes)	250
Total					2,754

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

II. References

The following references have been placed on display in the division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Food and Drug Administration, ''Claims That Can Be Made for Conventional Foods and Dietary Supplements,'' September 2003. Available at *http://www.fda.gov/Food/LabelingNutrition/LabelClaims/ucm111447.htm.*
2. Drichoutis, A.C., P. Lazaridis, and R.M. Nayga, ''Consumers' Use of Nutritional Labels: A Review of Research Studies and Issues,'' *Academy of Marketing Science Review,* 2006(9), 2006. Available at *http://www.amsreview.org/articles/drichoutis09-2006.pdf.*
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Dated: August 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19991 Filed 8–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0849]

Draft Guidance for Industry on Suicidal Ideation and Behavior: Prospective Assessment of Occurrence in Clinical Trials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Suicidal Ideation and Behavior: Prospective Assessment of Occurrence in Clinical Trials.'' The purpose of this guidance is to assist sponsors in prospectively assessing the occurrence of treatment-emergent suicidal ideation and behavior in clinical trials of drug and biological products, including drugs for psychiatric and nonpsychiatric indications. This guidance revises and replaces a previous draft guidance

entitled ''Suicidality: Prospective Assessment of Occurrence in Clinical Trials'' issued in September 2010.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 15, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Laughren, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4114, Silver Spring, MD 20993–0002, 301–796–2260.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Suicidal Ideation and Behavior: Prospective Assessment of Occurrence in Clinical Trials.'' The purpose of this guidance is to assist sponsors in prospectively assessing the occurrence of treatment-emergent suicidal ideation and behavior in clinical trials of drug and biological products. Specifically, this guidance addresses FDA's current thinking regarding the importance of suicidal ideation and behavior assessment in psychiatric and nonpsychiatric drug trials and the general principles for how best to accomplish this assessment during drug development.

Prospective assessment of suicidal ideation and behavior involves actively querying patients about the occurrence of suicidal thinking and behavior, rather than relying on patients to report such occurrences spontaneously, followed by retrospective classification of events into appropriate categories. This guidance recommends a specific suicidal ideation and behavior assessment instrument that can be used to conduct such prospective assessments and offers guidance on the use of alternative instruments.

This guidance is intended to serve as a focus for continued discussions among FDA, pharmaceutical sponsors, the academic community, and the public. This guidance does not address the complex analytic issues involved in the analysis of the suicidal ideation and behavior data that will be derived from prospective assessments of suicidal ideation and behavior; these issues will be addressed in separate guidances.

This guidance is a revision of the draft guidance for industry entitled ''Suicidality: Prospective Assessment of Occurrence in Clinical Trials'' issued September 9, 2010 (75 FR 54889). Comments we received on the draft guidance have been considered and the guidance has been revised. The revision: (1) Replaces the term ''suicidality'' with the terms ''suicidal ideation and behavior''; (2) provides an expanded set of the Columbia Classification Algorithm for Suicide Assessment (C–CASA) categories, along with definitions and explanations; (3) revises the advice on which trials and patients would need assessments of suicidal ideation and behavior and the timing of such assessments; (4) addresses concerns about the time burden of assessments; (5) addresses questions about the possible value of the assessments providing protection for patients in the trials themselves; (6) makes it clear that use of an assessment instrument that directly classifies relevant thoughts and behaviors into C–CASA categories eliminates the need for any additional coding; (7) provides multiple additional references; and (8) revises advice on evaluation of alternative instruments.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on prospective assessment of occurrence of suicidal ideation and behavior in clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: August 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19993 Filed 8–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0585]

Draft Guidance for Industry: Necessity of the Use of Food Categories in Food Facility Registrations and Updates to Food Categories; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Necessity of the Use of Food Categories in Food Facility Registrations and Updates to Food Categories.'' The draft guidance identifies additional food categories to be included in food facility registrations as determined appropriate by FDA.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on the draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 14, 2012.

ADDRESSES: Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance to the Office of Compliance, Division of Field Programs

and Guidance, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Amy Barringer, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1988.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Necessity of the Use of Food Categories in Food Facility Registrations and Updates to Food Categories.'' This draft guidance sets forth FDA's determination of the necessity for additional food categories and sets forth the additional food categories to be included as mandatory fields in food facility registrations as determined appropriate by FDA.

The FDA Food Safety Modernization Act (FSMA), enacted on January 4, 2011, amended section 415 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 350d). Section 415(a)(2) of the FD&C Act, as amended by section 102 of FSMA, provides in relevant part that, when determined necessary by FDA through guidance, a registrant is required to submit a registration to FDA containing information necessary to notify FDA of the general food category (as identified in 21 CFR 170.3) or any other food categories, as determined appropriate by FDA, including by guidance) of any food manufactured, processed, packed, or held at such facility. This draft guidance sets forth FDA's determination of the necessity for additional food categories and the other food categories to be included in food facility registrations as determined appropriate by FDA. The inclusion of these additional food categories in food facility registrations will help FDA provide a quick, accurate, and focused response to an actual or potential bioterrorist incident or other food-related emergency.

FDA is interested in comments regarding including the other food categories as mandatory fields in food facility registrations. FDA intends to issue a final guidance that identifies the additional food categories that will be included as mandatory fields in food facility registration forms before the first biennial registration renewal period, which begins on October 1, 2012.

Section 415(a)(2) of the FD&C Act provides in relevant part that a food facility is required to submit to FDA a registration containing information about the general food category (as identified listed in § 170.3 or any other food category as determined appropriate by FDA, including ''by guidance'') of a food manufactured/processed, packed or held at such facility, if the Agency determines ''through guidance'' that such information is necessary. Because of Congress' explicit statutory authorization in section 415(a)(2) to establish binding requirements based on actions by guidance, this document is not subject to the usual restrictions in FDA's good guidance practice (GGP) regulations, such as the requirements that guidances not establish legally enforceable responsibilities and that they prominently display a statement of the document's nonbinding effect. (See 21 CFR 10.115(d)(i)).

To comply with the GGP regulations and make sure that regulated entities and the public understand that guidance documents are nonbinding, FDA guidances ordinarily contain standard language explaining that guidances should be viewed only as recommendations unless specific regulatory or statutory requirements are cited, and the Agency's guidances also ordinarily include language similar to the following paragraph:

This guidance represents the Food and Drug Administration's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this guidance. If you cannot identify the appropriate FDA staff, call the appropriate number listed on the title page of this guidance.

FDA is not including this standard language in this draft guidance because it is not an accurate description of the effect of this guidance. This guidance contains findings that serve as the predicates for binding requirements on industry. As stated in ''Guidance for Industry on Necessity of the Use of Food Product Categories in Registration of Food Facilities'' (2003), which implemented, in part, section 415, as added by section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, it contains FDA's finding that inclusion of the food categories in § 170.3 in food facility registrations is necessary for a quick, accurate, and focused response to an actual or potential bioterrorist incident or other food-related emergency. Based in part on this finding, FDA's regulations for the registration of food facilities in 21 CFR part 1, subpart H currently require that a food facility submit a registration to FDA containing information on applicable food product categories as identified in § 170.3 for food manufactured/processed, packed, or held at such facility. As provided in section 102 of FSMA, this draft guidance contains FDA's finding that inclusion of other food categories in food facility registrations is also necessary to facilitate such rapid communications. In addition, this draft guidance sets forth the other food categories to be included in food facility registrations determined to be appropriate by FDA for the purposes of food facility registration. Insofar as this guidance, if finalized, modifies food categories for food facility registration under section 415 of the FD&C Act, it will have binding effect. For these reasons, FDA is not including the standard guidance paragraph in this draft guidance.

II. The Paperwork Reduction Act of 1995

This draft guidance contains a collection of information that requires clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). FDA intends to submit the collection of information to OMB in the near future for emergency clearance processing under 5 CFR 1320.13. The draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 1.230–1.235 have been approved under OMB control number 0910–0502.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either

http://www.fda.gov/FoodGuidances or *http://www.regulations.gov.* Always access an FDA document using the FDA Web site listed previously to find the most current version of the guidance.

Dated: August 6, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20038 Filed 8–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

DATES: *Date and Time:* The meeting will be held on October 17, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Paul Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 203858, lomitapide capsules, by Aegerion Pharmaceuticals, Inc. The proposed indication (use) is as an adjunct to a low-fat diet and other lipid-lowering drugs with or without low-density lipoprotein (LDL) apheresis to reduce LDL cholesterol, total cholesterol, apolipoprotein B, and triglycerides in patients with homozygous familial hypercholesterolemia. (Apheresis is a laboratory technology used to remove LDL from the bloodstream.)

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 2, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 24, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 25, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20013 Filed 8–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0853]

Tobacco Product Manufacturing Facility Visits

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Tobacco Products (CTP) is announcing an invitation for participation in its Tobacco Product Manufacturing Facility Visits. This program is intended to give FDA staff an opportunity to visit facilities involved in the manufacturing of tobacco products, including any related laboratory testing, and observe the manufacturing operations of the tobacco industry. The purpose of this notice is to invite parties interested in participating in Tobacco Product Manufacturing Facility Visits to submit requests to CTP.

DATES: Submit either an electronic or written request for participation by October 15, 2012. See section IV of this document for information on requests for participation.

ADDRESSES: If your facility is interested in participating in Tobacco Product

Manufacturing Facility Visits, please submit a request either electronically to *http://www.regulations.gov* or in writing to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lindsay Tobias, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 877–287–1373, email: *lindsay.tobias@fda.hhs.gov*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Public Law 111–31; 123 Stat. 1776) was signed into law, amending the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and giving FDA authority to regulate tobacco product manufacturing, distribution, and marketing. The new provisions include, among other things, the authority to issue regulations related to tobacco product manufacturing practice in order to protect the public health and to assure that tobacco products are in compliance with the FD&C Act. Specifically, section 906(e) of the FD&C Act (21 U.S.C. 387f(e)) provides that ''in applying manufacturing restrictions to tobacco, the Secretary shall * * * prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology.''

CTP is instituting Tobacco Product Manufacturing Facility Visits to provide FDA staff with the opportunity to:

- Observe tobacco product manufacturing operations—from the receipt of raw materials to the distribution of finished products, and
- Learn about the manufacturing practices and processes unique to your facility and regulated tobacco products.

This program will also inform FDA staff as they implement the tobacco provisions of the FD&C Act.

II. Description of the Tobacco Product Manufacturing Facility Visits

In this program, groups of FDA staff plan to observe the following facilities and their operations:

- Manufacturing facilities, including facilities that process, package, label, and distribute different types of regulated tobacco products (cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco products),
- Laboratory facilities that perform tobacco testing (whether third-party or in-house),
- Manufacturing facilities for components, parts, and accessories (including, but not limited to, cigarette paper, tipping paper, filters), and
- Manufacturing facilities for materials used for further processing in finished tobacco products (including, but not limited to, flavors, casings).

Please note that Tobacco Product Manufacturing Facility Visits are not intended to include or replace official FDA inspections of facilities to determine compliance with the FD&C Act; rather, these facility visits are meant to educate FDA staff and improve their understanding of the tobacco industry and its manufacturing operations.

III. Site Selection

CTP plans to select one or more of each of the following:

- Cigarette manufacturers,
- Cigarette tobacco and roll-your-own tobacco manufacturers,
- Smokeless tobacco manufacturers,
- Tobacco laboratories,
- Importers of finished tobacco products,
- Distributors and wholesalers of regulated tobacco products,
- Manufacturers of components, parts, accessories, and
- Manufacturers of materials used for further processing in finished tobacco products.

Final site selections will be based on the availability of CTP funds and resources for the relevant fiscal year, as well as the following factors, as applicable: (1) Compliance status of the requesting facility and affiliated firm; (2) whether the requesting facility is in arrears for user fees; and (3) whether the requesting facility will be engaged in active manufacturing or processing during the proposed time of the visit. All travel expenses associated with Tobacco Product Manufacturer Facility Visits will be the responsibility of CTP.

IV. Requests for Participation

The request for participation should include the following identification information:

- The name and contact information (including address, phone number, and email) of your point of contact for the request,
- The physical address(es) of the site(s) for which you are submitting a request,
- The type of processes (*e.g.,* manufacturing, laboratory practices, packaging, labeling, and distribution activities) performed at your facility,
- The type of tobacco products tested, processed, or manufactured at your facility, and
- A proposed program agenda.

Requests are to be identified with the docket number found in brackets in the heading of this document. Requests received by the Agency are available for public examination in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19992 Filed 8–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences

Proposed Collection; Comment Request; The Sister Study: A Prospective Study of the Genetic and Environmental Risk Factors for Breast Cancer

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Sister Study: A Prospective Study of the Genetic and Environmental Risk Factors for Breast Cancer. *Type of Information Collection Request:* Revision. *Need and Use of Information Collection:* This is to continue the Phase II follow-up of the Sister Study—a study of genetic and environmental risk factors for the development of breast cancer in a high-risk cohort of sisters of women who have had breast cancer. The etiology of breast cancer is complex, with both genetic and environmental factors likely playing a role. Environmental risk factors, however, have been difficult to identify. By focusing on genetically susceptible subgroups, more precise estimates of the contribution of environmental and other non-genetic factors to disease risk may be possible.

Sisters of women with breast cancer are one group at increased risk for breast cancer; we would expect at least 2 times as many breast cancers to accrue in a cohort of sisters as would accrue in a cohort identified through random sampling or other means. In addition, a cohort of sisters should be enriched with regard to the prevalence of relevant genes and/or exposures, further enhancing the ability to detect gene-environment interactions. Sisters of women with breast cancer will also be at increased risk for ovarian cancer and possibly for other hormonally-mediated diseases. From August 2003 through July 2009, we enrolled a cohort of 50,884 women who had not had breast cancer. We estimated that after the cohort was fully enrolled, approximately 300 new cases of breast cancer will be diagnosed during each year of follow-up. Thus far 1,634 participants have reported being diagnosed with breast cancer. *Frequency of Response:* For the remainder of the study, women will be contacted once each year (when not scheduled for ''triennial'') to update contact information and health status (10 minutes per response); and asked to complete short (75 minutes per response) follow-up interviews or questionnaires (''triennial'') every three years. Follow-up and validation of reported incident breast cancer and other health outcomes is conducted under Clinical Exemption CE 2009–09–004. *Affected Public:* Study participants, next-of-kin/proxies. *Type of Respondents:* Participants enrolled in high-risk cohort study of risk factors for breast cancer; next-of-kin/proxies. The annual reporting burden is as follows: *Estimated Number of Respondents:* 50,884 study participants or next-of-kin/proxies. *Estimated Number of Responses per Respondent:* See annualized table below:

Activity	Estimated number of responses	Estimated responses per respondent	Average burden hours per response	Estimated total burden hours requested
Annual Updates	33,923	1	10/60	85,654
Triennial Update	16,961	1	1.25	21,202
Total				26,856

Average Burden Hours Per Response:42 minutes; and *Estimated Total Annual Burden Hours Requested:* 26,856. The estimated total annualized cost to respondents $537,120 (assuming $20 hourly wage × 26,856). There are no capital, operating, or maintenance costs.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the project or to obtain a copy of the data collection plans and instruments, contact Dr. Dale P. Sandler, Chief, Epidemiology Branch, NIEHS, Rall Building A3–05, PO Box 12233, Research Triangle Park, NC 27709, or call non-toll free number (919)-541–4668 or Email your request, including your address to: *sandler@niehs.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 7, 2012.

Joellen M. Austin,

Associate Director for Management.

[FR Doc. 2012–20067 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Population Assessment of Tobacco and Health (PATH) Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 18, 2012, pages 29667–29668 and allowed 60-days for public comment. Two public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Population Assessment of Tobacco and Health (PATH) Study. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:*

This is a large national longitudinal cohort study on tobacco use behavior and health in the United States conducted under the direction of the National Institutes of Health (NIH) National Institute on Drug Abuse (NIDA) and in partnership with the Food and Drug Administration (FDA). The field test is scheduled to begin in the fall of 2012 and the baseline collection is scheduled to begin in the fall of 2013. Using annual interviews and the collection of biospecimens from adults, the PATH study is designed to establish a population-based framework for monitoring and evaluating the behavioral and health impacts of regulatory provisions by FDA as it meets its mandate under the Family Smoking Prevention and Tobacco Control Act (FSPTCA) to regulate tobacco-product advertising, labeling, marketing, constituents, ingredients, and additives. These regulatory changes are expected to influence tobacco-product risk perceptions, exposures, and use patterns in the short term, and to reduce tobacco-related morbidity and mortality in the long term. By measuring and accurately reporting tobacco product use behaviors and health effects associated with these regulatory changes, this study will provide an empirical evidence base to inform the development,

implementation, and evaluation of tobacco-product regulations in the U.S.

Frequency of Response: Annually. *Affected Public:* Individuals or households. *Type of Respondents:* Youth (ages 12–17) and Adults (ages 18+). The annual reporting burden for the field test is presented in Table 1, and the annual reporting burden for the baseline data collection is presented in Table 2. The annualized cost to respondents for the field test is estimated at: $22,993; and the annualized cost to respondents for the baseline data collection is: $1,792,156. There are no capital, operating, or maintenance costs.

TABLE 1—PATH STUDY FIELD TEST HOUR BURDEN ESTIMATES

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adults—Household Screener	1,295	1	17/60	367
Adults—Individual Screener	840	1	6/60	84
Adults—Extended Interview	590	1	19/60	679
Adults—Biospecimen Collection Forms	590	1	9/60	89
Adults—Tobacco Use Form	590	1	2/60	20
Adults—Followup/Tracking Participant Information Form	590	2	6/60	118
Youth—Extended Interview	100	1	35/60	58
Adult—Parent Interview	100	1	19/60	32
Adults—Followup/Tracking Participant Information Form for Youth (completed by parents)	100	2	8/60	27
Total				1,446

TABLE 2—PATH STUDY BASELINE HOUR BURDEN ESTIMATES

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adults—Household Screener	100,983	1	17/60	28,612
Adults—Individual Screener	63,000	1	6/60	6,300
Adults—Extended Interview	42,730	1	19/60	49,140
Adults—Biospecimen Collection Forms	42,730	1	9/60	6,410
Adults—Tobacco Use Form	42,730	1	2/60	1,424
Adults—Followup/Tracking Participant Information Form	42,730	2	6/60	8,546
Youth—Extended Interview	16,857	1	35/60	9,833
Adult—Parent Interview	16,857	1	19/60	5,338
Adults—Followup/Tracking Participant Information Form for Youth (completed by parents)	16,857	2	8/60	4,495
Total				115,602

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Kevin P. Conway, Ph.D., Deputy Director, Division of Epidemiology, Services, and Prevention Research, National Institute on Drug Abuse, 6001 Executive Blvd., Room 5185; 301–443–8755; email *PATHprojectofficer@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 7, 2012.

Glenda J. Conroy,

Executive Officer (OM Director) NIDA.

[FR Doc. 2012–20068 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft National Toxicology Program (NTP) Monograph on Developmental Effects and Pregnancy Outcomes Associated With Cancer Chemotherapy Use During Pregnancy; Request for Comments; Peer Review Panel Meeting

AGENCY: Division of the National Toxicology Program (DNTP), National

Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Notice.

DATES: The peer review meeting will take place October 1, 2012, 1:00 to 5:00 p.m. Eastern Daylight Time (EDT) and October 2, 2012, from 8:30 a.m. until adjournment, approximately 5 p.m. Two days are set aside for the meeting; however, it may adjourn sooner if the panel completes its peer review of the draft monograph.

Topic: Peer review of the draft NTP Monograph on Developmental Effects and Pregnancy Outcomes Associated with Cancer Chemotherapy Use during Pregnancy (available by August 14, 2012, at *http://ntp.niehs.nih.gov/go/36639*).

Place: Rodbell Auditorium, Rall Building, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. The meeting is open to the public with attendance limited only by the space available. Webcast of the meeting will be available at *http://www.niehs.nih.gov/news/video/index.cfm.*

Contact Person: Dr. Mary S. Wolfe, NTP Designated Federal Official, Office of Liaison, Policy and Review, DNTP, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709, Phone: (919) 541–7539, Fax: (919) 541–0295, or *wolfe@niehs.nih.gov.* Courier address: 530 Davis Drive, Room 2142, Morrisville, NC 27560.

Request for Comments and Registration: The meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on the draft monograph, submission deadline is September 14, 2012, and the deadline for pre-registration to attend the meeting and/or provide oral comments is September 24, 2012, online registration is available at *http://ntp.niehs.nih.gov/go/36639.* Visitor and security information is available at *http://www.niehs.nih.gov/about/visiting/index.cfm.* Public comments and any other correspondence on the draft monograph should be sent to the Contact Person. Individuals with disabilities who need accommodation to participate in this event should contact Danica Andrews at phone: (919) 541–2595 or email: *andrewsda@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

SUPPLEMENTARY INFORMATION:

Background

The panel will peer review the Draft NTP Monograph on Developmental Effects and Pregnancy Outcomes Associated with Cancer Chemotherapy Use during Pregnancy, prepared by the Office of Health Assessment and Translation (OHAT), DNTP. Cancer diagnosed during pregnancy affects approximately 1/6000 to 1/1000 women. Treatment for cancer frequently involves chemotherapy, and nearly all chemotherapeutic agents are known developmental toxicants in laboratory animals. OHAT has prepared a comprehensive draft NTP Monograph that summarizes the effects on development and pregnancy outcomes of gestational exposure to 52 cancer chemotherapeutic agents, individually and/or in combination therapy as reported in the peer-reviewed literature. The draft monograph also provides information on seven frequently diagnosed cancers in pregnant women and on mechanism of action, placental and breast milk transport, and laboratory animal developmental toxicology for the more frequently used chemotherapeutic agents. The overall goal of the monograph is to serve as a resource for the medical communities and their patients.

Preliminary Topic and Availability of Meeting Materials

The preliminary agenda and draft monograph should be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/36639*) by August 14, 2012. Additional information, when available, will be posted on the NTP Web site or may be requested in hardcopy from the Contact Person. Following the meeting, a report of the peer review will be prepared and made available on the NTP Web site. Registered attendees are encouraged to access the meeting page to stay abreast of the most current information regarding the meeting.

Request for Comments

The NTP invites written comments on the draft monograph, which should be received by September 14, 2012, to enable review by the peer review panel and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, email, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public input at this meeting is also invited, and time is set aside for the presentation of oral comments on the draft monograph. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 1–5 p.m. EDT on October 1 and from 8:30 until adjournment on October 2, although oral comments will be received only during the formal public comment period indicated on the preliminary agenda. Each organization is allowed one time slot. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair. Persons wishing to make an oral presentation are asked to register online at *http://ntp.niehs.nih.gov/go/36639* by September 24, 2012, and if possible, to send a copy of their slides and/or statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register on-site.

Background Information on OHAT and NTP Peer Review Panels

The NIEHS/DNTP established OHAT to serve as an environmental health resource to the public and to regulatory and health agencies. This office conducts evaluations to assess the evidence that environmental chemicals, physical substances, or mixtures (collectively referred to as ''substances'') cause adverse health effects and provides opinions on whether these substances may be of concern given what is known about current human exposure levels. OHAT also organizes workshops or state-of-the-science evaluations to address issues of importance in environmental health sciences. OHAT assessments are published as NTP Monographs. Information about OHAT is found at *http://ntp.niehs.nih.gov/go/ohat.*

NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise the NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting

research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. The NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide a current *curriculum vitae* to the Contact Person. The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service (PHS) Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: August 8, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–20044 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Quick2Insight: 3D Biological Tissue Image Rendering Software

Description of Technology: Available for licensing for commercialization or internal use is software providing automatic visualization of features inside biological image volumes in 3D. The software provides a simple and interactive visualization for the exploration of biological datasets through dataset-specific transfer functions and direct volume rendering. The method employs a K–Means++ clustering algorithm to classify a two-dimensional histogram created from the input volume. The classification process utilizes spatial and data properties from the volume. Then using properties derived from the classified clusters the software automatically generates color and opacity transfer functions and presents the user with a high quality initial rendering of the volume data. User input can be incorporated through the simple yet intuitive interface for transfer function manipulation included in our framework. Our new interface helps users focus on feature space exploration instead of the usual effort intensive, low-level widget manipulation.

Potential Commercial Applications:

- Biological tissue visualization in 3D
- Research uses

Competitive Advantages:

- User friendly
- Intuitive interface

Development Stage: Prototype

Inventors: Yanling Liu, Jack Collins, Curtis Lisle (all of FCRDC/SAIC)

Publications:

1. Maciejewski R, *et al.* Structuring feature space: a non-parametric method for volumetric transfer function generation. IEEE Trans Vis Comput Graphics. 2009 Nov–Dec;15(6):1473–80. [PMID 19834223]

2. Zhou J, Takatsuka M. Automatic transfer function generation using contour tree controlled residue flow model and color harmonics. IEEE Trans Vis Comput Graphics. 2009 Nov–Dec;15(6):1481–8. [PMID 19834224]

3. Röttger S, *et al.* Spatialized Transfer Functions. In: Brodlie K, Duke DJ, and Joy KI (eds.) EuroVis05 Joint Eurographics—IEEE VGTC Symposium on Visualization 1–3 June 2005, Leeds, United Kingdom, pp. 271–278. [doi: 10.2312/VisSym/EuroVis05/271–278]

Intellectual Property: HHS Reference No. E–254–2012/0 — Software Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize automatic 3D visualization of biological image volumes. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Human Renal Epithelial Tubular Cells for Studies of Cystinosis

Description of Technology: Cystinosis is a rare lysosomal storage disease, affecting about 500 people (mostly children) in the United States and about 2000 people worldwide. It is an autosomal recessive disorder, wherein patients have a defect in the CTNS gene, which codes for the lysosomal cystine transporter. In this disorder, cystine (an amino acid) is not properly transported out of the lysosome and accumulates in the cells, forming damaging crystals. As a result, cystinosis slowly destroys various organs in the body, including kidneys, liver, muscles, eyes, and brain. Currently, the only treatment for cystinosis is cysteamine, a drug that reduces intracellular cystine levels, although this treatment requires frequent dosing.

Available from NHGRI are human renal epithelial tubular cells isolated from cystinosis patient samples. These cells may be useful for studying the biology of cystinosis, as well as the metabolic role of the lysosomal cystine transporter; they may also be useful for the development of screening assays for potential therapeutic agents for cystinosis.

Potential Commercial Applications:

- Use in studies focused on cystinosis and lysosomal metabolism
- Use in assays for high throughput screening of potential therapeutic agents

Competitive Advantages: These cell lines were derived from cystinosis patient samples, and studies performed using these cells are expected to correlate well to the initiation, progression and treatment of cystinosis in patients.

Development Stage: Early-stage

Inventor: William A. Gahl (NHGRI)

Intellectual Property: HHS Reference No. E–204–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Tara L. Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov*.

Context Aware Mobile Device Software for Substance Abuse Interventions and Behavioral Modification

Description of Technology: Available for licensing for commercial development is software that provides personalized feedback for treating drug dependence and associated risky behaviors. The tool is designed for both healthcare providers at the point-of-care and for self-help. Many people who could benefit from treatment do not receive it because of its low availability and high cost. The available software

''mPAL'' (Mobile Personalized Assessment and Learning), combines mHealth-based educational functions with the Ecological Momentary Assessment (EMA) functions of TED (transactional electronic diary) software. mPAL allows interchange of data obtained from EMA and learning system in order to deliver context-aware intervention in real time, customized to the individual needs of participants. mPAL enables participants to interact with educational materials at the time and place of their choosing and receive personalized feedback when and where it is most needed. The software integrates into HuRlS where comprehensive patient data can be leveraged alongside the mPAL data to provide better understanding of the underlying factors under investigation.

Potential Commercial Applications:

- Substance abuse
- Drug abuse
- Alcoholism
- Behavioral modification
- Smoking cessation
- Pain management

Competitive Advantages:

- Low-cost mobile treatment mechanism
- Provides personalized feedback to patients at the time and place they choose
- Proven usability in prior clinical studies

Development Stage: Clinical

Inventors: Massoud R. Vahabzadeh, Mustapha Mezghanni, and Jia-Ling Lin (all of NIDA)

Publications:

1. Vahabzadeh M, *et al.* PGIS: Electronic diary data integration with GPS data initial application in substance-abuse patients. In, Proc. 23rd IEEE International Symposium on Computer-Based Medical Systems, pp 474–9, 2010. [DOI: 10.1109/CBMS.2010.6042691]

2. Lin JL, *et al.* A high-level specification for adaptive ecological momentary assessment: real-time assessment of drug craving, use and abstinence. AMIA Annu Symp Proc. 2005:455–9. [PMID 16779081]

3. Vahabzadeh M, *et al.* An electronic diary software for ecological momentary assessment (EMA) in clinical trials. In, Proc. 17th IEEE International Symposium on Computer-Based Medical Systems, pp 167–72, 2004. [DOI: 10.1109/CBMS.2004.1311709]

Intellectual Property: HHS Reference No. E–195–2012/0—Software. Patent protection is not being pursued for this technology.

Licensing Contact: Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The NIDA, IRP, Biomedical Informatics Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Mobile Personalized Assessment & Learning for Addiction Treatment and Behavioral Modification. For collaboration opportunities, please contact Vio Conley at *conleyv@mail.nih.gov*.

Plasmid Useful in Transplantation Therapy for Age-Related Eye Disease

Description of Technology: Researchers have developed a green fluorescent protein (GFP) based plasmid that can be used to detect differentiated retinal pigment epithelium (RPE) cells. RPE is a layer of cells located behind the eye that becomes damaged in age-related macular degeneration (AMD). Current cell based therapies for treating AMD focus on generating RPE cells from stem cells. This GPF-based plasmid can be inserted into growing stem cells, and the fluorescence marker can be used to detect and purify stem cells differentiating into RPE cells. This advancement allows generation of a purified population of RPE cells for in vitro and transplantation purposes.

Additionally, cells comprising the GFP-based construct may be useful in high-throughput drug screening as a means to: (1) identify potential therapeutic targets of RPE degenerative diseases such as AMD, and (2) evaluate initial toxicity of candidate drugs in RPE cells.

Potential Commercial Applications:

- Fluorescence based marker for detecting and purifying differentiated RPE cells
- Potential use in high throughput drug screening

Competitive Advantages: GFP based marker allows for fast and simple detection of differentiated RPE cells from stem cells.

Development Stage:

- Prototype
- In vitro data available

Inventors: Kapil Bharti (NINDS), Heinz Arnheiter (NINDS), Sheldon Millier (NEI)

Publication: Bharti K, *et al.* The new paradigm: retinal pigment epithelium cells generated from embryonic or induced pluripotent stem cells. Pigment Cell Melanoma Res. 2011 Feb;24(1):21–34. [PMID 20846177]

Intellectual Property: HHS Reference No. E–054–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *lauren.nguyen-antczak@nih.gov*.

Dated: August 10, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–20059 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 13, 2012.

Open: 8:30 a.m. to 2 p.m.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Closed: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this

notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20055 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Translational Research Review.

Date: August 23, 2012.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ernest W. Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20052 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 20–21, 2012.

Open: September 20, 2012, 8 a.m. to 2:15 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; and Administrative and Program Developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: September 20, 2012, 2:15 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: September 21, 2012, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http:///www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: August 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20048 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Parent-Child Processes.

Date: August 23, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD, 6100 Executive Blvd., 5B01, Bethesda, MD 20852, (Teleconference).

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20046 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposal and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; The National Children's Study—Worchester County Study Center.

Date: August 20, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20076 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Huntington's Disease SEP.

Date: August 29, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20075 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: September 10–11, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20073 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: September 13, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: Achieving Widespread HPV Vaccine Uptake.

Place: Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Salon BC, Arlington, VA 22202.

Contact Person: Abby B. Sandler, Ph.D., Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/pcp/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 9, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19995 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Stem Cells, Heart Regeneration, Congenital Heart Defect and Cardiac Valve Disease.

Date: September 10, 2012.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301)435–1195, *Chengy5@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Pain and Hearing.

Date: September 12–13, 2012.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biomaterials and Biointerfaces Study Section.

Date: September 13–14, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Arlington Capital View Hotel, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Joseph D Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 9, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19996 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Application (P01).

Date: September 26, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Fernwood (Rockledge Campus), 10401 Fernwood Rd., Room 2C07, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MDS–7616, Bethesda, MD 20892–7616, 301–451–2639, *poeky@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 9, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19994 Filed 8–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0770]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) will meet on September 19 and 20, 2012. On September 19, the committee will meet to discuss administrative matters and then recess for the separate but concurrent meetings of the four subcommittees, ''Recommendations for the Prevention of Towing Vessel Crewmember Falls Overboard'', ''Review and recommendations for the revision of NVIC 1–95, Voluntary Training Standards for Entry-Level Personnel on Towing Industry Vessels'', ''Recommendations for the Enhancement of Towing Vessel Stability'' and ''Recommendations for Safety Standards of Portable Facility Vapor Control Systems Used for Marine Operations.'' The committee will reconvene on September 20, 2012. The meetings of the TSAC on both days and the meeting of the subcommittees are open to the public.

DATES: On Wednesday, September 19, 2012, from 8:30 a.m. to noon, the TSAC will meet to discuss administrative matters, and from 1:30 to 5 p.m. the four subcommittees identified in the ''Agenda'' will meet. On Thursday, September 20, 2012, the TSAC will meet from 8:30 a.m. to 4:30 p.m. Please note that these meetings may close early if the committee has completed its business. Oral comments may be made at the September 20 meeting. Written comments must be submitted no later than September 10, 2012 by using one of the methods listed below.

ADDRESSES: The meetings will be held at the Federal Center South GSA Facility, 4735 East Marginal Way South, Seattle, WA 98134.

If you are planning to attend the meeting, you will be required to pass through a security checkpoint. You will be required to show state-issued photo identification. Please arrive at least 30 minutes before the planned start of the meeting in order to pass through security.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Written comments must be identified by Docket No. USCG–2012–0770 and submitted by *one* of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay the delivery of mail.
- *Fax:* 202–493–2251.
- *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 methods. *Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number of this action. All comments submitted will be posted on *www.regulations.gov* without alteration and will contain any personal information you provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* insert USCG–2012–0770 in the Keyword ID box, press Enter, and then click on the item you are interested in viewing.

FOR FURTHER INFORMATION CONTACT: Commander Rob Smith, Designated Federal Officer (DFO) or Mr. Patrick Mannion, Alternate Designated Federal Officer (ADFO), TSAC; U.S. Coast Guard Headquarters, CG–OES–2, Vessel and Facilities Operating Standards Division; telephone (202) 372–1439, fax (202) 372–1926, or email at: *Patrick.J.Mannion@USCG.MIL.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. (Pub. L. 92–463). This Committee is established in accordance with and operates under the provisions of the FACA. The Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. See 33 U.S.C. 1231a.

Agenda

On September 19, 2012, from 8:30 a.m. to noon, the TSAC will meet to discuss administrative matters such as logistical support and review the committee charter and bylaws. The TSAC will recess at noon and starting at 1:30 p.m. the following four subcommittees will convene to discuss work remaining on their open task statements. These subcommittees will conclude their meetings at 5 p.m.

- Recommendations for the Prevention of Towing Vessel Crewmember Falls Overboard.
- Review and recommendations for the revision of NVIC 1–95, Voluntary Training Standards for Entry-Level Personnel on Towing Industry Vessels.
- Recommendations for the Enhancement of Towing Vessel Stability.
- Recommendations for Safety Standards of Portable Facility Vapor

Control Systems Used for Marine Operations.

On September 20, 2012, at 8:30 a.m., the TSAC will reconvene. The committee will review and discuss the four open Task Statements currently before the committee. The TSAC will receive briefings from the Task Statement subcommittees to inform the TSAC of their work, to review and discuss the research, and to determine the disposition of the Task Statements. Presentations and discussions will include the following subjects:

- Presentation from the Towing Vessel Stability Casualty Data subcommittee and discussion of the task ''Towing Vessel Stability;''
- Presentation from the Towing Vessel Crewmember Competencies subcommittee and discussion of the task Towing Vessel Crewmember Competencies;
- Presentation from the Falls Overboard subcommittee and discussion of the task ''Prevention of Falls Overboard, Towing Vessels;''
- Presentation on Task Statement ''Recommendations for Safety Standards of Portable Facility Vapor Control Systems Used for Marine Operations.''
- Presentation of Coast Guard initiative for use of automated identification systems for towing vessels during tow reconfiguration;
- Presentation of potential Task Statement ''Recommendations to Improve Operational, Structural or Other Standards to Enhance Fire Prevention and Containment Aboard Towing Vessels.''
- Presentation of potential Task Statement ''Recommendations for Inspected Towing Vessel Manning Scales for Both Domestic and International Operations'';
- Report from the Supervisor, Towing Vessel National Center of Expertise.

Public Comment Period

An opportunity for oral comments by the public will be provided during the meeting on September 20, 2012, as the final agenda item. Speakers are requested to limit their comments to 5 minutes. Please note that the public oral comment period may end before 4:30 p.m. if all of those wishing to comment have done so.

Minutes

Minutes from the meeting will be available for the public review and copying within 30 days following the close of the meeting and can be accessed from the Coast Guard Homeport Web site *http://homeport.uscg.mil;* select these options: Mission>Port and Waterways>Safety Advisory Committees>TSAC>Meetings/Minutes or>Task Statements or the online docket for this notice.

Dated: August 7, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–20000 Filed 8–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–56]

Notice of Proposed Information Collection for Public Comment: Request for Acceptance of Changes in Approved Drawings and Specifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Builders who request changes to HUD's accepted drawings and specifications for proposed construction properties as required by homebuyers or determined by the builder use the information collection. The lender reviews the changes and amends the approved exhibits. These changes may affect the value shown on the DUD commitment. HUD requires the builder to use form HUD–92577 to request changes for proposed substantial rehabilitation construction properties (203k program properties). HUD's collection of this information is for the purpose of ascertaining that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

DATES: *Comments Due Date:* September 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2502–0117) and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at Colette. *Pollard@hud.gov,* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. This Notice also lists the following information:

Title of Proposal: Request for Acceptance of Changes in Approved Drawings and Specifications.

OMB Approveal Number: 2502–0117.

Form Number: HUD–92577.

Description of the Need for the Information and its Proposed: Builders who request changes to HUD's accepted drawings and specifications for proposed construction properties as required by homebuyers or determined by the builder use the information collection. The lender reviews the changes and amends the approved exhibits. These changes may affect the value shown on the DUD commitment. HUD requires the builder to use form HUD -92577 to request changes for proposed substantial rehabilitation construction properties (203k program properties). HUD's collection of this information is for the purpose of ascertaining that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	7,500	1		0.5		3,750

Total Estimated Burden Hours: 3,750.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 8, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–19968 Filed 8–14–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–14]

Notice of Proposed Information Collection for Public Comment; Rental Assistance Demonstration (RAD): Supporting Contracts and Processing Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Rental Assistance Demonstration allows Public Housing and Moderate Rehabilitation (Mod Rehab) properties to convert to long-term Section 8 rental assistance contracts; and Rent Supplement (Rent Supp), Rental Assistance Payment (RAP) and Mod Rehab properties upon contract expiration or termination, to convert Tenant Protection Vouchers (TPVs) to Project Based Vouchers (PBVs). Participation in the initiative will be voluntary; the attached supporting contracts and processing requirements will be used to process and complete the conversion process for Public Housing, Mod Rehab, Rent Supp and RAP.

DATES: *Comment Due Date:* October 15, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov*. 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. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is submitting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility and clarity of information to be collected; and, (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g. permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rental Assistance Demonstration (RAD) Application Forms.

OMB Control Number: 2577–0276.

Description of the need for the information and proposed use: The Rental Assistance Demonstration allows Public Housing and Moderate Rehabilitation (Mod Rehab) properties to convert to long- term Section 8 rental assistance contracts; and Rent Supplement (Rent Supp), Rental Assistance Payment (RAP), and Mod Rehab properties, upon contract expiration or termination, to convert tenant protection vouchers (TPVs) to project-based vouchers (PBVs). Participation in the initiative will be voluntary. Public Housing Agencies, Mod Rehab owners interested in participating in the Demonstration are required to submit supplementary documentation through these processing requirements to HUD so that HUD can determine throughout the conversion process the physical and financial sustainability of properties. As such, the processing requirements will demonstrate to HUD that the applicant will be able to leverage private financing to address immediate and long-term capital needs, improve operations, and implement energy efficiency improvements. The processing information request will be in a Web-based portal and will be pre-populated with data HUD is collecting from the RAD Application, which is currently undergoing its 30 day review under cover of a separate PRA. Overall, supplementary documentation and information requested will allow the Department to determine which applicants continue to meet the eligibility requirements and have the capacity to successfully meet RAD's mission delineated in PIH Notice PIH–2012–32: Rental Assistance Demonstration—Final Implementation Notice. Finally, all applicants will be required to sign the appropriate contractual documents to complete conversion and bind both the applicant and HUD, as well as set forth the rights and duties of the applicant and HUD, with respect to the converted project and any payments under that project. This requirement is for all applicants in the Public Housing, Mod Rehab, Rent Supp and RAP programs.

To review draft versions of the processing requirements and the contractual documentation please visit the RAD Web site: *www.hud.gov/rad/*.

Agency form number(s), if applicable:

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including respondents: The estimated number of respondents is 2,539 annually that have only one response per respondent. 605 respondents will have 9 responses annually until conversion is complete to total 5,445 responses. The average number for each response to each document in the information collection is 1 hour, for a total burden of 7,379.

Status of the proposed information collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 8, 2012.

Debra Gross,

Deputy Assistant Secretary for the Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2012–19962 Filed 8–14–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–12]

Notice of Proposed Information Collection for Public Comment; Indian Housing Block Grant (IHBG) Program Reporting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revised information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this notice is to solicit public comment on a revised Word version of HUD–52737, *Indian Housing Plan/Annual Performance Report* (IHP/APR), and two additional, automated versions of form: an Excel version and a version on HUD's Energy and Performance Information Center (EPIC) Web site. All three versions of the form request exactly the same information, but have different burdens due to the automated capabilities of the Excel and EPIC versions. These automated enhancements make the Excel and EPIC versions easier and faster to complete than the Word version. Respondents may elect to complete and submit to HUD either the Word, Excel, or EPIC versions; however, the Excel and EPIC versions are preferred because of their automated capabilities and reduced burden.

The Native American Housing Assistance and Self Determination Act (NAHASDA) requires recipients (tribes and tribally designated housing entities) to submit specific information that is necessary for the implementation and evaluation of low income housing programs using Indian Housing Block Grant funds (IHBG). Recipients of IHBG funds are required to submit the IHP/APR annually. In addition to the IHP/APR, each year recipients may submit a *Formula Response Form* (HUD–4117), and *Formula Challenge Form* (HUD–4119).

DATES: *Comments Due Date:* October 15, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette.Pollard@hud.gov* for a copy of the proposed forms, or other available information. 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. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Indian Housing Block Grant Information Collection, Word, Excel and EPIC Versions of the Indian Housing Plan/Annual Performance Report.

OMB Control Number: 2577–0218.

Description of the need for the information and proposed use:

Indian tribes, Alaska Natives, Native Hawaiians, or tribally designated housing entities that receive IHBG funds are required annually to submit HUD–52737 that consists of two components: the Indian Housing Plan (IHP) component and the Annual Performance Report (APR) component.

The IHP is required by Section 102 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) and describes the eligible IHBG-funded, affordable housing activities the recipient plans to conduct for the benefit of low and moderate income tribal members and identifies the intended outcomes and outputs for the upcoming 12-month year. The recipient submits the IHP at least 75 days prior to the beginning of its 12-month program year. HUD conducts a limited review of the IHP to determine that the planned activities are in compliance with NAHASDA requirements, as defined at 24 CFR Part 1000.

At the end of the 12-month period, the recipient submits the APR that is required by Section 404 of NAHASDA and describes (1) The use of grant funds during the prior 12-month period; (2) the actual outcomes and outputs achieved; (3) program accomplishments; and (4) jobs supported by IHBG-funded activities. HUD uses the information in the APR to review the recipient's progress in implementing the IHP, verify whether the activities are eligible and to determine if the recipient has the capacity to continue implementing the activities described in the IHP in a timely manner. The information in the APR also will be used to provide Congress, stakeholders, and other interested parties with information on how the IHBG funds are being used to meet affordable housing needs within Native American communities.

The IHP/APR is currently available in a Word version. With this submission HUD intends to make available a revised Word version, an Excel version, and a version on HUD's Energy and Performance Information Center (EPIC) Web site. All three versions of the IHP/APR request the same information and a recipient may elect to submit to HUD either the Word, Excel, or EPIC versions; however, the Excel and EPIC versions are preferred because of their automated capabilities and reduced burden. The Word, Excel, and EPIC versions differ from the current version of HUD–52737 with the elimination of Line 1 (Planned Grant-Based Budget for Eligible Programs) in Section 5 (Budgets) because collection of this information served no valid purpose.

Participants in the IHBG program are responsible for notifying HUD of changes to the Formula Current Assisted Stock (FCAS) component of the IHBG formula. HUD is notified of changes in the FCAS through a *Formula Response Form* (HUD–4117), as defined at 24 CFR 1000.302. A tribe, TDHE, or HUD may challenge the data from the U.S. Decennial Census or provide an alternative source of data by submitting the *Guidelines for Challenging U.S. Decennial Census Data Document* (HUD–4119). Census challenges are due June 15 of each fiscal year, as defined at 24 CFR 1000.336. This information collection is required of participants in the IHBG program to demonstrate compliance with eligibility and other requirements of NAHASDA; provision of correction or challenge documentation of the formula calculation; and provision of data for HUD's annual report to Congress. The information gathered will be used to allocate funds under the IHBG program. The quality assurance of data reported is a very important issue in maintaining HUD's databases used to monitor participant's proposed plans, accomplishments, determine program compliance, and to ensure fair and equitable allocations. In some cases, the FCAS information addressing the conveyances and conversions of units has resulted in the recouping of funds. The information collected will allow HUD to accurately audit the program.

Agency form numbers: HUD–52737, HUD–4117, HUD–4119.

Members of affected public: Native American Tribes and Tribally Designated Housing Entities, Alaska Natives and Corporations, and Native Hawaiians.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 579. The IHP/APR is submitted twice a year and the Formula Correction and Formula Challenge forms are submitted once per year for an estimated total of 1,326 responses. The total paperwork burden is estimated at 48,168 hours.

Status of the proposed information collection: Revision.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 6, 2012.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2012–19964 Filed 8–14–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–42]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the Columbia Housing Authority for the purchase and installation of handrail brackets, door stops and 4-prong appliance power cords for the Village at River's Edge project, and to the Hammond Housing Authority for the purchase and installation of tile flooring for its Hubert H. Humphrey Hi-Rise project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4112, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (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.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that the following exceptions were granted:

1. Columbia Housing Authority. On July 6, 2012, upon request of the Columbia Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Village at River's Edge project. The exception was granted by HUD on the basis that the relevant manufactured goods (handrail brackets, door stops, 4-prong appliance power cords) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

2. Hammond Housing Authority. On July 5, 2012, upon request of the Hammond Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with its Hubert H.

Humphrey Hi-Rise project. The exception was granted by HUD on the basis that the relevant manufactured goods (tileflooring) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: August 3, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–19966 Filed 8–14–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5634–N–02]

Changes in Certain Multifamily Housing and Health Care Facility Mortgage Insurance Premiums for Fiscal Year (FY) 2013

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

ACTION: Notice.

SUMMARY: On April 10, 2012, HUD announced increases to mortgage insurance premiums (MIPs) for certain Federal Housing Administration (FHA) Multifamily Housing, Health Care Facilities, and Hospital Mortgage Insurance programs for commitments to be issued or reissued in FY 2013, and solicited public comment on the announced increases. In the April 2012, notice, HUD submitted that the MIP increases would not only provide additional protection for the General Insurance and Special Risk Insurance (GI/SRI) fund and increase receipts to the Treasury, but would also encourage private lending to return to the market by ensuring FHA is not under-pricing its risk. The April 2012 notice also announced that a positive credit subsidy obligation will not be required in FY 2013 for loans under any of the active mortgage insurance programs for multifamily housing or health care facilities.

This notice announces that the proposed MIP increases will be implemented in FY 2012. This notice also addresses the public comments received in response to the announced MIP increases.

DATES: *Effective Date:* The revised MIP will be effective for any firm commitments issued or reissued on or after October 1, 2012, with the exception of those transaction for which firm commitment applications were submitted prior to June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Dan Sullivan, Acting Director, Office of Multifamily Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; telephone: 202–402–6130 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with HUD's mortgage insurance regulation at 24 CFR 207.254, HUD solicited public comment on changes in MIP for its multifamily mortgage insurance programs before the changes are adopted for a new fiscal year. HUD's regulation at 24 CFR 207.254 provides as follows:

> Notice of future premium changes will be published in the **Federal Register**. The Department will propose MIP changes for multifamily mortgage insurance programs and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate.

In accordance with this regulation, HUD published on April 10, 2012, at 77 FR 21580, a notice that announced changes for FY 2013 in the MIP for programs authorized under the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)), specifically for certain FHA Multifamily Housing, Health Care Facilities, and Hospital Mortgage Insurance programs for commitments to be issued or reissued in FY 2013. The April 2012 notice stated that the MIP for market-rate New Construction/Substantial Rehabilitation loans under Sections 207, 213, 220, 221(d)(4), 231, 232, and 242 would be increased by 20 basis points, and Section 223(a)(7) loans would be increased by 5 basis points; with a 15 basis point increase for all other market-rate multifamily housing, health care facility, and hospital loans. The April 2012 notice included a chart that set out for each program for which an MIP increase was announced the current basis points and the basis points that would apply in 2013. (See April 10, 2012, notice at 77 FR 21581)

The April 2012 notice clarified that these changes would not apply to loans combined with low-income housing tax credits (LIHTCs), other affordable housing loans for HUD-assisted properties, or loans insured under FHA's Risk Sharing programs. The term ''other affordable housing loans for HUD-assisted properties'' includes those properties with an active project-based Section 8 contract covering any of its units.

The April 2012 notice further clarified that positive credit subsidy will no longer be required for loans under any of the active mortgage insurance programs for multifamily housing or health care facilities. Beginning on October 1, 2012, commitments issued for Section 223(d) operating loss loans for health care facilities and Section 241(a) supplemental loans to FHA-financed multifamily housing will be reported under the budget risk category of their respective, primary FHA mortgages, which will generate negative credit subsidy in FY 2013. In addition, the Department will suspend issuance and reissuance commitments under two other programs that had previously required positive credit: Section 221(d)(3) multifamily housing loans for projects with non-profit sponsors or for Section 223(d) operating loss loans to multifamily housing projects with a primary FHA mortgage.

The April 2012 notice announced that the changes in MIP would be effective and apply to any Firm Commitments issued or reissued after October 1, 2012.

II. Public Comments

The public comment period on the April 10, 2012, notice closed on May 10, 2012, and HUD received 30 public comments by the close of the public comment period. Comments were submitted by mortgage lenders, organizations representative of the health care industry and of the home building industry, private citizens, and other interested parties. All public comments can be found on *www.regulations.gov* under the docket number FR–5634–N–01. All of the public commenters opposed the increases in MIPs, and challenged the basis for HUD' support of the increases. The following presents the key issues raised by commenters and HUD's response to these issues.

Additional Protection for the GI/SRI Fund Is Unwarranted

Comment: Commenters objected that the GI/SRI fund needs additional resources. These commenters offered data from a Government National Mortgage Association (GNMA) 2011 annual report that GNMA produced a surplus of $1.1 billion that was returned to the U.S. Treasury. Commenters suggested that if HUD needs additional resources to bolster the GI/SRI fund, then HUD should ''tap'' into the GNMA's surplus.

Commenters requested that HUD provide data to the industry that documents the need to raise the MIP.

Commenters stated that HUD offered no actuarial analysis to substantiate the need to protect the GI/SRI fund. Commenters requested that HUD provide the results of studies conducted which resulted in HUD's determination that the GI/SRI fund requires ''additional protection'' beyond what has already been implemented.

Commenters stated that that the President's budget for FY 2012 [in HUD's section of the budget] assumes continued negative credit subsidy for these programs, and they were therefore projected to generate income for the U.S. Treasury prior to April 10, 2012, notice. The commenters concluded that the proposed increases are unnecessary and are a mere attempt to generate additional revenue for the U.S. Treasury. The commenters stated that should HUD find it imperative to increase the MIPs for FY 2013, proceeds from the revenue generated by such increases be used exclusively for the sole benefit of the multifamily and healthcare mortgage insurance program.

Two commenters presented a table comparing 2012 default rates against 2013 default rates under specific housing programs (e.g., multifamily development, apartment refinances, health care & nursing homes, health care refinances, and hospitals). The table presented by the commenters reflects that HUD has reduced default rates for the loan program; consequently, reducing the amount of funds going into the reserves for the GI/SRI fund creating less protection for these programs. The commenters requested that HUD to demonstrate how such reductions will affect the reserves in the GI/SRI funds.

A commenter addressed specifically the Section 232 program, stating that the growth and successes of the Section 232 loans (without increases) are a source of stability for the FHA GI/SRI fund, and given this, the commenter finds HUD's announced MIP increases for the Section 232 program ''baffling''. The commenter refuted HUD claim that the ''modest'' increases in premiums will have little to no impact on program participants. According to the commenter, the real cost to a Section 232 loan of $7 million would cost an institution more than $10,000 in the first year under the proposed 20 basis points increase. Commenter stated that increased MIP will increase the costs of HUD financing by 30–40 percent for Section 242 and 232 programs; hence, putting the program out of reach for many community hospitals in need of affordable financing, and hampering necessary renovations, refinancing or new construction projects while threatening access to high quality health care services for those in need. Commenter stated that rather than increasing MIPs at the expense of seniors or those with healthcare needs, HUD consider an alternative approach that would increase revenue and incentivize better underwriting and improved operations—risk based premium pricing.

Other commenters focused on HUD's healthcare programs more broadly and presented what they identified as ''actual/projected'' credit scorings which indicates that HUD's healthcare programs have some of the best credit scoring for HUD, that are well within the mandates set forth by Federal Credit Reform Act of 1990 (FCRA) (2 U.S.C. 621 *et seq.*).

HUD Response: HUD is not increasing the premiums to gain additional resources to bolster the GI/SRI Fund, and even if it did there is no statutory authority to ''tap'' into Ginnie Mae's surplus. Section 307 of the National Housing Act (12 U.S.C. 1723) provides that all of the benefits and burdens of Ginnie Mae operations, after meeting the obligations and needed reserves of Ginnie Mae, inure solely to the Secretary of the Treasury. The statutory provisions authorizing Ginnie Mae do not authorize insuring of mortgages or subsidizing the FHA insurance funds.

The modest increase will ensure that the MIPs are priced appropriately to compensate for FHA's risk, consistent with current and potentially volatile market conditions. The MIP increase is in line with the requirement to responsibly align pricing with risk tolerance in administering FHA programs. The modest MIP increase will address potential risk attributed to the shift in portfolio from a primarily subsidized stock with small loans, to a primarily market rate portfolio with larger average loan sizes and the attendant risk of single point failures. The modestly increased premiums in addition to already record-low interest rates, will not contribute significantly to project costs. HUD will continually monitor interest rates, and will price the MIP accordingly to adjust to future changes.

Consider Negative Impact on the Debt

Comment: Commenters claimed that increased MIPs on loans increases the cost to service the debt causing a negative impact on the debt; hence, providing no additional protection for the GI/SRI fund as proposed by HUD.

HUD Response: This comment assumes the mortgage amount will stay the same as it was before the MIP increase. Given current and projected interest rates, government-insured financing remains materially less expensive than other capital sources and those terms available for FHA-insured loans prior to the current problems in the credit market. If loans are debt service controlled, the higher MIP will result in a lower mortgage amount, increasing the equity in the deal, adding to protection.

MIP Increases Significant Depart From HUD's Current Policy

Comment: Commenters stated that, historically, HUD has not raised the MIP to generate revenue beyond that needed to cover expected credit losses and associated program costs in accordance to the economic model as required under FCRA. Commenters stated that the MIP level is established based on an economic risk model required under the FCRA, and that HUD's announced increases run counter to the FCRA, as it sets the MIP at what the Administration considers a rate aligned with the private sector. The commenters expressed concern that the April 2012 notice made no mention of any technical or actuarial defects of the economic model; therefore, absent any information to this effect, the commenters presumed that HUD believes that the risk model is ''working appropriately.''

HUD Response: Section 505(a) of FCRA authorizes the appropriation of sums necessary ''to pay the cost associated with such direct loan obligations or loan guarantee commitments.'' There is no reference therein to the setting of mortgage insurance premiums. There is also no equivalent reference in Section 203(c)(1) of the National Housing Act regarding this issue. Section 203(c)(1) authorizes the Secretary ''to fix premium charge for the insurance of mortgages under the separate sections of this title but in the case of any mortgage such charge shall not be less than an amount equivalent to one-fourth of one per centum per annum * * *''

This change is forward-looking. HUD agrees that the risk model is working appropriately. The decision to increase MIP is not being made due to technical or actuarial defects of the economic model, but rather reflects the administration's concern for mitigating potential unforeseen risks, concern that HUD financing not be underpriced and thus discourage recovery of private capital source, and to differentiate between affordable and market rate program requirements.

MIPs Should Not Be Raised To Increase Receipts to Treasury

Comment: Several commenters opposed increasing MIPs for the

purpose of generating receipts to the Treasury. The commenters stated that the current MIP pricing is appropriately priced for the risks assumed. The commenters expressed concern that higher MIPs will not serve to build a buffer against future losses considering that there is no segregated fund and all excess income is returned to the Treasury each year. Commenters stated that should HUD increase MIPs as provided in the April 2012 notice, HUD is essentially increasing negative credit subsidy anywhere from 36 percent to 244 percent, thereby establishing the largest one year increase in negative credit subsidy since FCRA. Commenters stated that ''these programs were not created to return funds to the Treasury,'' and that returning excess funds from increased MIPs to the U.S. Treasury for the overall federal budget for unspecified spending sets a ''precedent for poor public policy making and has a significant negative impact on national housing policy.''

HUD Response: Credit subsidy rates vary from year to year, based in part on default rates and MIP changes, but also due to changes in prepayment rates, rates of recovery on defaults, and improvements to cash flow modeling techniques. Changing economic forecasts are a key variable in calculating the defaults, prepayments, and recoveries that feed into the credit subsidy rate.

While it is true that the GI/SRI negative credit subsidy is paid from the loan financing account to the Treasury General Fund, rather than to a dedicated reserve account, the General Fund is also the source of funding for any future upward re-estimates of liability for GI/SRI programs. FHA has permanent indefinite authority to draw from that fund to cover any increases to projected losses. The administration also has an obligation to administer the program within its statutory and regulatory authority, consistent with prudent risk management and risk tolerance.

Avoidance of FHA Under-Pricing Risk and Encouragement of Private Lending

Comment: Several commenters opposed increasing MIPs for the sake of encouraging private lending and ensuring that FHA is not under-pricing its risk. The commenters expressed that FHA's role is to serve as a ''counter-cyclical'' capital source and the nation's tepid economic situation will surely benefit from it. The commenters conclude that Congress did not contemplate setting the FHA MIPs based on the cost of capital in the private market.

Other commenters submitted data that suggests that FHA is not crowding out the private sector. The commenters stated that the data they provided reflects that the refinance market for multifamily rental properties was estimated to be approximately $54 billion in FY 2011. Sixty percent was financed by Freddie Mac and Fannie Mae in FY 2011. FHA's 223(f) program completed $3.5 billion or 6.5 percent of the market in FY 2011. In FY 2011, new construction was 180,000 new starts and FHA financed 30,483 units in both new and rehab units. The commenters conclude that, ''this represents 16.9 percent of the market. This percentage is by no means enough to crowd out the private sector.'' The same commenters disagreed that raising the MIP will indeed ensure that FHA is not under-pricing its risk. The commenters state that the current MIP is set at a level to break-even (e.g., no credit subsidy is required) providing only a minimal amount of excess income.

A commenter provided several charts illustrating the countercyclical nature of the FHA business; share of the new construction market that FHA occupies from FY 2008 through FY 2011; and that FHA financing serves as the niche that local banks and thrifts have retreated from in recent years. Another commenter presented data that illustrated that in 2011 banks and other private funding sources provided $2.9 billion in healthcare lending, approximately 300 percent more than the amount funded the previous year. The commenter summarized its comment with the statement that, based upon its findings, there is no reasonable measure that HUD has ''cornered the market.''

Other commenters stated that as conventional lenders return to the market, FHA's market share has declined due to financing sources being more flexible and less costly to pursue. The commenters urged HUD to provide its estimates of how much additional private capital will participate should the MIP increases go into effect. Certain commenters referenced data provided by the Mortgage Bankers Association (MBA) that they state support their claim that origination of Fannie Mae, Freddie Mac, and FHA all reached record volumes in 2011, yet its collective share of the market declined in 2011. Loans originated by this group accounted for 57 percent of the market in 2011. The commenters stated that other private capital sources have returned to the market without the incentive of an MIP increase for FHA. The commenters added that the data from the MBA reports, suggests that HUD has done a ''stellar job'' of assessing risk and underwriting loans; whereby, raising questions [within the industry] as to HUD's true rational for this notice. The commenters also submitted a report prepared by the Federal Practice Group, LLC entitled ''Analysis of Unassisted Multifamily Housing and Health Care Loans Insured by the Federal Housing Administration'' dated November 2011 to further substantiate their claim that FHA is not under-pricing its risk rather HUD is over-pricing its risk.

HUD Response: This modest MIP increase brings FHA's pricing more in line with the private mortgage insurance industry and enables more robust private competition while continuing to ensure sufficient levels of available capital in these sectors. Given the state of the capital markets, government insured financing is underpriced with historically low interest rates—this also contributes risk to the insurance fund since stressed properties are not as likely to be able to refinance in the future. The increase in MIP will address these issues by making it more likely private capital will return to the market.

HUD agrees that FHA's role is to serve as a ''counter-cyclical'' capital source. In light of record low interest rates, the proposed modest MIP increases are not a barrier to continuing this role. FHA insured financing terms, including with the increased MIP, have not been this favorable in decades, and are materially less expensive than in the years prior to and after the current credit crisis. As stated earlier, HUD will continue to monitor interest rates and their impact on the market, and will adjust its policies accordingly.

A market share of 16.9 percent is much higher than it has been historically. HUD has not represented that it has ''cornered the market,'' but the increased role that FHA has played in the market in recent years should be temporary. With this decision FHA is moving towards a return to the smaller share of the market it has traditionally occupied.

FHA cannot be compared to Fannie Mae and Freddie Mac. Collectively painting the GSEs and FHA with a broad brush does not reflect the fact that they have different business models. FHA's market share decreased last year, but it is still much higher than it was in 2006 when the MIPs were last increased, closer to 3 percent.

Assisted Properties and Tenants Will Be Harmed by MIP Increases

Comment: Commenters state that any increase in the MIPs be supported and preceded by a careful analysis of the

need and impact of the change, and stated that HUD's notice provided no analysis of the need and impact of the proposed increase on borrowers, lenders or renters who live in properties insured under the programs. The commenters states that these properties will be disadvantaged by the imposition of higher MIPs. Commenter stated that the proposed increases will adversely harm market rental properties in secondary and tertiary markets due in part to private capital (banks, pension funds, and insurance companies, etc.,) and large developers' lack of interest. The commenters stated that FHA is vital in providing liquidity in the secondary and tertiary markets, and urged HUD to differentiate among markets when considering increases to the MIPs. A commenter specifically expressed concern about properties financed or refinanced under the FHA-insured loans in the sections 223(f) and 223(a)(7) multifamily programs.

Another commenter stated that the proposed increases in MIPs will be passed through to the tenants residing within the property insured by the program(s); thus requiring the rental units to be raised to cover theses costs.

The commenters stated that HUD has not provided compelling justification for the increases, and urge HUD not to implement these changes at a time when demand for rental housing is increasing and preserving and investing in our stock of rental housing is critical.

HUD Response: Given record-low interest rates, even with an increase in MIP higher than proposed, higher mortgage amounts at lower debt service burden are available today. Thus, we anticipate no direct or indirect negative impact on tenants, borrowers, or lenders. The MIP increase is not expected to have a significant impact on rental properties in secondary and tertiary markets. FHA will monitor the impact of the increased MIP and will adjust its policies accordingly.

Establishing Risk-Based Premiums for Riskier Loans

Comment: Commenters urged HUD to consider establishing specific risk-based premium pricing for lenders that produce riskier loans. Commenters stated that these lenders should pay higher premiums, while other lenders with little or no defaults should pay lower premiums. The commenters assert that this methodology would raise premiums on those lenders that pose greater risks to the insurance fund—saving the taxpayers from challenges currently experienced by the MMI fund.

HUD Response: HUD has established risk-based premium pricing with this decision on a program-wide basis, but at this time does not contemplate differentiating MIP for lenders. For example, the MIP increase for 223(a)(7) loans will be lower than the increase for new construction loans.

III. MIP Increases for 2013

MIPs for FHA's Mortgage Insurance Programs for FY2013

In the chart below, this notice announces the MIPs which will be in effect during FY 2013 for the multifamily housing, health care facilities, and hospital mortgage insurance programs authorized under the National Housing Act (12 U.S.C. 1713 *et seq.*). The multifamily housing programs are administered by FHA's Office of Multifamily Housing Programs. The health care facilities and the hospital insurance programs are administered by FHA's Office of Healthcare Programs. The programs of these offices are listed separately on the chart.

The mortgage insurance premiums to be in effect for FHA firm commitments issued or reissued in FY 2013 are shown in the chart below. Firm Commitments for applications received prior to June 1, 2012, will be subject to the MIP rates applicable in Fiscal Year 2012 (Current Basis Points in the following chart) even if issued after October 1, 2012.

FISCAL YEAR 2013 MIP RATES—MULTIFAMILY HOUSING, HEALTH CARE FACILITIES AND HOSPITAL INSURANCE PROGRAMS

	Current basis points	FY13 basis points
FHA Apartments		
207 Multifamily Housing New Construction/Sub Rehab without LIHTC	50	70
207 Multifamily Housing New Construction/Sub Rehab with LIHTC	45	45
207 Manufactured Home Parks without LIHTC	50	70
207 Manufactured Home Parks with LIHTC	45	45
221(d)(3) New Construction/Substantial Rehabilitation (NC/SR) for Nonprofit/Cooperative mortgagor without LIHTC	80	N/A
221(d)(3) Limited dividend with LIHTC	45	45
221(d)(4) NC/SR without LIHTC	45	65
221(d)(4) NC/SR with LIHTC	45	45
220 Urban Renewal Housing without LIHTC	50	70
220 Urban Renewal Housing with LIHTC	45	45
213 Cooperative	50	70
207/223(f) Refinance or Purchase for Apartments without LIHTC	45*	60*
207/223(f) Refinance or Purchase for Apartments with LIHTC	45*	45*
223(a)(7) Refinance of Apartments without LIHTC	45	50
223(a)(7) Refinance of Apartments with LIHTC	45	45
223d Operating Loss Loan for Apartments	80	N/A
231 Elderly Housing without LIHTC	50	70
231 Elderly Housing with LIHTC	45	45
241(a) Supplemental Loans for Apartments/coop without LIHTC	80	95
241(a) Supplemental Loans for Apartments/coop with LIHTC	45	45
FHA Health Care Facilities (Nursing Homes, ALF & B&C)		
232 NC/SR Health Care Facilities without LIHTC	57	77
232 NC/SR—Assisted Living Facilities with LIHTC	45	45
232/223(f) Refinance for Health Care Facilities without LIHTC	50*	65*
232/223(f) Refinance for Health Care Facilities with LIHTC	45*	45*
223(a)(7) Refinance of Health Care Facilities without LIHTC	50	55

FISCAL YEAR 2013 MIP RATES—MULTIFAMILY HOUSING, HEALTH CARE FACILITIES AND HOSPITAL INSURANCE PROGRAMS—Continued

	Current basis points	FY13 basis points
223(a)(7) Refinance of Health Care Facilities with LIHTC	45	45
223d Operating Loss Loan for Health Care Facilities	80	95
241(a) Supplemental Loans for Health Care Facilities without LIHTC	57	72
241(a) Supplemental Loans for Health Care Facilities with LIHTC	45	45
FHA Hospitals		
242 Hospitals	50	70
223(a)(7) Refinance of Existing FHA-insured Hospital	50	55
223(f) Refinance or Purchase of Existing Non-FHA-insured Hospital	50	65
241(a) Supplemental Loans for Hospitals	50	65

*The first year MIP for the Section 207/223(f) loans for apartments is 100 basis (one percent) points for the first year, as specified in sections 24 CFR 207.252b(a). The first year MIP for a Section 232/223(f) health care facility remains at 100 basis points (one percent). The first year MIP for a Section 223(a)(7) refinancing loan remains at 50 basis points.

IV. Positive Credit Subsidy Programs

Positive credit subsidy will no longer be required for loans under any of the active mortgage insurance programs for multifamily housing or health care facilities. Beginning on October 1, 2012, commitments issued for Section 223(d) operating loss loans for health care facilities and Section 241(a) supplemental loans to FHA-financed multifamily housing will be reported under the budget risk category of their respective, primary FHA mortgages, all of which will generate negative credit subsidy in FY 2013. In addition, the Department will suspend issuance and reissuance commitments under two other programs that had previously required positive credit: Section 221(d)(3) multifamily housing loans for projects with non-profit sponsors or for Section 223(d) operating loss loans to multifamily housing projects with a primary FHA mortgage.

Dated: August 9, 2012.

Carol Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–20045 Filed 8–14–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–06–A]

Privacy Act of 1974; New System of Records, Office of General Counsel E-Discovery Management System—Change in Final Effective Date

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: This notice advises that HUD's Office of General Counsel (OGC) is moving its final effective date of a new system of records for the OGC E–Discovery Management System until after the opportunity for further comment is provided to the public.

FOR FURTHER INFORMATION CONTACT: For inquiries pertaining to Privacy Act records, contact Donna Robinson-Staton, Chief Privacy Officer, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor) telephone number (202) 402–8073 (this telephone number is not toll free). A telecommunications device for hearing- and speech-impaired persons (TTY) is available by calling the Federal Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a), HUD published in the **Federal Register** on July 17, 2012, at 77 FR 41997, a notice that announced OGC's intent to establish a new system of records for OGC's E-Discovery Management System (EDMS), a system expected to improve significantly the efficiency of OGC's processing of records during the preservation, discovery and processing of litigation requests when litigation is ''reasonably anticipated'' and dramatically reduce the time spent on document review and production process. OGC's EDMS is in response to e-discovery preservation and production requirements in the Federal Rules of Civil Procedure.

The July 17, 2012, notice solicited public comment on the new record system for OGC–EDMS, which was detailed in the July 17, 2012, notice, for a period of 30 days. The notice advised that EDMS would carry a final effective date of August 16, 2012, unless HUD received comments which would result in a contrary determination. HUD anticipates receiving public comments prior to August 16, 2012, but even in the absence of comment, HUD determined, upon further review of the system, to make certain clarifications and solicit public comment for another 30-day period. Accordingly, following conclusion of the comment period on August 16, 2012, HUD will consider any public comments related to the July 17, 2012, notice, and subsequently publish another notice. The second notice to be published on the new record system for OGC–EDMS will make the clarifications that HUD believes need to be made, respond to any public comments received by August 16, 2012, make any additional changes that may be recommended by commenters and with which HUD agrees, and solicit public comment for an additional period of 30-days.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated August 10, 2012.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2012–20042 Filed 8–14–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2012–N160; FXRS12610200000S3–123–FF02R06000]

Texas Mid-Coast National Wildlife Refuge Complex, Brazoria, Fort Bend, Matagorda, and Wharton Counties, TX; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft comprehensive conservation plan (CCP) and an environmental assessment (EA) for public review and comment. The draft CCP/EA describes our proposal for managing the Texas Mid-Coast National Wildlife Refuge Complex for the next 15 years. The Complex, which includes Brazoria, San Bernard, and Big Boggy National Wildlife Refuges (NWRs), is located approximately 50 miles south of Houston, Texas.

DATES: To ensure consideration, please send your written comments by August 15, 2012. We will announce upcoming public meetings in local news media.

ADDRESSES: You may submit comments or requests for copies or more information on the Draft CCP/EA by any of the methods listed below. You may request hard copies or a CD–ROM of the documents. Please contact Jennifer Sanchez, Project Leader, or Carol Torrez, Lead Planner/R2 NWRS NEPA Coordinator.

Email: carol_torrez@fws.gov. Include ''TMC NWR Complex Draft CCP and EA'' in the subject line of the message.

Fax: Attn: Carol Torrez, 505–248–6803.

U.S. Mail: Carol Torrez, Lead Planner/NWRS NEPA Coordinator, U.S. Fish and Wildlife Service, NWRS Division of Planning, P.O. Box 1306, Albuquerque, NM 87103.

In-Person Drop-off, Viewing, or Pickup: You may drop off comments during regular business hours (8 a.m. to 4:30 p.m.) at 500 Gold Street SW., 4th Floor, Room 4336, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Jennifer Sanchez, Project Leader, Texas Mid-Coast National Wildlife Refuge Complex, CCP—Project, 5247 CR 316, Brazoria, TX 77422; phone: 979–964–4011; fax: 979–964–4021.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the Texas Mid-Coast NWR Complex. We started this process through a notice in the **Federal Register** (74 FR 29714; June 23, 2009).

The Complex is located along the upper Texas Gulf Coast, approximately 50 miles south of Houston, Texas. It is comprised of three refuges: Brazoria NWR, which was established in 1966, and encompasses 44,414 acres; San Bernard NWR, which was established in 1968, and encompasses 52,400 acres; and Big Boggy NWR, which was established in 1983, and encompasses 4,526 acres. These lands provide a vital complex of salt and freshwater marshes, sloughs, ponds, coastal prairies, and bottomland hardwood forests that provide habitat for a wide variety of resident and migratory wildlife.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach

Formal scoping began with publication of a notice of intent to prepare a comprehensive conservation plan and environmental assessment (EA) in the **Federal Register** on June 23, 2009 (74 FR 29714). The Refuge solicited comments on issues and concerns to aid in CCP development through three open house meetings held in September 2009.

An ecoregion-wide coordination meeting was held at the Complex's Discovery Center on December 2, 2009, to gain a better understanding of the issues within the Gulf Coast Prairies and Marshes Ecoregion, where the Complex is located, and to determine the Complex's role in addressing issues impacting fish, wildlife, and their habitats within the larger landscape. In February 2010, the Complex met with representatives from the Texas Parks and Wildlife Department to discuss their concerns regarding past management, future management, and issues common to both agencies.

Additional public scoping for the Land Protection Planning process was conducted in January 2012. Three open house meetings were held to provide information on the proposed expansion and respond to questions and concerns.

The feedback received at the conclusion of the public involvement period identified numerous concerns from a variety of stakeholders. These concerns were organized by five broad issue categories and one administrative category: Ecoregion, Habitat, Wildlife, Visitor Services, and Facilities/Infrastructure Management.

CCP Alternatives We Are Considering

During the public scoping process with which we started work on this draft CCP, we, other governmental partners, Tribes, and the public, raised multiple issues. Our draft CCP addresses them. A full description of each alternative is in the EA. To address these issues, we developed and evaluated the following alternatives, summarized below.

Issue topic	Alternative A—no action	Alternative B—proposed action	Alternative C
Ecoregion Management Issue 1: Climate Change.	Supplement natural forest regeneration with restoration efforts; monitor carbon sequestration; conduct education programs; and use "green" technologies and building products on all new construction.	Same as Alternative A plus increase restoration efforts; utilize exchange of carbon credits; gather baseline data on habitat composition/wildlife diversity; update refuge displays; and increase use of "green" technologies.	Same as Alternative B plus increase restoration efforts above described levels.
Ecoregion Management Issue 2: Erosion/Saltwater Intrusion.	Construct/Use a variety of structural and some restoration techniques at various locations.	Same as Alternative A plus increase the types and amounts of structural and restoration techniques used.	Same as Alternative A plus increase the types and amounts of structural and restoration techniques used.

Issue topic	Alternative A—no action	Alternative B—proposed action	Alternative C
Ecoregion Management Issue: 3 Wildland Fire Use.	Follow direction of current Fire Management Plan (FMP).	Same as Alternative A	Same as Alternative A.
Ecoregion Management Issue 4: Petroleum Development.	Work cooperatively with companies to minimize impacts to refuge resources.	Same as Alternative A	Same as Alternative A.
Ecoregion Management Issue 5: Land Conservation.	The Complex will continue to acquire lands under the 1997 Austin's Woods Conservation Plan until the 28,000-acre cap is reached.	The Complex will acquire lands under the new Land Protection Plan up to 70,000 acres.	Same as Alternative B.
Habitat Management Issue 1: Gulf Coast Prairie and Marshes—Restoration and Management.	Cooperative haying conducted; wetland and farmland rehabilitation. Native prairie restoration.	Same as Alternative A, plus increase acreage of haying, and increase number of rehabilitation projects. Increase prairie restoration.	Same as Alternative B plus develop seed bank on prairie restoration areas.
Habitat Management Issue 2: Gulf Coast Prairie and Marshes—Management of Invasive Species (Flora).	Mechanical, chemical, and prescribed fire use allowed; grazing not allowed.	Same as Alternative A plus increase the types and amounts of management prescriptions used, including limited livestock grazing.	Same as Alternative B but diversify the types of management prescriptions used, including bison grazing.
Habitat Management Issue 3: Gulf Coast Prairie and Marshes—Prescribed Fire Use.	Allowed Complex-wide to improve habitats and reduce hazardous fuels.	Same as Alternative A	Same as Alternative A.
Habitat Management Issue 4: Gulf Coast Prairie and Marshes—Farming Program.	Cooperative farming and force account farming occur on all three refuges.	Same as A, plus incorporate additional moist soil units into farming rotation at Brazoria NWR.	Reduce cooperative farming acres at Brazoria NWR and eliminate farming at Big Boggy and San Bernard NWRs.
Habitat Management Issue 5: Gulf Coast Prairie and Marshes—Water Management.	Restore prairie pothole hydrology as opportunity arises; use established wells to provide freshwater to moist soil units during drought periods; and purchase water from various water authorities annually.	Same as Alternative A plus drill additional wells, and develop new/rehabilitate existing water control structures.	Same as Alternative B plus increase water availability through the development of partnerships and purchase of water rights; expand wetlands; and rehabilitate marshes.
Habitat Management Issue 6: Bottomland Hardwood Forest—Restoration.	Allow natural regeneration; where appropriate add supplemental planting of hardwood species; treat invasive species.	Same as Alternative A	Same as Alternative A.
Habitat Management Issue 7: Bottomland Hardwood Forest—Water Management.	Restore previously drained wetlands.	Same as Alternative A	Same as Alternative A.
Habitat Management Issue 8: Dune and Beach Management.	Management of beach resources has not been clearly defined due to recent silting in of Cedar Lakes Cut and trespass across upland vegetation on private land to access the Cut.	Cooperatively work with County and General Land Office (GLO) to provide additional protection on San Bernard Beach restricting type of access and activities by visitors that would be compatible with Refuge Purpose.	Same as Alternative B.
Wildlife Management Issue 1: Threatened and Endangered Species.	Implement the Sea Turtle Recovery Plan.	Same as A, plus if reintroduction of APC and whooping crane occur, implement APC and whooping crane recovery plans.	Same as Alternative B.
Wildlife Management Issue 2: Migratory Bird Species and Species of Special Management Concern.	Manage a variety of habitats for resting, feeding, and reproductive purposes.	Same as Alternative A	Same as Alternative A.
Wildlife Management Issue 3: Management of Invasive Species (Fauna).	Hunting and trapping used to control feral hogs. Baiting and broad scale treatments to control ants.	Same as Alternative A plus release natural predators to control ants.	Same as Alternative A, but diversify the types of management prescriptions used for each invasive.
Visitor Services Issue 1: Hunting ...	Allowed in designated areas for waterfowl, youth deer/feral hog hunt on San Bernard NWR, and a youth feral hog hunt. One permit area and ATV use allowed in designated area for disabled hunters.	Same as Alternative A plus provide a youth waterfowl hunt; revise the hunting schedule at two locations.	Same as Alternative B plus provide a population reduction deer hunt.
Visitor Services Issue 2: Fishing ...	Allowed on all navigable waters and from designated locations.	Same as Alternative A	Same as Alternative A.

Issue topic	Alternative A—no action	Alternative B—proposed action	Alternative C
Visitor Services Issue 3: Wildlife Observation.	Brazoria and San Bernard NWRs open to wildlife observation; visitors directed to designated public use areas.	Same as Alternative A plus construct additional photo blinds, new trails, a boardwalk, and road pull-offs to provide for additional opportunity.	Same as Alternative B.
Visitor Services Issue 4: Wildlife Photography.	Photo blind at Hudson Woods	Same as Alternative A plus develop additional photography opportunities.	Same as Alternative B.
Visitor Services Issue 5: Environmental Education.	Various programs and events conducted.	Same as Alternative A plus increase number of programs conducted and expand programs into additional school districts at San Bernard NWR.	Same as Alternative B.
Visitor Services Issue 6: Interpretation.	One annual 3-day event	Same as Alternative A plus expand organized interpretive programs at a variety of Refuge venues on a monthly basis.	Same as Alternative B.
Visitor Services Issue 7: Preservation of Historic Sites.	Historical sites are identified and interpreted in public use areas when appropriate.	Same as Alternative A	Same as Alternative A.
Visitor Services Issue 8: Entrance Fee.	No entrance fee required	Require entrance fee	Provide donation boxes at various public use areas.
Facilities Issue 1: Visitor Orientation.	Visitor contact station located at Brazoria NWR Discovery Center.	Same as Alternative A plus additional Visitor Contact Station at San Bernard NWR.	Same as Alternative A plus construct stand-alone Visitor Center at San Bernard NWR Field Office.
Facilities Issue 2: Visitor Use—Trails.	Hiking trail provided at Brazoria and San Bernard NWRs.	Same as Alternative A plus construct a new trail at Brazoria NWR Field Office; provide bicycle access at Dow Woods Unit.	Same as Alternative B.
Facilities Issue 3: Visitor—Non-Motorized Boat Launches Visitor.	Canoe/Kayak launches provided at San Bernard and Brazoria NWRs.	Same as Alternative A plus construct one additional launch.	Same as Alternative B plus construct two additional launches.
Facilities Issue 4: Visitor—Signs/Exhibits.	Signs and exhibits at Brazoria and San Bernard NWRs.	Construct new exhibits and signs and improve quality and content of existing exhibits and signs.	Same as Alternative B.
Facilities Issue 5 Visitor—Roadways.	Vehicular access allowed on designated refuge roads.	Same as Alternative A	Same as Alternative A.
Facilities Issue 6: Administrative—Volunteer.	Recreation vehicle pads provided at Brazoria and San Bernard NWRs.	Construct new recreation vehicle site at Brazoria NWR, and expand recreation vehicle sites at San Bernard NWR; include additional facilities at both locations.	Same as A, plus construct additional facilities at Brazoria NWR.
Facilities Issue 7: Administrative Facilities.	A variety of administrative/maintenance facilities available at various refuges.	Construct new administrative/maintenance facilities at various refuges.	Same as Alternative B.

Public Availability of Documents

In addition to any methods in **ADDRESSES,** you can view or obtain documents at the following locations:

- Texas Mid-Coast National Wildlife Refuge Complex Headquarters Office, CR 316, Brazoria, TX, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- Our web site: *http://www.fws.gov/southwest/refuges/Plan/plansinprogress.html.*
- At the following public libraries:

Library	Address	Phone No.
Brazoria County Library City of Lake Jackson Branch	250 Circle Way, Lake Jackson, TX 77566	979–297–1271
Brazoria County Library West Columbia Branch	518 East Brazos, West Columbia, TX 77486	979–345–3394
Bay City Public Library	1100 7th Street, Bay City, Texas 77414	979–245–6931

Submitting Comments/Issues for Comment

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment (EA);
- Present reasonable alternatives other than those presented in the EA; and/or
- Provide new or additional information relevant to the assessment.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and finding of no significant impact.

Public Availability of Comments

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

Dated: July 26, 2012.

Joy E. Nicholopoulos,

Regional Director, Southwest Region.

[FR Doc. 2012–19891 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE030000.L10600000.DI0000 241A; 12–08807; MO# 4500035685; TAS: 14X1109]

Notice of Intent To Prepare an Environmental Impact Statement for Proposed Wild Horse Eco-Sanctuary in Elko County, Nevada, and an Associated Resource Management Plan Amendment for the Wells Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Wells Field Office, Elko, Nevada, intends to prepare an Environmental Impact Statement (EIS) and an associated Resource Management Plan (RMP) amendment for a proposed privately operated wild horse eco-sanctuary and by this notice, is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS and associated RMP amendment. Comments on issues may be submitted until September 14, 2012. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, mailings to interested individuals, and the BLM Elko District Web site at: *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.* In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the EIS and RMP amendment by any of the following methods:

- *Email: EcoSanctuaryComments@blm.gov*
- *Fax:* 775–753–0255
- *Mail:* Bureau of Land Management, Wild Horse Sanctuary RMP Amendment, Wells Field Office, 3900 E. Idaho Street, Elko, NV 89801

Documents pertinent to this proposal may be examined at the BLM Elko District Office, 3900 E. Idaho Street, Elko, Nevada, during regular business hours of 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Pertinent documents are also available on-line at: *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.*

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Judy May, resource assistant, BLM Wells Field Office, telephone: 775–753–0267; address: 3900 East Idaho Street, Elko, NV 89801; email: *jmay@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 document provides notice that the BLM Wells Field Office, Elko, Nevada, intends to prepare an EIS with an associated RMP amendment to the Wells RMP, and announces the beginning of the scoping process and seeks public input on issues and planning criteria. The planning area is located in Elko County, Nevada, and encompasses approximately 510,000 acres of public land. The organization Saving America's Mustangs (SAM) proposes to establish a privately operated eco-sanctuary to accommodate up to 900 non-reproducing wild horses (all one sex or sterilized) on a mixture of public and private lands in Elko County, Nevada, about 25 miles southeast of Wells. The proposed eco-sanctuary is in response to the BLM's request for applications for funding (Funding Opportunity L11AS0043) to assist in the development of a Wild Horse Partnership for an Eco-Sanctuary on Public and Private Land. Preliminarily, the BLM expects that the EIS will address the impacts of the proposed eco-sanctuary and reasonable alternatives to that proposal, and an RMP amendment that may: (1) Adjust the boundaries and management objectives of existing wild horse herd management areas (HMAs) within or near the proposed eco-sanctuary; and (2) reduce and potentially eliminate livestock grazing within the portion of the Spruce Allotment east of Highway 93. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

(a) Potential effects to archaeological resources.

(b) Potential effects to greater sage-grouse and other sensitive species.

(c) Potential effects to important elk, mule deer, and other wildlife habitats.

(d) Ability to meet standards for rangeland health.

(e) Ability to manage healthy wild horse populations within the eco-sanctuary.

(f) Ability to provide public access for recreational purposes.

(g) Potential effects of reducing public lands available for livestock grazing.

(h) Ability to manage non-reproducing herd.

Preliminary planning criteria for the RMP amendment include:

1. Any amendment to the Wells RMP will comply with FLPMA (43 U.S.C 1701) and the BLM's land use planning regulations (43 CFR 1600).

2. Public participation would be encouraged throughout the process. The Wells Field Office managers and interdisciplinary team members will work cooperatively with the State of Nevada, tribal governments, county and municipal governments, other Federal agencies, local resource advisory councils, appellants, affected permittees, and any other interested groups, agencies, and individuals.

3. The EIS will comply with NEPA (42 U.S.C. 4332 *et seq.*) and its implementing regulations, as well as other Federal regulations.

4. Any amendment to the Wells RMP will appropriately recognize the State's authority to manage wildlife and water.

5. Any amendment to the Wells RMP will recognize valid existing rights.

6. The State Historic Preservation Officer (SHPO) will be consulted under the NHPA and kept involved throughout the planning process, consistent with the National Programmatic Agreement (February 2012) and the State of Nevada Protocol Agreement between the BLM

and SHPO (revised February 2012). Integration of the public involvement provisions of the NHPA and NEPA will follow the guidance in Washington Office Instruction Memorandum 2012–108.

7. The BLM will address transportation and access within the planning area, if appropriate, to meet the objectives identified for the eco-sanctuary.

8. Existing planning decisions in the Wells RMP not modified by this amendment would remain valid.

9. All proposed management activities, including adjusting wild horse levels would be based upon current scientific information, and research and technology, as well as existing inventory and monitoring information.

10. Adaptive management principles will be used in development of the plan amendment to provide management direction if additional actions or modified actions would be needed for the protection of wild horses or the sustainability of the land and its resources.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the ''ADDRESSES'' section above. You should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will utilize and coordinate the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

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.

The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Wild horse and burro, rangeland management, outdoor recreation, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Bryan K. Fuell,

Manager,

Wells Field Office.

[FR Doc. 2012–20022 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI02000–L16100000–DR0000–LXSS050D0000]

Notice of Availability of Record of Decision for the Pocatello Field Office Resource Management Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the Pocatello Field Office located in southeastern Idaho. The Idaho State Director signed the ROD on July 10, 2012, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP are available upon request from the Field Manager, Pocatello Field Office, Bureau of Land Management, 4350 Cliffs Drive, Pocatello, Idaho 83204 or at the following Web site: *http://www.blm.gov/id/st/en/fo/pocatello/planning/pocatello_resource.html.* Copies of the ROD/Approved RMP are available for public inspection at the Pocatello Field Office at the above address and the Idaho State Office at 1387 S. Vinnell Way, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: David Pacioretty, Field Manager, Bureau of Land Management, Pocatello Field Office; telephone 208–478–6340; address 4350 Cliffs Drive, Pocatello, Idaho 83204; email: *id_pocatello_fo@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The approved RMP was developed with public participation through a collaborative planning process in accordance with the Federal Land Policy and Management Act of 1976, as amended, and the National Environmental Policy Act of 1969, as amended. The Approved RMP addresses management of resources and resource uses on approximately 618,300 acres of public land in the Pocatello Field Office

located in southeastern Idaho. The Approved RMP is designed to achieve or maintain desired resource conditions developed through the planning process including management actions for forest, upland, and riparian vegetation; wildlife habitat; lands with wilderness charatceristics; cultural and visual resources; and recreation.

The preferred alternative as described in the Draft RMP/Environmental Impact Statement (EIS) was carried forward with some modifications into the Proposed RMP/Final EIS published in the **Federal Register** on May 7, 2010 [75 FR 25288].

The BLM received two protest letters on the Proposed RMP/Final EIS. The BLM Director denied all protest issues as reported in the Director's Protest Resolution Report which can be reviewed at the following Web site: *http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protestreports.html.*

No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS. The Approved RMP is essentially the same as Alternative B described in the Proposed RMP/Final EIS with only minor editorial modifications made in preparing the ROD/Approved RMP. The Approved RMP can be accessed at the following Web site: *http://www.blm.gov/id/st/en/fo/pocatello/planning/pocatello_resource.html.*

The ROD/Approved RMP includes an implementation level decision designating travel routes for motorized public use in the following areas: The Soda Hills Management Area, Formation Cave Research Natural Area (RNA), Robbers Roost RNA, and Oneida Narrows. This decision is described in the Comprehensive Trails and Travel Management section of the Approved RMP (Action TM–1.2.11). Any party adversely affected by this implementation level decision may file an appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, part 4, subpart E. The appeal should state the specific route(s), as identified in Figures 18, 19, 20 and 21 of the Approved RMP that are being appealed.

The appeal must be filed with the Pocatello Field Manager by mail at the above-listed address. Please consult the appropriate regulations and the ROD/Approved RMP for further appeal information and requirements regarding motorized vehicle route designations.

Authority: 40 CFR 1505.2 and 43 CFR 1610.5–1.

Steven A. Ellis,

Idaho State Director.

[FR Doc. 2012–20018 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW173223]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW173223, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW173223 for land in Washakie County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW173223 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19890 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW173224]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW173224, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW173224 for land in Washakie County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW173224 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a

valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19894 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW173254)]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW173254, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW173254 for land in Park County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW173254 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19895 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164514]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164514, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW164514 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164514 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19896 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164510]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164510, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW164510 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164510 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a

valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19898 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19889 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2012–19903 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164511]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164511, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW164511 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164511 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW175075]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW175075, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Nova Leasing, LLC for competitive oil and gas lease WYW175075 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW175075 effective November 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164508]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164508, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW164508 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164508 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a

valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19904 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM 108040]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 108040, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the Class II provisions of Title IV of the Federal Oil and Gas Royalty Management Act of 1982, the Bureau of Land Management received a petition for reinstatement of oil and gas lease NMNM 108040 from the lessees ABO Petro Corp., MYCO Industries, Inc., and OXY Y–1 Co., for lands in Chaves County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Elizabeth Rivera, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at 505–954–2162. 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 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: No valid lease has been issued that affects the lands. The lessees agree to new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessees paid the required $500 administrative fee for the reinstatement of the lease and the $159 cost for publishing this Notice in the **Federal Register**. The lessees met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease NMNM 108040, effective the date of termination, March 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Elizabeth Rivera,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2012–20014 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW173225]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW173225, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW173225 for land in Washakie County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW173225 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19923 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164747]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164747, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW164747 for land in Washakie County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20 per acre, or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164747 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a

valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2012–19925 Filed 8–14–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK–963000–L1410000–ET0000; F–90576]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Policy, Management and Budget proposes to extend the duration of Public Land Order (PLO) No. 7032 for an additional 20-year period. PLO No. 7032 withdrew approximately 2,560 acres of public land from settlement, sale, location, or entry under the general land laws, including location and entry, under the United States mining laws, but not from leasing under the mineral leasing laws, to protect the archaeological, historical, and cultural resource integrity of the Paleoindian site known as Mesa Site. This notice gives an opportunity for the public to comment on the proposed withdrawal extension and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by November 13, 2012.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West Seventh Avenue, No. 13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, BLM Alaska State Office, 907–271–4682 or at the address above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The withdrawal, created by PLO No. 7032 (59 FR 11196, (1994)), will expire on March 9, 2014, unless extended. PLO No. 7032 is incorporated herein by reference. The Bureau of Land Management (BLM) filed a petition/application to extend PLO No. 7032 for an additional 20-year period. PLO No. 7032 withdrew approximately 2,560 acres of public land from settlement, sale, location, or entry under the general land laws, including location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, to protect a Paleoindian site known as Mesa Site. A complete description, along with all other records pertaining to the extension application, can be examined in the BLM Alaska State Office at the address shown above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way, interagency, or cooperative agreement would not adequately protect the Federal interest in the Mesa Site.

There are no suitable alternative sites available that could be substituted for the above described public land, since the Mesa Site is unique.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address indicated above. 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. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3120).

Authority: 43 CFR 2310.3–1(b).

Robert L. Lloyd,

Supervisor, Lands, Realty, and Title Transfer Program, Division of Alaska Lands.

[FR Doc. 2012–20036 Filed 8–14–12; 8:45 am]

BILLING CODE 1410–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–THRI–10649; 1960–726]

Minor Boundary Revision at Theodore Roosevelt Inaugural National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460*l*–9(c)(1), the boundary of Theodore Roosevelt Inaugural National Historic Site is modified to include Tract 01–102 containing 0.15 of an acre. The tract is located in Erie County, New York, immediately adjacent to the boundary of the Theodore Roosevelt Inaugural National Historic Site. The boundary revision is depicted on Map No. 442/107,298 dated October 13, 2011. The map is available for inspection at the following locations: National Park Service, Northeast Region Land Resources Division, New England Office, 115 John Street, 5th Floor, Lowell, Massachusetts 01852, and National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: National Park Service, Deputy Realty Officer, Northeast Region Land Resources, New England Office, 115 John Street, 5th Floor, Lowell, Massachusetts 01852, at (978) 970–5260.

DATES: The effective date of this boundary revision is August 15, 2012.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460*l*–9(c)(1) provides that after notifying the House Committee on Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees were notified of this boundary revision by letters signed by the Secretary on May 24, 2012. This boundary revision will restore the Wilcox property to the boundaries that existed at the time of President Theodore Roosevelt's inauguration in 1901 and will improve the visitor experience by enhancing the historic integrity, visibility and appearance of the site.

Dated: June 14, 2012.

Dennis R. Reidenbach,

Regional Director, Northeast Region.

[FR Doc. 2012–20021 Filed 8–14–12; 8:45 am]

BILLING CODE 4312–23–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–698 (Enforcement Proceeding)]

Certain DC–DC Controllers and Products Containing Same; Notice of Commission Decision To Review in Part an Enforcement Initial Determination Finding a Violation of the August 13, 2010 Consent Order; Request for Written Submissions Regarding Certain Issues Under Review and Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an enforcement initial determination (''EID'') of the presiding administrative law judge (''ALJ'') finding a violation of the August 13, 2010 consent order by respondent uPI Semiconductor Corp. (''uPI'') of Hsinchu, Taiwan, and is requesting written submissions regarding certain issues under review and remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this enforcement proceeding on September 6, 2011, based on an enforcement complaint filed by Richtek Technology Corp. of Hsinchu, Taiwan and Richtek USA, Inc. of San Jose, California (collectively ''Richtek''). 76 FR 55109–10. The complaint alleged violations of the August 13, 2010 consent orders issued in the underlying investigation by the continued practice of prohibited activities such as directly importing, offering for sale, and selling for importation into the United States and by knowingly aiding, abetting, encouraging, participating in, or inducing importation and sale in the United States by third parties of DC–DC controllers or products containing the same that infringe one or more of U.S. Patent Nos. 7,315,190 (''the '190 patent''); 6,414,470 (''the '470 patent''); and 7,132,717 (''the '717 patent''); or that contain or use Richtek's asserted trade secrets. The Commission's notice of institution of enforcement proceedings named uPI and Sapphire Technology Limited (''Sapphire'') of Shatin, Hong Kong as respondents.

On April 11, 2012, the Commission issued notice of its determination not to review the ALJ's ID terminating the enforcement proceeding as to Sapphire based on a settlement agreement.

On June 8, 2012, the ALJ issued his EID finding a violation of the August 13, 2010 consent order by uPI. He found that, after issuance of the consent order, certain uPI DC–DC controllers and downstream products containing uPI accused controllers had been imported and/or sold in the United States without Richtek's consent or agreement. He made infringement findings as to certain claims of the '190, the '470, and the '717 patents. He found no misappropriation of Richtek's asserted trade secrets in violation of the consent order with respect to uPI's products developed after the consent order issued. Also, he recommended enforcement measures for uPI's violation that included: (1) Modifying the consent order to clarify that the order applies (and has always applied) to all uPI affiliates; and (2) imposing a civil penalty of $750,000 against uPI. On June 25, 2012, uPI and Richtek each filed a petition for review of the EID; and on July 3, 2012, Richtek, uPI, and the Commission investigative attorney each filed a response to the opposing party's petition.

Upon review of the record and considering the parties' filings, the Commission has determined to review the EID in part. Specifically, the Commission has determined to review the following: the ALJ's finding of infringement of the '470 patent; the ALJ's finding of infringement of the '190 patent; and the ALJ's determination that uPI violated the August 13, 2010 consent order on 75 days.

On review, with respect to violation of the August 13, 2010 consent order, the parties are requested to submit briefing limited to the following issues:

(1) What is the test for determining whether uPI violated the following consent order prohibition: ''Knowingly aid, abet, encourage, participate in, or induce importation into the United States, the sale for importation into the United States, or the sale, offer for sale, or use in the United States after importation,'' without the consent or agreement of Richtek, any DC–DC controllers or products containing same which infringe the asserted patent claims or are made using Richtek's trade secrets? August 13, 2010 consent order, ¶ A.

(2) Explain whether or not there is a factual basis in the evidentiary record that proves that a violation of the ''knowingly aid, abet, encourage, participate in, or induce'' prohibition of paragraph A of the August 13, 2010 consent order has occurred in view of the evidence of uPI's efforts to comply with the consent order.

(3) Explain whether or not there is a factual basis in the evidentiary record that proves uPI has violated the following consent order prohibition: ''import into the United States, sell for importation into the United States, or sell or offer for sale in the United States after importation'' without the consent or agreement of Richtek of any DC–DC controllers or products containing same which infringe the asserted patent claims or contain Richtek's asserted trade secrets. August 13, 2010 consent order, ¶ A.

(4) Please provide, based upon evidence in the record, the specific date(s) upon which an importation or sale in the United States occurred for

each line item of the table on page 121 of the EID.

In addressing these issues, the parties are requested to make specific reference to the evidentiary record and to cite relevant legal authority. The Commission does not request additional briefing at this time on any other issues under review.

In connection with the final disposition of this investigation, the Commission may revoke the consent order and issue an order excluding the subject articles from entry into the United States. *See* 19 CFR 210.75(b)(4)(iii). Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

If the Commission contemplates revoking the consent order and issuing an exclusion order, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission were to revoke the consent order and issue an exclusion order, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review that specifically address the Commission's questions set forth in this notice. The submissions should be concise and thoroughly referenced to the record in this investigation. The parties to the enforcement proceeding, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, and such submissions should address the enforcement measures recommended by the ALJ relating to remedy. The complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration in the event it determines to revoke the consent order. Complainant is also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 23, 2012. Reply submissions must be filed no later than the close of business on August 30, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 CFR 210.4(f). Submissions should refer to the investigation number (''Inv. No. 337–TA–698'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–46 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46.

By order of the Commission.

Issued: August 9, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–19990 Filed 8–14–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 9, 2012, a proposed Consent Decree signed by the plaintiff, the United States of America, and the defendants, Icicle Seafoods, Inc., Evening Star, Inc., Icicle Acquisition Subsidiary, LLC, and LFK, Inc., was lodged with the United States District Court for the Western District of Washington.

In this lawsuit the United States sought civil penalties and injunctive relief for defendants' alleged violations of regulations promulgated by the Environmental Protection Agency under Title VI of the Clean Air Act, specifically regulations set forth in 40 CFR part 82, Subpart F. The regulations govern the management and control of ozone-depleting substances used as refrigerants in defendants' vessels and other fish processing facilities. The Consent Decree requires the defendants to pay a civil penalty of $430,000.00 and to perform injunctive relief. To ensure the defendants' compliance going forward, the Consent Decree will require the defendants to institute a comprehensive leak inspection and repair program for all of their vessels and operating facilities. To mitigate the effects of past violations, the Consent Decree specifies that the defendants will repair leaks in the refrigeration systems of certain vessels and facilities when the leak rate would result in losing more than 20% of the refrigerant charge during a 12-month period. This is a stricter standard than is required by the leak repair regulations.

For thirty (30) days after this notice, the Department of Justice will receive comments related to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. The comments should refer to *United States* v. *Icicle Seafoods, Inc.,* No. 12–cv–1349 (W.D. Wash.), DOJ No. 90–5–1–1–07395/2.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@udoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree library by mail, please enclose a check in the amount of $10.00 (40 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–20047 Filed 8–14–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sai Wentum, M.D.; Decision and Order

On March 20, 2012, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Sai Wentum, M.D. (Registrant), of Nashville, Tennessee. GX 4. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration FW2529672, which authorizes him to dispense controlled substances as a practitioner, on the ground that Registrant does not possess authority under the laws of the State of Tennessee, the State in which he is registered with DEA, to dispense controlled substances. *Id.* at 1 (citing 21 U.S.C. 824(a)(3)). In particular, the Show Cause Order alleged that Registrant is currently unlicensed to practice medicine and without authority to handle controlled substances in the State of Tennessee as a result of ''actions by the Tennessee Board of Medical Examiners.'' [1] *Id.*

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement regarding the matters of fact and law asserted in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43(a), (c), (d), & (e)). On March 28, 2012, the Show Cause Order was served on Respondent by certified mail addressed to him at his registered locations in both Nashville, Tennessee and Detroit, Michigan. GX 5 & GX 6. Since the date of service of the Show Cause Order, thirty days have now passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

Findings

Registrant is the holder of DEA Certificate of Registration FW2529672, which authorizes him to dispense controlled substances in schedules II through V, as a practitioner, at the registered address of 213 W. Maplewood Lane, Suite 400, Nashville, Tennessee 37207. GX 1. His registration has an expiration date of May 31, 2014. *Id.*

By letter dated June 7, 2011, the Tennessee Board of Medical Examiners (hereinafter, the Board) notified Registrant that the Board had voted to deny his application for licensure as a medical doctor and that his temporary license, previously issued on April 1, 2011, had been rescinded. GX 2. After Registrant appealed the Board's decision to deny his application for licensure, the Board issued an Agreed Order on November 16, 2011. GX 3. The Board found that Registrant is not qualified to obtain a Tennessee medical license because he is not a graduate of a board-approved international medical school, as required by Tenn. Code Ann. § 63–6–207 and Tenn. Comp. R. & Reg. Rule 0880–02–04. *Id.* at 3. Registrant admitted the truth of the allegations contained in the Agreed Order. *Id.* at 2. Accordingly, the Board denied Registrant's application for licensure as a medical doctor. *Id.* at 4. I therefore find that Registrant currently lacks authority under Tennessee law to dispense controlled substances.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances.'' 21 U.S.C. 824(a)(3). Moreover, DEA has long held that a practitioner must be currently authorized to handle controlled substances in the jurisdiction in which he practices in order to maintain a DEA registration. *See Gerald T. Hanley,* 53 FR 5658 (1988). This rule derives from the text of the CSA, which defines ''the term 'practitioner' [to] mean[] a * * * physician * * * or other person licensed, registered or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice,'' 21 U.S.C. 802(21), and which imposes, as a condition for obtaining a registration, that a practitioner be authorized to dispense controlled substances under the laws of the State in which he practices. *See id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'').

As these provisions make plain, possessing authority under state law to dispense controlled substances is an essential condition for holding a DEA registration. *See David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). DEA has therefore consistently held that revocation is the appropriate sanction whenever a practitioner has lost his state authority to dispense controlled substances. *James L. Hooper,* 76 FR 71371, 71372–73 (2011) (collecting cases), *pet. for rev. denied Hooper* v. *Holder,* No. 11–2351, 2012 WL 2020079 (4th Cir. June 6, 2012) (unpublished).

Because Registrant no longer has authority to dispense controlled substances in the State in which he holds his DEA registration, he is not entitled to maintain his DEA registration. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). Accordingly, Registrant's registration will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FW2529672, issued to Sai Wentum, M.D., be, and it hereby is, revoked. This Order is effective September 14, 2012.

Dated: July 31, 2012

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–20008 Filed 8–14–12; 8:45 am]

BILLING CODE 4410–09–P

[1] The Show Cause Order does not specifically set forth the actions allegedly taken by the Tennessee Board of Medical Examiners. *See* GX 4, at 1.

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m., August 21, 2012.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on eight original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: August 13, 2012.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2012–20178 Filed 8–13–12; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Tuesday, August 21, 2012.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of May 17, 2012 minutes; reports from the Chairman, the Commissioners, and senior staff; Mental Health Docket update, Workforce Development Program Overview, and Short-Term Intervention for Success (SIS) update.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: August 13, 2012.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2012–20179 Filed 8–13–12; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Extension and Reorganization of Information Collections: OMB Control No. 1205–0466, ETA Form 9141, Application for Prevailing Wage Determination; ETA Form 9142, Application for Temporary Employment Certification, and OMB Control No. 1205–0404 ETA–9144, H–2A Certification Letter With Notification, 1205–NEW1; and 1205–NEW2

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

ETA is soliciting comments concerning the collection of data in the following information collections: Office of Management and Budget (OMB) Control Number 1205–0466, currently containing ETA Form 9141, *Application for Prevailing Wage Determination,* and ETA Form 9142, *Application for Temporary Employment Certification,* which expires on October 31, 2012; and OMB Control Number 1205–0404 containing the H–2A Certification Letter known as ETA–9144. The Department proposes to divide 1205–0466 into three distinct information collection requests (ICRs), segregated by program, and to merge 1205–0404 into the collection that remains in 1205–0466. Specifically, the Department proposes to separate out ETA Form 9141, *Application for Prevailing Wage Determination* into its own collection, 1205–NEW2. The Department also proposes to divide the ETA Form 9142, *Application for Temporary Employment Certification,* into two collections, one to remain as 1205–0466 and to contain the ETA Form 9142A, *H–2A Application for Temporary Employment Certification and Appendix A,* along with other information collection burdens for the H–2A Temporary Labor Certification Program, while the second would be 1205–NEW1 and contain ETA Form 9142B, *H–2B Application for Temporary Employment Certification and Appendix B,* along with all the information collection burdens for the H–2B Temporary Labor Certification Program. Once separated, 1205–0404, which contains one additional information collection burden for the H–2A program, would be merged with 1205–0466 so that most of the H–2A information collection burdens can be accounted for in one ICR.

In order to meet its responsibilities under the Immigration and Nationality Act (INA), the Department needs to extend the existing collection of information pertaining to programs requiring prevailing wage determinations and the H–2A and H–2B programs for temporary employment certification in agricultural and non-agricultural occupations. The Department is utilizing this opportunity to separate the collections into more manageable and easy to understand ICRs.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 15, 2012.

ADDRESSES: Submit written comments to William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Room C–4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2768. Email at *ETA.OFLC.Forms@dol.gov* subject line: ETA Form 9141, ETA Form 9142A and ETA Form 9142B. A copy of the proposed ICRs can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

On April 8, 2012, OMB approved changes to the 1205–0404 and 1205–0466 ICRs in conjunction with recent rulemaking resulting in a final rule published on February 21, 2012 (the 2012 H–2B Final Rule). 77 FR 10038. The 1205–0404 ICR was merged with the 1205–0466 ICR and then the 1205–0466 ICR was extended until April 30, 2015. However, a lawsuit was brought

in Federal court in the Northern District of Florida, Pensacola Division, against the Department and an order was issued on April 26, 2012 by the court enjoining the Department from implementing the 2012 H–2B Final Rule. (*Bayou Lawn & Landscape Services, et al.* v. *Hilda L. Solis, et al.,* 12–cv–00183–RV–CJK.) Therefore, the Department sought and received an emergency extension of the two older ICRs that were in effect prior to the rulemaking so that these forms could continue to be used.

The emergency extension of the old forms and information collections expires October 31, 2012. Emergency extensions require agencies to publish a **Federal Register** Notice and seek comments during the extended validity period. The Department is utilizing this opportunity to make these ICRs more manageable and more transparent to the regulated community by dividing 1205–0466 into several ICRs and once again merging the information contained in 1205–0404 into 1205–0466.

The information collections are required by sections 203(b)(3); 212(a)(5)(A); 212(m), (n), (t); 214(c); and 218 of the INA (8 U.S.C. 1153(b)(3); 1182(a)(5)(A); 1182(m), (n), (t); 1184(c); and 1188); 8 CFR 214.2(h); and 20 CFR 655.135(c) and (d). The INA and applicable DHS regulations require the Secretary of Labor (Secretary) to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) for the purpose of performing certain skilled or unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers similarly employed. The Secretary must also certify that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before an employer may petition for temporary or permanent skilled or unskilled foreign workers, it must submit a request for certification to the Secretary containing the elements prescribed by the INA and regulations, which differ depending on the visa program under which the labor is sought. In addition, before the Secretary can certify that wages for U.S. workers have not been adversely affected, she must ensure that the employer offers the required wage to the foreign workers in accordance with the Department's applicable labor certification regulations. To ensure that U.S. workers are given as much time as possible to apply for agricultural work, the agricultural employer is required to inform the SWA if the H–2A workers will be leaving their home country later than the third day preceding the employer's first date of need.

II. Review Focus

The Department is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New Collections and Extension with revisions.

Title(s): ETA Form 9141, *Application for Prevailing Wage Determination;* ETA Form 9142A, H–2A *Application for Temporary Employment Certification;* ETA Form 9142B, H–2B *Application for Temporary Employment Certification;* and ETA–9144, H–2A Certification Letter with Notification.

OMB Control Number: 1205–0466; 1205–0404; 1205–NEW1; 1205–NEW2.

Affected Public: Businesses or other for-profits, not-for-profits, farms, States, local governments, and tribal governments.

Form(s): Forms ETA–9141, ETA–9142A, ETA–9142B, and ETA–9144.

Total Annual Respondents: 474,181.

Annual Frequency: On occasion.

Total Annual Responses: 1,071,442.

Average Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 458,350.

Total Annual Burden Cost for Respondents: $1,529,370.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: Signed on this 3rd day of August 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–19944 Filed 8–14–12; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506, as follows (ending times are approximate):

Literature (application review): In room 716. This meeting will be closed.

DATES: September 11–13, 2012. September 11th—9 a.m. to 6:30 p.m. EDT; September 12th and 13th, 9 a.m.–5 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: August 10, 2012.

Kathy Plowitz-Worden

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2012–20003 Filed 8–14–12; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork

Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 77 FR 30330, and three comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and 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.* Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (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 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

The following are the comments, and associated responses, resulting from the May 20, 2012 **Federal Register** notice (77 FR 30330):

Comment: One institutional Financial Official (FO) questioned why it was the responsibility of the FO to submit the Completion Report and not the responsibility of the Coordinating Official (CO). The FO was concerned that the information gathered by them may not be accurate.

Response: The CO and FO will have access to the same Completion Report module. The CO and FO can add information to the Completion Report, but only the FO can submit the Completion Report which is tied to the Annual Report. The CO can assist the FO in obtaining accurate information regarding the entries to the Completion Report. The module has a General Comments section in which the CO can communicate with the FO regarding the Completion Report update, as well as alerting the FO of when the report is ready for their submission. The FO will certify the information, electronically sign and date the report, and submit the report.

Comment: One institutional CO requested clarification of the ''current degree status''. Did it mean type of degree (*i.e.* MS or Ph.D.), or years remaining until conferral of degree, or something else. The CO stated that knowledge of the specific information requested by NSF is necessary in order for them to obtain the needed personnel to perform the work, as that institution has a significant number of Fellows.

Response: The Completion Report menu will have four columns to populate, (1.) Degree Status, (2.) Graduate Program Start Date, (3.) Degree Sought, and (4.) Graduation Date. The Degree Status will have four pull-down choices- In Progress, Graduated, Transferred, or Withdrawn. The Graduate Program Start Date will require a month and a year. The Degree Sought will be pre-populated from the Degree Sought field of the Fellow's Annual Activity Report. The Graduation Date is required only if the Fellow's degree status is marked as ''Graduated''.

Comment: One institutional CO asked how to report Fellows who are on an approved leave (medical or military deferral), as ''In Progress'' does not fit their situation.

Response: All Fellows within the Fellowship Period will be defined as In Progress in the Completion Report. The Fellowship Period is a five-year Fellowship Period which includes three Tenure Years of Financial Support (Stipend and institutional Cost-of-Education Allowance) and two Reserve Years. In addition, Forfeit, Medical Deferral, or Military Deferral are included in the Fellowship Period.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Graduate Research Fellowship Program.

OMB Control No.: 3145–NEW.

Abstract: The purpose of the NSF Graduate Research Fellowship Program is to help ensure the vitality and diversity of the scientific and engineering workforce in the United States. The program recognizes and supports outstanding graduate students who are pursuing research-based master's and doctoral degrees in fields within NSF's mission. The GRFP provides three years of support, to be used during a five-year fellowship period, for the graduate education of individuals who have demonstrated their potential for significant achievements in science and engineering research.

The Graduate Research Fellowship Program uses several sources of information in assessing and documenting program performance and impact. These sources include reports from program evaluation, the GRFP Committee of Visitors, and data compiled from the applications. In addition, GRFP Fellows submit annual activity reports to NSF.

The GRFP Completion report is proposed as a new component of the annual reporting submitted by each GRFP institution to NSF. The Completion Report and the existing Program Expense Report will comprise the GRFP Annual Report. GRFP institutions will certify the current status of all GRFP Fellows at the institution. The current status will be reported as either In Progress, Graduated, Transferred, or Withdrawn. For Graduate Fellows with Graduated status, the graduation date is a required reporting element. Collection of this information will allow the program to obtain information on the current status of Fellows, the number and/or percentage of Graduate Fellowship recipients who complete a science or engineering graduate degree, and an estimate of time to degree completion. The report must be certified and submitted by the institution's designated Financial Official (FO) annually.

Use of the Information: The completion report data will provide the GRFP with accurate Fellow information regarding their completion of their graduate programs. The data will be used by NSF in its assessment of the impact of its investments in the GRFP, and will inform its program management.

Respondents: Academic institutions with GRFP Fellows.

Estimated Number of Annual Respondents: One from each of the 228 current GRFP institutions.

Burden on the Public: Overall average time will be 15 minutes per Fellow (6886 Fellows) for a total of 1722 hours for all institutions with Fellows. An estimate for institutions with 12 or fewer Fellows will be 1 hour, institutions with 12–48 fellows will be 4 hours, and institutions over 48 Fellows will be 10 hours.

Dated: August 10, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–20060 Filed 8–14–12; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Notice of Change in Student's Status, RI25–15

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0042, Notice of Change in Student's Status. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

DATES: Comments are encouraged and will be accepted until October 15, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Retirement Services, Union Square Room 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler, or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 25–15, Notice of Change in Student's Status, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Notice of Change in Student's Status.

OMB: 3206–0042.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,500.

Estimated Time per Respondent: 20.

Total Burden Hours: 833.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2012–20063 Filed 8–14–12; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Application for Death Benefits Under the Federal Employees Retirement System (SF 3104); and Documentation and Elections in Support of Application for Death Benefits When Deceased was an Employee at the Time of Death (SF 3104B)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0172, Application for Death Benefits under the Federal Employees Retirement System and Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on March 21, 2012 at Volume 77 FR 16567 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

DATES: Comments are encouraged and will be accepted until September 14, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: SF 3104, Application for Death Benefits under the Federal Employees Retirement System, is needed to collect information so that OPM can pay death benefits to the survivor of Federal employees and annuitants. SF 3104B, Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death, is needed for deaths in service so that survivors can make the needed elections regarding health benefits, military service and payment of the death benefit.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Death Benefits under the Federal Employees Retirement System and Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death.

OMB: 3206–0172.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 3104 = 12,734 and SF 3104B = 4,017.

Estimated Time per Respondent: 60.

Total Burden Hours: 16,751.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2012–20062 Filed 8–14–12; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Annuity Supplement Earnings Report, RI 92–22

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0194, Annuity Supplement Earnings Report. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

DATES: Comments are encouraged and will be accepted until October 15, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Retirement Services, Union Square 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 92–22, Annuity Supplement Earnings Report, is used each year to obtain the earned income of Federal Employees Retirement System (FERS) annuitants receiving an annuity supplement. The annuity supplement is paid to eligible FERS annuitants who are not retired on disability and are not yet age 62. The supplement approximates the portion of a full career Social Security benefit earned while under FERS and ends at age 62. Like Social Security benefits, the annuity supplement is subject to an earnings limitation.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Annuity Supplement Earnings Report.

OMB Number: 3206–0194.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 13,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 3,250.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–20061 Filed 8–14–12; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from June 1, 2012, to June 30, 2012.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes annually a consolidated listing of all Schedule A, B and C appointing authorities current as of June 30 as a notice in the **Federal Register.**

Schedule A

No changes to report for Schedule A authorities during June 2012.

Schedule B

No changes to report for Schedule B authorities during June 2012.

Schedule C

The following Schedule C appointing authorities were approved during June 2012.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of Communications	Speech Writer	DA120084	6/11/2012
Department of Commerce	Office of the Under Secretary	Director of Congressional and Public Affairs.	DC120122	6/8/2012
	National Oceanic and Atmospheric Administration.	Director, External Affairs	DC120123	6/13/2012
	Office of White House Liaison	Deputy Director, Office of White House Liaison.	DC120126	6/15/2012
Department of Defense	Office of the Assistant Secretary of Defense, Global Strategic Affairs.	Special Assistant(Cyber Policy)	DD120075	6/1/2012
	Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics.	Special Assistant, Acquisition, Technology and Logistics.	DD120080	6/20/2012
Department of Education	Office of the Secretary	Special Assistant	DB120067	6/8/2012
	Office of the Deputy Secretary	Special Assistant	DB120061	6/26/2012
	Office of Legislation and Congressional Affairs.	Special Assistant	DB120070	6/26/2012
Department of Energy	Office of the Secretary	Special Assistant	DE120094	6/1/2012
	Office of the General Counsel	Senior Advisor	DE120104	6/19/2012
	Office of Nuclear Energy	Special Advisor	DE120105	6/21/2012
	Office of Public Affairs	Deputy Press Secretary for Regional and Online Outreach.	DE120108	6/21/2012
	Office of Nuclear Energy	Special Assistant	DE120106	6/26/2012
Department of Health and Human Services.	Administrator for Children, Youth and Families/Office of Commissioner.	Special Assistant	DH120114	6/1/2012
	Office of Intergovernmental and External Affairs.	Special Assistant	DH120117	6/1/2012
	Office of Intergovernmental and External Affairs.	Deputy Director for Regional Outreach.	DH120109	6/13/2012
	Office of the Assistant Secretary for Public Affairs.	Director for Health Care Initiatives	DH120111	6/13/2012
	Office of the Assistant Secretary for Legislation.	Confidential Assistant	DH120112	6/13/2012
Department of Homeland Security	Office of the Chief of Staff	Special Assistant	DM120131	6/1/2012
	Federal Emergency Management Agency.	Director of Legislative Affairs	DM120132	6/8/2012
	Office of the Assistant Secretary for Public Affairs.	Director of Special Projects	DM120134	6/8/2012
	Office of the General Counsel	Confidential Assistant	DM120139	6/22/2012
Department of Housing and Urban Development.	Office of Congressional and Intergovernmental Relations.	General Deputy Assistant Secretary for Congressional and Intergovernmental Relations.	DU120040	6/22/2012
Department of the Interior	Secretary's Immediate Office	Press Assistant	DI120051	6/1/2012
	Office of Congressional and Legislative Affairs.	Special Assistant, Office of Congressional and Legislative Affairs.	DI120052	6/19/2012
	Secretary's Immediate Office	Deputy Director, Office of Intergovernmental Affairs and Director of Latino Affairs.	DI120049	6/26/2012
Department of Labor	Office of Congressional and Intergovernmental Affairs.	Legislative Officer	DL120065	6/25/2012
	Office of Congressional and Intergovernmental Affairs.	Chief of Staff	DL120058	6/27/2012
Office of Management and Budget	Office of the Director	Confidential Assistant	BO120027	6/7/2012
Office of National Drug Control Policy.	Intergovernmental Public Liaison	Associate Director, Office of Intergovernmental Public Liaison.	QQ120003	6/22/2012
Office of Personnel Management	Congressional and Legislative Affairs.	Deputy Director	PM120017	6/26/2012
Selective Service System	Office of the Director	Executive Officer/Chief of Staff	SS120003	6/11/2012
Small Business Administration	Office of Entrepreneurial Development.	Senior Advisor for Entrepreneurial Development.	SB120024	6/19/2012
Department of State	Bureau of Conflict and Stabilization Operations.	Special Assistant	DS120087	6/1/2012
	Office of the Under Secretary for Civilian Security, Democracy and Human Rights.	Special Advisor for Global Youth Issues.	DS120091	6/1/2012
Department of Transportation	Secretary	Special Assistant for Scheduling and Advance.	DT120066	6/15/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Public Affairs	Deputy Press Secretary	DT120070	6/19/2012
Department of the Treasury	Assistant Secretary for Financial Stability.	Senior Advisor	DY120093	6/1/2012
	Assistant Secretary, Economic Policy.	Deputy Assistant Secretary for Microeconomic Analysis.	DY120094	6/1/2012
	Assistant Secretary, Public Affairs	Spokesperson	DY120097	6/19/2012
	Assistant Secretary, Public Affairs	New Media Specialist	DY120098	6/21/2012

The following Schedule C appointing authorities were revoked during June 2012.

Agency	Organization	Position title	Authorization No.	Vacate date
Commission on Civil Rights	Commissioners	Special Assistant to the Commissioner.	CC070004	6/22/2012
Department of Agriculture	Office of the Under Secretary for Research, Education and Economics.	Special Assistant	DA110068	6/2/2012
	Farm Service Agency	Special Assistant, Deputy Chief of Staff.	DA120017	6/16/2012
Department of Commerce	Office of White House Liaison	Deputy Director, Office of White House Liaison.	DC110025	6/16/2012
	Economics and Statistics Administration.	Special Assistant	DC110124	6/29/2012
Department of Education	Office of the Under Secretary	Confidential Assistant	DB110017	6/1/2012
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB110061	6/16/2012
	Office of Innovation and Improvement.	Special Assistant	DB120010	6/16/2012
	Office of the Secretary	Special Assistant	DB120046	6/17/2012
	Office for Civil Rights	Senior Counsel	DB120050	6/18/2012
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB120013	6/22/2012
Department of Energy	Office of Assistant Secretary for Policy and International Affairs.	Special Assistant	DE090159	6/1/2012
	Office of the American Recovery and Reinvestment Act.	Special Assistant	DE090117	6/22/2012
Department of Health and Human Services.	Office of the Assistant Secretary for Public Affairs.	Surrogate Scheduler (Health Reform).	DH100148	6/2/2012
	Administrator for Children, Youth and Families/Office of Commissioner.	Confidential Assistant to the Commissioner, Administration for Children, Youth and Families.	DH090276	6/2/2012
	Office of the Assistant Secretary for Legislation.	Confidential Assistant, Office of the Assistant Secretary for Legislation (Health Reform).	DH100162	6/16/2012
	Office of the Assistant Secretary for Public Affairs.	Special Assistant (Health Reform)	DH100180	6/16/2012
	Office of Intergovernmental and External Affairs.	Deputy Director, Office of Intergovernmental and External Affairs.	DH110119	6/16/2012
	Office of the Assistant Secretary for Children and Families.	Associate Commissioner	DH090174	6/30/2012
Department of Homeland Security	Office of Assistant Secretary for Legislative Affairs.	Director of Strategy and Planning	DM090335	6/2/2012
	Office of the Chief of Staff	Special Assistant to the Deputy Chief of Staff.	DM100198	6/2/2012
	Office of the Chief of Staff	Special Assistant to the Deputy Chief of Staff.	DM110141	6/2/2012
	Office of the Assistant Secretary for Public Affairs.	Director of Special Projects	DM120026	6/16/2012
Department of Housing and Urban Development.	Office of Congressional and Intergovernmental Relations.	General Deputy Assistant Secretary for Congressional and Intergovernmental Relations.	DU100083	6/16/2012
Department of Labor	Office of the Secretary	Special Assistant	DL090131	6/15/2012
Department of State	Office of Global Food Security	Staff Assistant	DS100031	6/2/2012
Department of the Interior	Office of Congressional and Legislative Affairs.	Special Assistant	DI110037	6/2/2012
	Bureau of Land Management	Special Assistant	DI090178	6/20/2012
	Secretary's Immediate Office	Deputy Director, Intergovernmental Affairs.	DI110022	6/30/2012

Agency	Organization	Position title	Authorization No.	Vacate date
Department of Transportation	Administrator	Special Assistant to the Administrator.	DT090102	6/16/2012
Federal Deposit Insurance Corporation.	Federal Deposit Insurance Corporation.	Director for Public Affairs	FD070003	6/17/2012
Office of the Secretary of Defense	Office of the Assistant Secretary of Defense, International Security Affairs.	Special Assistant to the Deputy Assistant Secretary of Defense for African Affairs.	DD110119	6/1/2012
	Office of the Assistant Secretary of Defense, Global Strategic Affairs.	Special Assistant to the Deputy Assistant Secretary of Defense for Cyber and Space Policy.	DD100019	6/2/2012
	Office of the Secretary	Confidential Assistant	DD070270	6/8/2012
	Washington Headquarters Services	Defense Fellow	DD090297	6/15/2012
	Washington Headquarters Services	Defense Fellow	DD100188	6/15/2012
	Office of the Assistant Secretary of Defense, International Security Affairs.	Special Assistant to the Deputy Assistant Secretary of Defense (Middle East).	DD090215	6/16/2012
Small Business Administration	Office of Congressional and Legislative Affairs.	Congressional and Legislative Affairs Assistant.	SB100046	6/15/2012
	Office of Government Contracting and Business Development.	Director of Hubzone	SB100039	6/16/2012

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–20057 Filed 8–14–12; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: August 15, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 8, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 41 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–39, CP2012–47.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–19975 Filed 8–14–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date* August 15, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 8, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 40 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–38, CP2012–46.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–19976 Filed 8–14–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67619; File Nos. SR–NYSEArca–2012–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes Amending NYSE Arca, Inc. Rule 3.2 and NYSE Arca Equities, Inc. Rule 3.2, Which Concern the Nomination and Election of Fair Representation Directors

August 8, 2012.

I. Introduction

On June 18, 2012, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes to amend NYSE Arca Rule 3.2 and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') Rule 3.2, which concern the nomination and election of fair representation directors. The proposed rule changes were published for comment in the **Federal Register** on June 28, 2012.[4] The Commission received no comment letters on the proposal.

II. Background

NYSE Arca Rule 3.2 sets forth a process for the nomination and selection of fair representation directors for the NYSE Arca Board of Directors

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 67244 (June 22, 2012), 77 FR 38701 (SR–NYSEArca–2012–67) (the ''Notice'').

(''NYSE Arca Board''),[5] and NYSE Arca Equities Rule 3.2 sets forth a similar process for the nomination and selection of fair representation directors for the NYSE Arca Equities Board of Directors (''Equities Board'').[6] The Exchange states that the proposed rule changes would streamline those processes and make them more similar to the processes used by the New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'').[7]

A. Amendments to NYSE Arca Rules

Nominating Committee Composition and Appointment

The Exchange proposes to amend NYSE Arca Rules 3.2(b)(2)(A) and (B) to change the composition of, and the appointment process for, its nominating committee for fair representation directors (the ''Nominating Committee'').[8] The Exchange proposes to eliminate the public member position from the Nominating Committee and eliminate the nomination process for the Nominating Committee members and instead have the NYSE Arca Board appoint the members of the Nominating Committee. The Exchange represents that this change is consistent with the fair representation nominating committee composition and selection processes followed by NYSE and NYSE MKT.[9]

Petition Process for Fair Representation Director Nominees

The Exchange also proposes to amend the petition process for fair representation director nominees to the NYSE Arca Board.[10] Under proposed NYSE Arca Rule 3.2(b)(2)(C)(ii), the Nominating Committee would publish the names of the nominees to the NYSE Arca Board on an ''Announcement Date'' each year sufficient to accommodate the nomination and petition processes of the proposed rule. OTP Holders in good standing would be permitted to nominate additional eligible candidates if a written petition of at least 10 percent of OTP Holders in good standing were submitted to the Nominating Committee within two weeks after the Announcement Date. The Exchange states that these proposed revisions would make the petition process more efficient and consistent with the petition process for fair representation directors for NYSE and NYSE MKT.[11]

The proposed rule would also require each petition candidate to include a completed questionnaire used to gather information concerning director candidates, and the Nominating Committee would determine whether the petition candidate is eligible to serve on the NYSE Arca Board (including whether such person was free of a statutory disqualification under Section 3(a)(39) of the Act), and such determination would be final and conclusive. The questionnaire would be a new requirement to assist the Nominating Committee in reaching its decision. According to the Exchange, such a questionnaire is already used by NYSE and NYSE MKT and having the Nominating Committee determine the qualifications of a petition candidate is similar to the NYSE and NYSE MKT processes.[12]

Contested Nominations

Currently, in the event that the OTP Holder position is nominated by the Nominating Committee pursuant to a petition by the OTP Holders, and there are two or more nominees for the NYSE Arca Board, the Nominating Committee must submit the contested nomination to the OTP Holders for selection. The nominee for the NYSE Arca Board selected by the most OTP Holders is submitted by the Nominating Committee to the NYSE Arca Board. The Exchange proposes to amend this rule to simplify it and provide that if the number of nominees exceeds the number of available seats, the Nominating Committee would submit the contested nomination to the OTP Holders for selection, and the nominee for the NYSE Arca Board receiving the most votes of OTP Holders would be submitted by the Nominating Committee to the NYSE Arca Board.[13]

B. Amendments to NYSE Arca Equities Rules

Nominating Committee Composition and Appointment

Current NYSE Arca Equities Rules 3.2(b)(2)(A) and (B) are similar to the counterpart NYSE Arca rules described above.[14] As proposed with respect to NYSE Arca Rules 3.2(b)(2)(A) and (B), and consistent with current NYSE and NYSE MKT processes described above, the Exchange proposes to amend NYSE Arca Equities Rule 3.2 to eliminate the public member position from the Equities Nominating Committee and eliminate the nomination process for the Equities Nominating Committee members and instead have the Equities Board appoint the members of the Equities Nominating Committee.

Petition Process for Fair Representation Director Nominees

The Exchange also proposes to amend the petition process for fair representation director nominees to the Equities Board. Under proposed NYSE Arca Equities Rule 3.2(b)(2)(C)(ii), the Equities Nominating Committee would publish the names of the nominees on an ''Announcement Date'' each year sufficient to accommodate the nomination and petition processes as set forth in the proposed rule.[15] ETP

[5] Under Section 3.02(a) of the Bylaws of NYSE Arca (''NYSE Arca Bylaws'') the NYSE Arca Board must have 8–12 directors, and at least 20 percent of the directors must be individuals nominated by trading permit holders, with at least one director nominated by the Equities Trading Permit Holders (''ETP Holders'') of NYSE Arca Equities, and at least one director nominated by the Options Trading Permit Holders (''OTP Holders'') of the Exchange. In addition, at least 50 percent of the directors must be directors who represent the public. The exact number of the directors nominated by the ETP Holders and OTP Holders is determined from time to time by the NYSE Arca Board, subject to the percentage restrictions described above.

Similar to the NYSE Arca Bylaws, Section 3.02(a) of the Bylaws of NYSE Arca Equities, Inc. (the ''Equities Bylaws'') requires that at least 20 percent of the Equities Board, but no fewer than two directors, must be nominees of the nominating committee of the Equities Board (''Equities Nominating Committee'') selected in accordance with NYSE Arca Equities Rule 3.2. Under Section 3.02(e) of the Equities Bylaws, the Equities Board nominates directors for election at the annual meeting of stockholders, and such nominations must comply with Section 3.02(a) of the Equities Bylaws and NYSE Arca Equities Rules. A 10-member Equities Board must include two nominees of the Equities Nominating Committee. *See* Section 3.02(e) of the Equities Bylaws.

[6] NYSE Arca Equities, Inc. is a wholly-owned subsidiary of NYSE Arca.

[7] *See* Notice, *supra* note 4 at 38701.

[8] Currently, the Nominating Committee has seven members, consisting of six OTP Holders and one member of the public.

[9] *See* Notice, *supra* note 4 at 38702.

[10] Under current NYSE Arca Rule 3.2(b)(2)(C)(ii), the Nominating Committee publishes the names of the fair representation director nominees to the NYSE Arca Board no later than 65 days prior to the expiration of the term of its directors. OTP Holders may submit a petition to add another nominee within 10 business days after the Nominating Committee publishes its nominees to the NYSE Arca Board. If a written petition of the lesser of 35 OTP Holders or 10 percent of OTP Holders in good standing is submitted to the Nominating Committee, such person also is nominated by the Nominating Committee.

[11] *See* Notice, *supra* note 4 at 38702.

[12] *See id.*

[13] The Exchange also proposes to amend this rule to explicitly provide that OTP Holders would be afforded no less than 20 calendar days to submit their votes on a confidential basis.

[14] Under current NYSE Arca Equities Rule 3.2(b)(2)(A), the Equities Nominating Committee has seven members, consisting of six ETP Holders and one member of the public.

[15] Under current NYSE Arca Equities Rule 3.2(b)(2)(C)(ii), the Equities Nominating Committee publishes the names of the fair representation director nominees no later than 65 days prior to the expiration of the term of the directors. ETP Holders may submit a petition to add another nominee within 10 business days after the Equities Nominating Committee publishes its nominees. If a

Continued

Holders in good standing would be permitted to nominate additional eligible candidates if a written petition of at least 10 percent of ETP Holders in good standing were submitted to the Equities Nominating Committee within two weeks after the Announcement Date. Each petition candidate would be required to include a completed questionnaire used to gather information concerning director candidates, and the Equities Nominating Committee would determine whether the petition candidate is eligible to serve on the Equities Board or NYSE Arca Board (including whether such person was free of a statutory disqualification under Section 3(a)(39) of the Act), and such determination would be final and conclusive. According to the Exchange, the proposed rule change would amend this process to align it with the NYSE and NYSE MKT processes and proposed NYSE Arca Rule 3.2(b)(2)(C) for the same reasons stated above with respect to proposed NYSE Arca Rule 3.2.[16]

Contested Nominations

Currently, in the event that there is a contested nomination, the Equities Nominating Committee submits such contested nomination to the ETP Holders, which may select two nominees for the contested seat on the Equities Board and one nominee for the contested seat on the NYSE Arca Board. The Exchange proposes to simplify this text to align it with the proposed changes to NYSE Arca Rule 3.2(b)(2)(C)(iii).[17]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,[19] which, among other things, requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer. The Commission also notes that the proposed rule changes are substantially similarly to the nominating and fair representation policies and procedures of NYSE and NYSE MKT. Furthermore, the proposed rule changes would not amend the fair representation requirements as set forth in Sections 3.02 of both the NYSE Arca Bylaws and the Equities Bylaws.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[20] that the proposed rule changes (SR–NYSEArca–2012–67), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19958 Filed 8–14–12; 8:45 am]

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written petition of at least 10 percent of ETP Holders in good standing is submitted to the Equities Nominating Committee within 45 days preceding the expiration of the current term, such person is also nominated by the Equities Nominating Committee.

[16] *See* Notice, *supra* note 4 at 38703.

[17] Current NYSE Arca Equities Rule 3.2(b)(2)(C)(ii) does not describe the voting process. The proposed rule changes would amend the rule to explicitly provide that ETP Holders would be afforded no less than 20 calendar days to submit their votes on a confidential basis. The Exchange also proposes certain technical and conforming changes.

[18] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(3).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67639; File No. SR–NASDAQ–2012–071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Amend Rule 4758(a)(1)(A) To Reflect a Change in NASDAQ's Routing Functionality

August 10, 2012.

I. Introduction

On June 14, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 4758(a)(1)(A) to reflect a change in NASDAQ's routing functionality. The proposed rule change was published for comment in the **Federal Register** on June 29, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description

NASDAQ has proposed to amend Rule 4758(a)(1)(A) to reflect a change in NASDAQ's order routing functionality, which will allow routable orders[4] to simultaneously execute against NASDAQ available shares and route to other markets for execution of the remainder of the order. Currently, when a routable order is entered into the NASDAQ system, the NASDAQ book is first checked for available shares. If such an order is not filled or filled only partially, then the order is routed to away markets with the best bid or best offer pursuant to NASDAQ's System routing table.[5]

NASDAQ stated that it has observed that upon partial execution of a routable order at NASDAQ market participants often react to the order by cancelling their orders on other markets and entering new orders at inferior prices. This occurs because the current process directs the order to NASDAQ before attempting to access available liquidity at other markets and thereby allows market participants to react to the execution (an effect known as ''market impact'' or ''information leakage''). As a consequence, the available shares at the away market are no longer available, resulting in a lower likelihood of successfully accessing liquidity on away markets (*i.e.,* the ''fill rate'') and an increased likelihood of ultimately receiving an execution at an inferior price. As such, NASDAQ has proposed to address this by changing how the routing process will operate.

NASDAQ has proposed to execute routable orders against the NASDAQ book for available shares and to simultaneously route any remaining shares to additional markets. Specifically, under the proposed change a routable order would attempt to execute against the available shares at

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67246 (June 25, 2012), 77 FR 38875 (''Notice'').

[4] For purposes of this filing, a ''routable order'' is an order entered into the NASDAQ System, which is not of an Order Type precluded from routing to other markets.

[5] The ''System routing table'' is the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Rule 4758(a)(1)(A).

NASDAQ and, to the extent the order would not be filled by such available shares, NASDAQ would simultaneously route the remainder of the order to other venues, according to NASDAQ's System routing table, in a manner consistent with Regulation NMS (*i.e.,* satisfying all displayed protected quotes). In the event that the amount of shares on other markets is insufficient to completely fill the order, or the order fails to completely execute, NASDAQ would then post the remaining shares on the NASDAQ book or cancel the remaining shares per the routed order's instructions. NASDAQ believes that this simultaneous execution against NASDAQ available shares and routing to other venues' shares will avoid the deleterious effect of market impact discussed above and result in overall faster and better executions of its members' routable orders.

NASDAQ noted, in its proposal, that it is not changing the execution and routing sequence of all routable orders. The TFTY, SAVE, SOLV, and CART orders are designed to execute serially as part of their strategies, which is generally to reduce the blended fees associated with transacting on multiple markets. As such, simultaneous routing of such orders would not result in a better execution in terms of the goals of these routable order types.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be 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 a national market system, and, in general, to protect investors and the public interest.

The proposed rule change meets these requirements in that it promotes efficiency in the market, and should, as represented by NASDAQ, increase the likelihood that a routable order will receive faster and better executions. As a result, the proposed rule change could improve NASDAQ's ability to effectively process routable orders. For these reasons, the Commission believes that the proposed change is consistent with Section 6(b)(5) of the Act.[8]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASDAQ–2012–071) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67635; File No. SR–NYSEMKT–2012–34]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the NYSE Amex Options Fee Schedule Regarding a Rebate for Order Flow Providers, an Increase in the Service Fee Applicable to Market Makers, and a Fee for Market Maker Executions of SPY Options

August 9, 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 July 31, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 proposes to [sic] amend the NYSE Amex Options Fee Schedule to (i) Establish a rebate for Order Flow Providers (''OFPs'')[4] based on the average daily volume (''ADV'') of Customer[5] Electronic Complex Orders[6] executed by an OFP on the Exchange; (ii) increase the service fee applicable to NYSE Amex Options Market Makers[7] that have reached the monthly Market Maker fee cap, from $0.05 per contract to $0.10 per contract for executions of Electronic Complex Orders; and (iii) establish a fee of $0.10 per contract for NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. 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, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) Establish a rebate for OFPs based on the ADV of Customer Electronic Complex Orders executed by an OFP on the Exchange; (ii) increase the service fee applicable to NYSE Amex Options Market Makers that have reached the monthly Market Maker fee cap, from $0.05 per contract to $0.10 per contract for executions of Electronic Complex Orders; and (iii) establish a fee of $0.10 per contract for NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. The Exchange proposes to implement these changes on August 1, 2012.

The Exchange proposes to establish a rebate for OFPs based on the ADV of Customer Electronic Complex Orders

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An OFP is any ATP Holder that submits, as agent, orders to the Exchange. *See* Rule 900.2NY(57).

[5] The term ''Customer'' means an individual or organization that is not a broker-dealer. *See* Rule 900.2NY(18).

[6] *See* Rule 980NY.

[7] References herein to Market Makers include Specialists and e-Specialists. *See* Rule 900.2NY(76). *See also* Rule 927.4NY.

executed by an OFP on the Exchange. An OFP would be required to execute an ADV of at least 35,000 contracts of Customer Electronic Complex Orders to qualify for the rebate. The proposed volume tiers and the corresponding per contract rebate would be as follows: [8]

Customer electronic complex order ADV tiers	Rebate per contract for all customer electronic complex orders (retroactive to the first contract traded during the month)
35,000 to 49,999	$0.04
50,000 to 69,999	0.06
70,000 to 109,999	0.08
110,000 and greater	0.10

In addition to this proposed rebate, the Exchange proposes to amend the rate for the incremental service fee charged to NYSE Amex Options Market Makers that have reached the monthly fee cap for their executions of Electronic Complex Orders. Currently, and as described in endnote 5 to the Fee Schedule, NYSE Amex Options Market Maker fees are aggregated and capped at $350,000 per month. An incremental service fee of $0.01 per contract applies for NYSE Amex Options Market Maker volume executed in excess of 3,500,000 contracts per month. However, the incremental service fee is $0.05 for an execution of an Electronic Complex Order. The Exchange is proposing to increase this incremental service fee for Electronic Complex Order executions from $0.05 per contract to $0.10 per contract.

The Exchange is also proposing to implement a fee of $0.10 per contract for any NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. NYSE Amex Options Market Makers that execute Electronic Complex Orders in options other than SPY would continue to pay the existing transaction charges, as provided in the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal to establish a tiered rebate for OFPs that execute the requisite ADV of Customer Electronic Complex Orders on the Exchange is reasonable because it is designed to attract additional Customer Electronic Complex Order volume to the Exchange, which would benefit all participants by offering greater price discovery, increased transparency and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes that the rates proposed for the rebate are reasonable because they would incentivize OFPs to submit Customer Electronic Complex Orders to the Exchange and would result in a rebate that is reasonably related to an exchange's market quality that is associated with higher volumes. The Exchange also believes that the proposed thresholds for the tiers are reasonable because they will reward OFPs with a greater rebate when they bring a larger number of orders to the Exchange. The Exchange also believes that retroactively applying the highest rebate amount achieved by an OFP to all Customer Electronic Complex Orders executed by the OFP during the calendar month is reasonable because it will increase the incentive for OFPs to achieve a higher tier. Moreover, the Exchange believes that the proposed rebate is equitable and not unfairly discriminatory because it will be available to all OFPs that execute Customer Electronic Complex Orders on the Exchange on an equal and non-discriminatory basis. The Exchange also believes that the proposed rebate is reasonable because it is not new or novel. Instead, the Exchange understands that at least two other option exchanges currently offer a rebate specifically for Customer Complex Order volume.[10]

The Exchange believes that the proposal to increase the capped NYSE Amex Market Maker service fee from $0.05 to $0.10 for executions of Electronic Complex Orders is reasonable because the capped NYSE Amex Options Market Maker would still be incentivized to continue to trade sufficient volume once it has achieved the fee cap, thereby lowering the effective rate for its executions over the course of the month. Specifically, the Exchange believes that the proposed new rate is reasonable because, among other things, the new rate would be factored into an NYSE Amex Options Market Maker's overall transaction costs, including the rebate proposed herein for Customer Electronic Complex Order executions. The Exchange also believes that the proposed new rate is reasonable because the anticipated increase in Customer Electronic Complex Order volume that would result from the proposed rebate will directly benefit capped NYSE Amex Options Market Makers, as they will have an increased opportunity to trade. The Exchange believes that the increased opportunity to trade reasonably balances the proposed increase in the service fee, which would continue to be less than the rate that the NYSE Amex Options Market Maker

[8] The Exchange proposes that the highest rebate amount achieved by an OFP for the calendar month would apply retroactively to all Customer Electronic Complex Orders executed by the OFP during such calendar month.

[9] 15 U.S.C. 78f(b)(4).

[10] For example, the International Securities Exchange ("ISE") Schedule of Fees provides that a rebate of $0.32 per contract per leg will apply to Priority Customer Complex orders in the Select Symbols (excluding SPY) that trade with non-Priority Customer orders in the ISE Complex Order book; provided, however, that a greater rebate shall apply to an ISE Member during a calendar month that achieves a certain ADV of Priority Customer Complex Order contracts executed during the calendar month, as follows: if the ISE Member achieves an ADV of 75,000 Priority Customer Complex Order contracts, the rebate amount shall be $0.33 per contract per leg; if the ISE Member achieves an ADV of 125,000 Priority Customer Complex Order contracts, the rebate amount shall be $0.34 per contract per leg; and if the ISE Member achieves an ADV of 250,000 Priority Customer Complex Order contracts, the rebate amount shall be $0.35 per contract per leg. Similar to the Exchange's proposal, the highest rebate amount achieved by the ISE Member for a calendar month applies retroactively to all contracts executed by the ISE Member during such month. *See* endnote 3 [sic] of the ISE Schedule of Fees. Similarly, NASDAQ OMX PHLX ("PHLX") provides a rebate for Customer Complex Orders. *See* Section I, Part B of the PHLX Pricing Schedule.

would pay if it was not capped. In this regard, the Exchange believes that the proposed rate is reasonable because it would continue to incentivize NYSE Amex Options Market Makers to trade sufficient volume to achieve the fee cap. The Exchange believes that this aspect of the proposed rule change is equitable and not unfairly discriminatory because it will apply to all capped NYSE Amex Options Market Makers on an equal and non-discriminatory basis.

The Exchange believes that the proposal to charge $0.10 per contract to all NYSE Amex Options Market Makers that execute SPY options as part of an Electronic Complex Order is reasonable because the rate is set at a level that the Exchange believes may attract greater Market Maker participation in the Exchange's Complex Order Book for SPY options. Additionally, the Exchange notes that NYSE Amex Options Market Makers will continue to be assessed Marketing Charges when they execute SPY options as part of an Electronic Complex Order where the contra party is a Customer. The Marketing Charges for SPY options are currently $0.25 per contract, which, when coupled with the proposed $0.10 per contract rate, results in a $0.35 per contract charge. This all-in cost is reasonable because it is comparable to what other participants on the Exchange will pay under the proposal, ranging from $0.20 per contract for firms trading electronically to $0.43 per contract for non-NYSE Amex Options Market Makers trading electronically. In this regard, the fee is equitable and not unfairly discriminatory, particularly when considering the quoting obligations that NYSE Amex Options Market Makers must satisfy. The Exchange notes that Market Maker quotes establish the Exchange's best bid and best offer, which serve as an important price discovery tool for participants that enter Complex Orders into the Exchange's Complex Order Book. Accordingly, the Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory. The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all NYSE Amex Options Market Makers on an equal and non-discriminatory basis.

For these reasons, the Exchange believes that the entire proposal is reasonable, equitable and not unfairly discriminatory. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–34 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–NYSEMKT–2012–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–34 and should be submitted on or before September 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19986 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67634; File No. SR–NYSEMKT–2012–33]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Changes to the NYSE Amex Options Fee Schedule Relating to the Monthly Cost for an Amex Trading Permit and Monthly Fees Relating to Trading in Premium Products

August 9, 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 August 1, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') to (i) change the monthly cost for an Amex Trading Permit (''ATP''), and (ii) introduce a group of 10 issues, to be known as Premium Products, that will carry a monthly fee for certain NYSE Amex Options Market Makers that trade them. 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, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE MKT proposes to amend the Fee Schedule to (i) change the monthly cost for an ATP, and (ii) introduce a group of 10 issues, to be known as Premium Products, that will carry a monthly fee for certain NYSE Amex Options Market Makers that trade them.

Specifically, the Exchange proposes to amend the monthly cost for ATPs that are required by an NYSE Amex Options Market Maker in creating their appointment for those options for which they want to submit electronic quotations to the Exchange. Presently, each ATP that a NYSE Amex Options Market Maker has during a month carries a charge of $5,000 per month. The Exchange will adopt a sliding scale for ATPs as follows:

1st ATP = $8,000
2nd ATP = $6,000
3rd ATP = $5,000
4th ATP = $4,000
5th ATP = $3,000

For additional ATPs beyond five, the monthly fee will be $2,000 for each ATP.

A Floor Market Maker [4] will be permitted to purchase up to two ATPs at a lower rate of $5,000 for each such ATP (i.e., lower than the $8,000 or $6,000 monthly rate for the first and second ATP, respectively, set forth above) if certain requirements are met. Specifically, the lower fees will only be available if the Floor Market Maker has no more than two ATPs in any month and transacts at least 75% of its Market Maker volume manually, by public outcry (excluding Qualified Contingent Cross and Strategy Executions). Such a Floor Market Maker may continue to submit quotes electronically through an auto-quoting device, subject to the requirement to execute at least 75% of contract volume via public outcry.

Concurrent with this change, the Exchange will introduce a list of 10 Premium Products that will carry a monthly fee for any NYSE Amex Options Market Maker who transacts in them, except those Floor Market Makers subject to the lower ATP fees previously described. The proposed fee is $1,000 per product traded with a monthly cap of $7,000. The 10 Premium Products are SPY, AAPL, IWM, QQQ, BAC, EEM, GLD, JPM, XLF, and VXX. Any change to the list of Premium Products would be done through a fee filing.

The proposed changes will be operative on August 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [5] of the Act, in general, and Section 6(b)(4) [6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The proposed changes in NYSE Amex Options Market Maker ATP fees from a fixed fee of $5,000 per month per permit to a sliding scale that ranges from $8,000 per month for the first ATP to $2,000 per month for each additional ATP beyond five ATPs is reasonable, equitable, and not unfairly discriminatory for the following reasons. First, the proposed change is both reasonable and equitable when viewed in light of the cost for a market maker on at least two other exchanges to obtain a sufficient number of trading permits or rights to quote a similar number of names. For example, on the International Securities Exchange (''ISE''), a Competitive Market Maker (''CMM'') is required to have nine CMM Trading Rights in order to quote all issues on the ISE.[7] CMM Trading Rights on the ISE are fixed in terms of the number that are available and must be bought or leased from someone who possesses them. The last sale for a CMM Trading Right on the ISE was for $1,550,000 on November 30, 2009.[8] As of July 17, 2012, there appeared to be a total of seven CMM Trading Rights available for sale or lease, which are two fewer than the number required to quote all issues on the ISE.[9] The Exchange estimates that the monthly lease cost is somewhere in the range of $7,000 to $11,000 per month.[10] Assuming the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Floor Market Maker is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and provides quotations (A) manually, by public outcry, and (B) electronically through an auto-quoting device. *See* Rule 900.2NY(29).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* ISE Rule 802(c) and *http://www.ise.com/WebForm/viewPage.aspx?categoryId=563.*

[8] *See* Secondary Market Sales after May 1, 2002, *available at http://www.ise.com/WebForm/viewPage.aspx?categoryId=222.*

[9] *See http://www.ise.com/WebForm/viewPage.aspx?categoryId=563.*

[10] Based on the last reported sale of $1,550,000, if one uses five-year straight-line depreciation, the monthly cost of a single CMM Trading Right is $25,833. In light of this, coupled with decreased volumes in the industry, the Exchange believes that a lease rate of between $7,000 and $11,000 per month per CMM Trading Right is a reasonable

best-case scenario of being able to obtain a lease at the most favorable price for each of the nine CMM Trading Rights needed to quote every name on ISE, the Exchange estimates that it would cost a market maker approximately $63,000 per month in rights fees. By comparison, under the proposal, a NYSE Amex Options Market Maker will pay $23,000 per month in rights fees to quote the entire universe of names on the Exchange.

A further comparison may be made with the Chicago Board Options Exchange (''CBOE'') and the trading permit costs for a market maker to create an assignment there. CBOE has a sliding scale for Trading Permit Holders (''TPHs'') who are acting as market makers. The sliding scale is $5,500 per month for permits one to 10, $4,000 per month for permits 11 to 22 [sic], and $2,500 for permits 21 and higher. The discounted permit rates of $4,000 and $2,500 are only available to TPHs who commit to a full year of that number of permits. In configuring an appointment on CBOE, a market maker incurs an appointment cost for each option in its appointment based on various tiers.[11] The appointment cost can be calculated using an ''appointment calculator'' provided to TPHs.[12] The Exchange used the appointment calculator dated July 10, 2012 to calculate the cost to construct a market maker appointment consisting of all 2,196 options traded on the Exchange as of June 30, 2012. The result shows that a total of 28 trading permits would be required to create a market maker appointment on CBOE that consisted of all options traded on the Exchange.[13] Assuming the best-case scenario in which a market maker committed to a full year of utilizing 28 permits, a market maker on CBOE would pay $115,000 per month in permit costs or $92,000 more per month than an NYSE Amex Options Market Maker would pay under the proposal.

The Exchange further notes that by virtue of the limited number of CMM Trading Rights available for sale or lease on ISE and the Class Quoting Limit (''CQL'') [14] on CBOE, the barriers to entry on both exchanges for a market maker are quite high in that it may not be possible to create a market maker appointment of one's choosing due to either a lack of available CMM Trading Rights on ISE or a CQL on CBOE that has been reached. Under the Exchange's proposal, no such artificial barrier to entry will be created, and coupled with the relatively lower monthly cost to acquire ATPs, the proposal is both reasonable and equitable.

A second aspect of the proposed change in the monthly ATP cost that needs to be considered is that while a total of four ATPs are required under the proposal to quote all options on the Exchange, in practice some participants have more than the maximum number of ATPs required. Typically this is done for accounting or risk management purposes within an ATP Holder's organization. Under the proposal, the fifth ATP is reduced in cost from $5,000 per month to $3,000 per month, and ATPs beyond the fifth ATP are reduced in cost from $5,000 per month to $2,000 per month. This is both reasonable and equitable given that acquiring additional ATPs beyond the four required to quote all options on the Exchange is likely to be for purely accounting or risk management purposes. As this aspect of the proposal applies to all NYSE Amex Options Market Maker ATPs equally, it is not unfairly discriminatory.

The Exchange's proposal to adopt lower fees for certain Floor Market Makers who purchase an ATP is reasonable, equitable, and not unfairly discriminatory for the following reasons. First, the Exchange believes that open or public outcry markets serve an important role in the price discovery process that benefits all participants on the Exchange and in the marketplace. Presently, there are 41 entities that have 109 market making ATPs on the Exchange, ranging from one ATP to 10 ATPs per entity. Of these 41 entities, 10 have Floor Market Makers, with six of the 10 having one Floor Market Maker each. In light of its desire to foster the price discovery process via public outcry markets, the Exchange believes that it is reasonable and equitable to establish a slightly discounted ATP fee for Floor Market Makers, which will be $5,000 per month for each ATP, with a maximum of two such ATPs (or $10,000 in that case). By contrast under the proposal, an NYSE Amex Options Market Maker will pay $8,000 for the first ATP and $6,000 for the second ATP, for a total of $14,000. To ensure the Floor Market Maker ATP is being used to foster price discovery in public outcry markets, the Exchange has proposed to limit the availability of the lower fees to those Floor Market Makers who conduct at least 75% of their contract volume manually, by public outcry, and who do not utilize more than two ATPs for market making in a given month. The latter restriction is designed to encourage participation in public outcry from smaller broker-dealers looking to begin market making, which will encourage competition. The proposal is not unfairly discriminatory as it is available to any NYSE Amex Options Market Maker who wishes to contribute to public outcry markets such that at least 75% of its contract volumes are executed in public outcry. Those NYSE Amex Options Market Makers who have no desire to engage in public outcry trading are not being disadvantaged, as public outcry trading cannot take place at prices that are inferior to the electronic quotations submitted by an NYSE Amex Options Market Maker.

The Exchange's proposal to adopt a Premium Product Issues List and the associated monthly NYSE Amex Options Market Maker Fee of $1,000 per issue with a $7,000 per month cap is reasonable, equitable, and not unfairly discriminatory for the following reasons. The Exchange does not limit the number of participants who may act as market makers, either electronically or in public outcry. This is in direct contrast to, for example, the ISE and CBOE, which have a limited number of CMM Trading Rights and a CQL, respectively. The result is that the Exchange has more than sufficient liquidity in the most active options on the Exchange as evidenced by its market share in those options. By adopting a Premium Product Issues List, which is comprised of many of the most active issues on the Exchange, and a corresponding monthly fee applicable to NYSE Amex Options Market Makers who transact in any of those names, the Exchange intends to encourage meaningful market maker participation in these names.

For example, presently it would be permissible within Exchange rules for an NYSE Amex Options Market Maker to send in a quote that is $1 bid for one contract, offered at $6 for one contract in the at-the-money series in SPY. Such a quote, while permitted under Exchange rules, has an extremely low probability of ever being executed against, although if it were to happen, it quite likely would be viewed as somewhat of a ''windfall'' from the market maker's profitability perspective. Such a quote, however, is also required to be processed by the Exchange, despite the low probability of the quote ever being executed against. By adopting the Premium Product Issues List and the associated monthly fee applicable to NYSE Amex Options

estimate and has confirmed that estimate informally with market participants.

[11] *See* CBOE Rule 8.3.

[12] The appointment calculator is *available at https://www.cboe.org/publish/SeatCalculator/SeatCalcUpdated071012.xlt.*

[13] Of the 2,196 options traded on the Exchange as of June 30, 2012, 2,000 were trading on the CBOE, and it would require 28 TPHs to create an appointment in those names.

[14] *See* CBOE Rule 8.3A.

Market Makers who transact in a Premium Product issue, ''less meaningful'' quoting activity as described above should become less common given the economics of the proposal. Furthermore, the notion of ''premium'' or ''select'' pricing for a subset of issues traded on an Exchange is not novel. For example, both the ISE and Nasdaq OMX PHLX exchanges feature ''select'' symbol lists on their respective fee schedules.[15]

The Premium Product Issues List will apply to all NYSE Amex Options Market Makers equally, except for those market makers who are eligible for the newly proposed reduced Floor Market Maker ATP fees, one of the requirements of which is that they achieve 75% or more of their volumes in public outcry. Excluding market makers who are subject to these lower fees is in keeping with the Exchange's stated goals of continuing to foster price discovery through public outcry while at the same time reducing the instances of ''less meaningful'' electronic quotes in the more liquid names that comprise the Premium Product Issues List. For these reasons, the Exchange believes that the proposal is reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[16] of the Act and subparagraph (f)(2) of Rule 19b–4[17] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–33 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—NYSEMKT–2012–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–33 and should be submitted on or before September 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19985 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* ISE Fee Schedule dated July 6, 2012, available at *http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf,* and the Nasdaq OMX PHLX Fee Schedule dated July 2, 2012, available at *http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67633; File No. SR–Phlx–2012–104]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing in Select Symbols and Multiply Listed Options

August 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that, on August 1, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section I of the Exchange's Pricing Schedule titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' to amend various Select Symbols,[3] increase certain Complex Order[4] Rebates for Adding Liquidity, eliminate the Complex Order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rebates and fees in Section I apply to certain Select Symbols which are listed in Section I of the Pricing Schedule.

[4] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

Fees for Adding Liquidity, increase certain Complex Order Fees for Removing Liquidity, and eliminate a discount applicable to Customer Complex Order Rebates, and make technical corrections to ''Part B. Complex Order'' in Section I. The Exchange also proposes to amend Section II of the Pricing Schedule titled ''Multiply Listed Options Fees'' to decrease the threshold amount which entitles members to a reduced Firm Electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options and amend the Customer Rebate Program.[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 the proposed rule change is to amend Sections I and II of the Exchange's Pricing Schedule. Specifically, the Exchange is proposing to amend Section I of the Pricing Schedule to amend the Select Symbols, increase certain Complex Order Rebates for Adding Liquidity, eliminate Complex Order Fees for Adding Liquidity, increase certain Complex Order Fees for Removing Liquidity, eliminate a discount applicable to options overlying SPDR S&P 500 (''SPY''),[6] and to make other technical amendments. The Exchange is proposing to amend Section II of the Pricing Schedule to decrease the threshold to receive the reduced Firm Electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options and to amend the Customer Rebates Program. Each amendment will be described in more detail below.

Section I Amendments

Select Symbols

The Exchange displays a list of Select Symbols in its Pricing Schedule at Section I, which symbols are subject to the rebates and fees in that section. The Exchange is proposing to add the following symbol to the list of Select Symbols in Section I of the Pricing Schedule: Arena Pharmaceuticals Inc. (''ARNA''). The Exchange is also proposing to delete the following symbols from the list of Select Symbols in Section I of the Pricing Schedule: Dell Inc. (''DELL''), and Newmont Mining Corp. (''NEM'' (collectively, ''Proposed Deleted Symbols''). These Proposed Deleted Symbols would be subject to the rebates and fees in Section II of the Pricing Schedule entitled ''Multiply Listed Options Fees.'' The Exchange believes that by adding and removing the above-referenced symbols in Section I of the Pricing Schedule the Exchange will continue to attract order flow to the Exchange.

Complex Order Fees

The Exchange is proposing to increase the Complex Order Rebates for Adding Liquidity from $0.00 to $0.10 for Specialists,[7] Market Makers,[8] Firms, Broker-Dealers and Professionals.[9] Additionally, the Exchange is proposing to eliminate Complex Order Fees for Adding Liquidity. The Exchange believes that these fees are no longer necessary and proposes to uniformly eliminate them for all market participants. The Exchange believes that the increase to the Complex Order Rebates for Adding Liquidity coupled with the elimination of the Complex Order Fees for Adding Liquidity will incentivize market participants to transact additional Complex Order flow on the Exchange.

The Exchange also is proposing to increase the Complex Order Fees for Removing Liquidity from $0.36 to $0.39 per contract for Specialists and Market Makers, and to increase the Complex Order Fees for Removing Liquidity from $0.38 to $0.39 per contract for Firms, Broker-Dealers, and Professionals in Select Symbols. The Exchange is proposing to increase these fees in order that it may offer additional rebates for Customer Complex Orders as described below.

Eliminating SPY Discount

The Exchange is proposing to remove the additional incentive for Customers who transact Complex Orders in SPY. The Exchange currently pays a Customer Complex Order Rebate for Adding Liquidity of $0.32 per contract and a Customer Complex Order Rebate for Removing Liquidity of $0.06 per contract, but specifies that the Exchange will increase the Customer Complex Order Rebates for Adding and Removing Liquidity by $0.01 per contract for transactions in SPY. Therefore, with this change, Customer Complex Orders that add liquidity in SPY would receive a rebate of $0.32 per contract and Customer Complex Orders that remove liquidity in SPY receive a rebate of $0.06 per contract. The Exchange is eliminating the discount in lieu of offering a higher rebate for Customer Complex Orders as described below.

Technical Amendments

The Exchange also is proposing to make technical corrections in Section I, Parts A and B, by replacing ''$0.00'' with ''N/A'' for several categories. This is not a change to these fees, but a technical amendment since in these instances ''N/A'' better reflects that a fee is not relevant for this category rather than ''$0.00'' which simply reflects that no fee is currently being charged for this category.

Section II Amendments

Firm Volume Discount

The Exchange desires to continue to incentivize Firms to transact electronic orders, by providing Firms with an opportunity to pay lower fees in Section II of the Pricing Schedule by offering a lower threshold in order for Firms to receive a reduction of electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options. Currently, Firms must have a volume greater than 750,000 electronically delivered contracts in a month to obtain

[5] Section II includes options overlying equities, ETFs, ETNs, indexes, and HOLDRs which are Multiply Listed.

[6] SPY is one of the Select Symbols subject to the rebates and fees in Section I. A complete list of Select Symbols is included in Section I of the Pricing Schedule.

[7] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[8] A ''Market Maker'' includes Registered Options Traders (''ROTs'') (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders (''SQTs'') (*See* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (''RSQTs'') (*See* Rule 1014(b)(ii)(B)).

[9] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

the lower fees.[10] The Exchange proposes to lower the threshold volume from 750,000 to 600,000 electronically delivered contracts in a month. The Exchange believes that the lower threshold would enable a greater number of Firms to take advantage of lower fees.

Customer Rebate Program

The Exchange recently adopted a Customer Rebate Program to incentivize members to transact Customer orders on the Exchange. Such liquidity benefits all market participants through increased liquidity. At this time, the Exchange proposes to expand its Customer Rebate Program by adding another Category of orders eligible for rebates, ''Category D.'' This new category will pay rebates to members executing electronically delivered Customer Complex Orders in Select Symbols that add liquidity.[11] The Exchange proposes to pay the following rebates:

Average daily volume threshold	Rebate per contract categories			
	Category A	Category B	Category C	Category D
0 to 49,999 contracts in a month	$0.00	$0.00	$0.00	$0.00
50,000 to 99,999 contracts in a month	0.07	0.10	0.10	0.00
Over 100,000 contracts in a month	0.09	0.12	0.10	0.05

The Customer Rebate Program consists of three tiers. The first tier (0 to 49,999 contracts in a month) and the second tier (50,000 to 99,999 contracts in a month) do not earn any rebates defined in Category D. The third tier (over 100,000 contracts in a month) pays a rebate as an additional incentive for member organizations to route Customer Complex Order flow to the Exchange for execution ($0.05 per contract). The $0.05 will be in addition to the Customer Complex Order Rebate for Adding Liquidity (currently $0.32 per contract) for a total rebate of $0.37 for Category D.

As is currently the case with Category A, B, and C, each tier or ''Threshold'' is calculated by totaling all applicable Multiply-Listed Options electronically delivered Customer Orders, except electronic Qualified Contingent Cross Orders (eQCC Orders). The Exchange proposes to amend the calculation of the Average Daily Volume Threshold by totaling Customer volume in Multiply Listed Options that are electronically delivered and executed, except QCC Orders as defined in Exchange Rule 1080(o), and including electronically delivered and executed Customer Complex Orders in Select Symbols (''Threshold Volume'').[12] The Exchange is proposing to add the word ''executed'' for clarity and account for the Category D rebates in the Threshold Volume Calculation. The Exchange believes that the addition of Category D will attract additional Customer order flow to the Exchange for the benefit of all market participants.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Select Symbols

The Exchange believes that it is reasonable to remove and add the proposed symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that the fees and rebates in Section I will attract order flow for the newly added Select Symbol ARNA. Also, the Exchange believes that applying the fees in Section II of the Pricing Schedule to the Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove and add the proposed symbols because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Pricing Schedule, which would not include the proposed deleted symbols, but would include the proposed added symbol. Also, all market participants would be uniformly subject to the fees in Section II, which would include the Proposed Deleted Symbols, but would not include the proposed added symbol.

Complex Order Fees

The Exchange believes its proposal to increase the Complex Order Rebates for Adding Liquidity from $0.00 to $0.10 for Specialists,[15] Market Makers, Firms, Broker-Dealers, and Professionals is reasonable because the Exchange is proposing to incentivize market participants to transact additional order flow on the Exchange.

The Exchange believes that its proposal to increase the Complex Order Rebate for Adding Liquidity is equitable and not unfairly discriminatory because the Exchange is proposing to uniformly increase the rebates among market participants, except Customers. Today, Customers receive a Complex Order Rebate for Adding Liquidity of $0.32 per contract. Customers would continue to receive a higher rebate already because Customer order flow brings unique benefits to the market which benefits all participants through increased liquidity.

The Exchange believes its proposal to eliminate Complex Order Fees for Adding Liquidity is reasonable because market participants would be incentivized to transact additional orders on the Exchange at no cost when adding liquidity. The Exchange believes its proposal to eliminate Complex Order Fees for Adding Liquidity is equitable and not unfairly discriminatory because no market participant would be assessed a Complex Order Fee for Adding Liquidity.

The Exchange believes its proposal to increase the Complex Order Fees for Removing Liquidity from $0.36 to $0.39 per contract for Specialists and Market

[10] Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options will be reduced to $0.13 per contract for a given month provided that a Firm has volume greater than 600,000 electronically delivered contracts in a month (''Electronic Firm Fee Discount'').

[11] This rebate will be in addition to any rebate that the member receives in Section I of the Pricing Schedule.

[12] Rebates will be paid on Threshold Volume in a given month, excluding electronically delivered Customer volume associated with PIXL as is the case today and Customer Complex Orders that remove liquidity.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

Makers, and to increase it from $0.38 to $0.39 per contract for Firms, Broker-Dealers, and Professionals in Select Symbols is reasonable because the Exchange is proposing to utilize these increased fees to fund the proposed new rebates in the Customer Rebate Program. The Exchange believes that the increased Complex Order Fees for Removing Liquidity are equitable and not unfairly discriminatory because all market participants, except Customers will be assessed a uniform fee to remove liquidity. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to not assess Customers a Complex Order Fee to Remove Liquidity because Customer order flow brings unique benefits to the market. Also, Customers are not assessed a Complex Order Fee for Removing Liquidity, as is the case on competing exchanges.[16]

Eliminating SPY Discount

In addition, the Exchange believes that removing the additional $0.01 per contract incentive, when transacting electronically delivered SPY orders, in addition to the Customer Complex Order Rebates for Adding and Removing Liquidity in SPY is reasonable because the Exchange is proposing to incentivize members to transact Customer Complex Orders by offering an incentive in the Customer Rebate Program. The Exchange believes that the elimination of the SPY discount is equitable and not unfairly discriminatory because no market participants would be entitled to this discount.

Technical Amendments

The Exchange's proposal to make technical corrections in Section I, Parts A and B, by replacing ''$0.00'' with ''N/A'' for several categories is reasonable, equitable, and not unfairly discriminatory because this is not a change to these fees, but a clarification that in these instances ''N/A'' better reflects that a fee is not relevant for this category rather than using ''$0.00'' which simply reflects that no fee is currently being charged for this category.

Firm Volume Discount

The Exchange's amendment to the volume threshold applicable to the Electronic Firm Fee Discount in Section II of the Pricing Schedule is reasonable because the Exchange believes that the lower threshold would allow a greater number of Firms to obtain the lower pricing when they meet the volume threshold.

The Exchange's amendment to the volume threshold applicable to the Electronic Firm Fee Discount in Section II of the Pricing Schedule is equitable and not unfairly discriminatory because it provides all Firms with an opportunity to pay lower fees through the lower volume threshold of 600,000 electronically delivered contracts in a month rather than the current threshold of 750,000. Today Firms that transact 750,000 electronically delivered contracts in a month are entitled to reduce their Firm electronic Options Transaction Charges in Penny Pilot ($0.40 per contract) and non-Penny Pilot ($0.45 per contract) in a given month to $0.13 per contract.[17] The reduction of the volume threshold from 750,000 electronically delivered contracts in a month to 600,000 electronically delivered contracts in a month would enable firms to obtain the reduction of fees by transacting a lower number of contracts in a month.

Customer Rebate Program

The Exchange's amendment to the Customer Rebate Program is reasonable because it will provide members another manner in which to earn a rebate on the Exchange. This rebate will be in addition to any rebate that the member receives in Section I of the Pricing Schedule. The Exchange believes that offering the Category D rebate and including Customer Complex Order volume in Select Symbols in the Threshold Volume, will attract additional Customer order flow to the Exchange and benefit all market participants. The Exchange believes that incentivizing members executing electronically delivered Customer Complex Orders in Select Symbols to direct Customer order flow to the Exchange will benefit all market participants.

The Exchange's amendment to the Customer Rebate Program is equitable and not unfairly discriminatory because all market participants are eligible to receive the new rebate provided they meet both the volume and order type requirement of Category D. Also, the Exchange believes it is equitable and not unfairly discriminatory to base rebates not only on volume but on the type of orders because the Exchange would uniformly apply the rebates to all market participants by order type. The Exchange currently offers no rebate under Category D for the first tier (between 0 and 49,999 contracts in a month) and the second tier (between 50,000 and 99,000 contracts in a month). It is only in the third tier (over 100,000 contracts in a month) that there is a rebate and it is $0.05 per contract to members that execute electronically delivered Customer Complex Orders in any Select Symbol that adds liquidity. Further, the concept of volume tiers and rebates based on tiers is not novel. Market participants entitled to Category A, B, or C rebates are subject to Section II of the Pricing Schedule, which has no rebates. Market participants entitled to Category D rebates are subject to Section I of the Pricing Schedule and also receive the Rebate for Adding Liquidity in Section I.

The Exchange operates in a highly competitive market, comprised of ten exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee and rebate levels at a particular venue to be excessive. Accordingly, the fees that are assessed and the rebates paid by the Exchange must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18] 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. If the Commission takes such action, the Commission shall institute proceedings to determine

[16] *See* the Chicago Board Options Exchange Incorporated's (''CBOE'') Fees Schedule.

[17] The Electronic Firm Fee Discount applies per member organization when such members are trading in their own proprietary account.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–104. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–104 and should be submitted on or before September 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19984 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67632; File No. SR–NYSEArca–2012–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

August 9, 2012.

On June 15, 2012, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade option contracts overlying 10 shares of a security. The proposed rule change was published for comment in the **Federal Register** on July 3, 2012.[3] The Commission received two comment letters on this proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 17, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would allow the listing of a new type of options product, the comment letters that have been submitted in connection with this proposed rule change, and any response to the comment letters submitted by the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates October 1, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2012–64).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19983 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67283 (June 27, 2012), 77 FR 39535.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, President, KOR Trading LLC, dated July 10, 2012 and Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated July 24, 2012.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67631; File No. SR–ISE–2012–58]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

August 9, 2012.

On June 20, 2012, the International Securities Exchange, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade option contracts overlying 10 shares of a security. The proposed rule change was published for comment in the **Federal Register** on July 3, 2012.[3] The Commission received one comment letter on this proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67284 (June 27, 2012), 77 FR 39545.

[4] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated July 24, 2012.

[5] 15 U.S.C. 78s(b)(2).

self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 17, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would allow the listing of a new type of options product, the comment letter that has been submitted in connection with this proposed rule change, and any response to the comment letter submitted by the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates October 1, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISE–2012–58).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19982 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67630; File No. SR–Phlx–2012–101]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clearing Arrangements

August 9, 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 July 30, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Rule 1046 entitled ''Clearing Arrangements'' to further clarify the text of Exchange Rule 911, entitled ''Member and Member Organization Participation'' with respect to the requirement to have a membership in or access arrangement with a clearing agency.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 the proposed rule change is to adopt a new Rule 1046 to provide clarity for members or member organizations that are conducting an options business on the Exchange. Exchange Rule 911 requires initial and continuing compliance with the provisions of Exchange Rule 911 to participate in the Exchange as a member or member organization. Specifically, Rule 911(a)(2) states that ''membership in, or access arrangement with a member of, a clearing agency registered with the Commission which maintains facilities through which Exchange compared trades may be settled'' is required initially upon membership with the Exchange and must be continually maintained during membership. The Rule applies broadly to all members and member organizations, whether they conduct equities or options business, but does not specifically define what qualifies as a clearing arrangement.

The Exchange is proposing to clarify this requirement by adopting Rule 1046, entitled ''Clearing Arrangements,'' specifically applicable to Exchange members and member organizations conducting an options business. Rule 1046 would require a member or member organization conducting an options business to either have a direct membership in The Options Clearing Corporation (''the OCC''), or an indirect relationship with an Exchange member organization that is a clearing member of the OCC.

The Exchange believes the proposed language further clarifies the existing requirement of Rule 911 by specifying that a clearing arrangement means a direct membership with the OCC or an indirect relationship with an Exchange member organization that has a membership in the OCC. The Exchange believes this is not a substantive change but rather a clarifying amendment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that clarifying its current text by adopting a new Rule 1046 to specify the types of clearing arrangements a member or member organization conducting an options business is required to obtain and maintain will assist prospective and current members in understanding the obligations of Rule 911 relating to clearing arrangements. The proposed rule serves to codify with specificity the obligations which today apply to current Exchange members and member organizations.[5] The proposed amendment is non-substantive.

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.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] All current members and member organizations today comply with proposed Rule 1046.

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

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(1)[7] thereunder, the Exchange has designated this proposal as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO, and therefore has become effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–101 and should be submitted on or before September 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19981 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67627; File No. SR–ISE–2012–70]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

August 9, 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 August 1, 2012, the International Securities Exchange, LLC (the ''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 ISE is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in 101 options classes (the ''Select Symbols'').[3] The Exchange also currently assesses maker/taker fees and rebates for certain regular orders in 25 option classes (''Special Non-Select Penny Pilot Symbols'').[4] The purpose of this proposed rule change is to amend the list of Select Symbols and Special Non-Select Penny Pilot Symbols in order to attract additional order flow to the Exchange. Specifically, the Exchange proposes to remove the following eight (8) symbols from the list of Select Symbols and add them to the list of Special Non-Select Penny Pilot Symbols: Amazon.com, Inc. (''AMZN''), ConocoPhillips (''COP''), ProShares QQQ Trust Series 1 (''QQQ''), Sprint Corporation (''S''), ProShares UltraShort S&P 500 (''SDS''), Sirius XM Radio, Inc. (''SIRI''), ProShares Ultra S&P 500

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The Special Non-Select Penny Pilot Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

(''SSO'') and Direxion Small Cap Bear 3X (''TZA'') (''Proposed Deleted Select Symbols'').

Additionally, the Exchange proposes to add the following 32 symbols to the list of Special Non-Select Penny Pilot Symbols: Arch Coal, Inc. (''ACI''), American Capital Agency Corporation (''AGNC''), Amylin Pharmaceuticals, Inc. (''AMLN''), Alpha Natural Resources, Inc. (''ANR''), Apache Corporation (''APA''), Arena Pharmaceuticals, Inc. (''ARNA''), ATP Oil & Gas Corporation (''ATPG''), Yamana Gold, Inc. (''AUY''), Baxter International, Inc. (''BAX''), Delta Airlines, Inc. (''DAL''), E.I. du Pont de Nemours and Company (''DD''), The Walt Disney Company (''DIS''), Dow Chemical Company, Inc. (''DOW''), Human Genome Sciences, Inc. (''HGSI''), JC Penney Co., Inc. (''JCP''), Joy Global, Inc. (''JOY''), KB Home (''KBH''), Kinross Gold Corporation (''KGC''), Mastercard, Inc. (''MA''), MBIA, Inc. (''MBI''), Medtronic, Inc. (''MDT''), Nike, Inc. (''NKE''), Pepsico, Inc. (''PEP''), SandRidge Energy, Inc. (''SD''), Union Pacific Corporation (''UNP''), United Technologies Corporation (''UTX''), Valero Energy Corporation (''VLO''), Walgreen Co. (''WAG''), Western Digital Corporation (''WDC''), Walter Energy, Inc. (''WLT''), Utilities Select Sector SPDR Fund (''XLU'') and Zynga, Inc. (''ZNGA'') (''Additional Special Non-Select Symbols'').

With this proposed rule change, the 40 symbols noted above, i.e., the Proposed Deleted Select Symbols and the Additional Special Non-Select Symbols, together with the 25 symbols that are already designated as Special Non-Select Penny Pilot Symbols, will now be subject to the fees for Special Non-Select Penny Pilot Fees listed in Section I of the Schedule of Fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove the Proposed Deleted Select Symbols from its list of Select Symbols and add them to the list of Special Non-Select Penny Pilot Symbols. The Exchange also believes it is reasonable to add the Additional Special Non-Select Symbols to the current list of Special Non-Select Penny Pilot Symbols. The Exchange believes that applying the fees applicable to Special Non-Select Penny Pilot Symbols to the Proposed Deleted Select Symbols and to the Additional Special Non-Select Symbols will attract additional order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed Deleted Symbols and to amend its list of Special Non-Select Penny Pilot Symbols to add the Additional Special Non-Select Symbols because the list of Select Symbols and Special Non-Select Penny Pilot Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols and the Special Non-Select Penny Pilot Symbols would be uniformly subject to the fees and rebates applicable to those symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–70 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–ISE–2012–70. 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–ISE–2012–70 and should be submitted on or before September 5, 2012.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19978 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67629; File No. SR–DTC–2012–05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enable The Depository Trust Company To Collect and Pass Through Certain Fees Owed by Participants to Transfer Agents in Connection With the Deposit and Withdrawal at Custodian System

August 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 30, 2012, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[2] and Rule 19b–4(f)(2)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to enable DTC to collect and pass through certain fees owed by participants to transfer agents in connection with the Deposit and Withdrawal at Custodian (''DWAC'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DWAC can be utilized to electronically transfer securities between Participants and transfer agents, acting as custodians.[5] DWAC is designed for utilization by any Participant with respect to certain issues of securities in DTC's Fast Automated Securities Transfer program (''FAST''). For securities that are part of the FAST program, the transfer agents hold the securities registered in the name of DTC's nominee, Cede & Co., in the form of balance certificates. As additional securities are deposited or withdrawn from DTC, the transfer agents adjust the denomination of the certificate as appropriate, and electronically confirm these changes with DTC. Transfer agents charge Participants a fee for the processing of a DWAC request. Participants must submit a check in the amount of the DWAC fee upon presentation of the transfer instructions, or the transfer agent invoices the Participant.

In order to facilitate a more efficient DWAC fee collection process, DTC is proposing to collect and pass through DWAC fees owed by Participants to transfer agents.[6] DTC will only collect DWAC fees from an entity that is a Participant of DTC at the close of business on the 7th business day of each month that DTC is collecting the fee. The introduction of this process has been discussed with and endorsed by the Securities Transfer Association. Furthermore, DTC has discussed this proposal with several of its Participants and all agree that it should be implemented as soon as possible. In order to cover costs incurred in collecting fees associated with DWAC transactions, DTC will retain a monthly collection charge equal to 1.5% of the DWAC fee collected on behalf of each transfer agent.[7] This collection charge will appear in the DTC Fee Schedule as follows:

Service	Current fee	Proposed fee	Per
Collection of transfer agent DWAC fees	N/A	1.5%	Per monthly amount collected for each transfer agent.

DTC expects to begin collecting DWAC fees in the first quarter of 2013. DTC will announce the implementation date by Important Notice.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act,[8] and the rules and regulations thereunder applicable to it because the proposed fee change is designed to provide for the equitable allocation of reasonable fees and charges among the users of DTC's services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii)[9] of the Act and Rule 19b–4(f)(2)[10] thereunder. 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

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] For more information about the DWAC service, *see* Securities Exchange Act Release No. 29952 (November 18, 1991) 56 FR 59307 (November 25, 1991) (SR–DTC–91–16) (order granting approval of the DWAC service).

[6] Transfer agents that use DTC's DWAC services are not required to use this collection service.

[7] DTC is charging this 1.5% collection fee to the transfer agent to cover its cost of administering the program.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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–DTC–2012–05 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–DTC–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site (*http://www.dtcc.com/downloads/legal/rule_filings/2012/dtc/DTC_Rule_Filing_2012_05.pdf*).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2012–05 and should be submitted on or before September 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19980 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67628; File No. SR–ISE–2012–71]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Certain Regular and Complex Orders Executed on the Exchange

August 9, 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 August 1, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 ISE is proposing to amend transaction fees for certain regular and complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction charge and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] For removing liquidity in the Select Symbols, the Exchange currently charges a taker fee of: (i) $0.29 per contract for Market Maker[4] and Market Maker Plus[5] orders, (ii) $0.35 per contract for Non-ISE Market Maker[6] orders, (iii) $0.30 per contract for Firm Proprietary/Broker-Dealer and Professional Customer[7] orders, and (iv) $0.20 per contract for Priority

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[5] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[6] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[7] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

Customer[8] orders. The Exchange now proposes to increase the taker fee for: (i) Market Maker and Market Maker Plus orders in the Select Symbols from $0.29 per contract to $0.32 per contract, (ii) Non-ISE Market Maker orders in the Select Symbols from $0.35 per contract to $0.36 per contract, (iii) Firm Proprietary/Broker-Dealer and Professional Customer orders in the Select Symbols from $0.30 per contract to $0.33 per contract, and (iv) Priority Customer orders in the Select Symbols from $0.20 per contract to $0.25 per contract.

For complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a taker fee of: (i) $0.35 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, and (ii) $0.38 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Select Symbols (excluding SPY). The Exchange now proposes to increase the complex order taker fee in the Select Symbols (excluding SPY) for: (i) Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, from $0.35 per contract to $0.37 per contract, and (ii) Non-ISE Market Maker orders, from $0.38 per contract to $0.39 per contract. The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Select Symbols (excluding SPY).

With this proposed rule change, the Exchange proposes to adopt a new column for taker fees for SPY as those fees are distinct and also to provide market participants greater clarity with regards to fees for SPY.[9] Specifically, for complex orders in SPY, the Exchange currently charges a taker fee of: (i) $0.35 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, and (ii) $0.39 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in SPY. The Exchange now proposes to increase the complex order taker fee in SPY for: (i) Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, from $0.35 per contract to $0.38 per contract, and (ii) Non-ISE Market Maker orders, from $0.39 per contract to $0.40 per contract. The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in SPY.

With the proposed adoption of a new column for SPY, the column that previously reflected taker fees for SPY and Non-Select Penny Pilot Symbols will now display taker fees for Non-Select Penny Pilot Symbols only. For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.35 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, and (ii) $0.39 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Non-Select Penny Pilot Symbols. The Exchange now proposes to increase the complex order taker fee in the Non-Select Penny Pilot Symbols for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, from $0.35 per contract to $0.37 per contract. The Exchange is not proposing any change to the complex order taker fee for Non-ISE Market Maker and Priority Customer orders in the Non-Select Penny Pilot Symbols.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.75 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, and (ii) $0.78 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Non-Penny Pilot Symbols. The Exchange now proposes to increase the complex order taker fee in the Non-Penny Pilot Symbols for: (i) Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, from $0.75 per contract to $0.80 per contract, and (ii) Non-ISE Market Maker orders, from $0.78 per contract to $0.83 per contract. The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Non-Penny Pilot Symbols.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers remove liquidity from the complex order book in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols. Market Makers that remove liquidity in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols from the complex order book by trading with Priority Customer orders that are preferenced to them will continue to receive a two cent discount.

Further, the Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols that they send to the Exchange, the Exchange now proposes to increase the rebate levels for these volume-based tiers. In the Select Symbols (excluding SPY), the Exchange currently provides a rebate of $0.32 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.33 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.34 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.35 per contract, per leg, in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to the Select Symbols (excluding SPY), as follows: (i) Increase the base rebate level, from $0.32 per contract, per leg, to $0.34 per contract, per leg, (ii) increase the rebate level, from $0.33 per contract, per leg, to $0.36 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.34 per contract, per leg, to $0.37 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.35 per

[8] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[9] The Exchange notes that its Schedule of Fees has a separate column for rebates payable for complex orders in SPY. The Exchange proposes to adopt a similar distinct column for taker fees for complex orders in SPY.

contract, per leg, to $0.38 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

In SPY, the Exchange currently provides a rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of ADV of executed Priority Customer complex order contracts in SPY during a calendar month are provided a rebate of $0.34 per contract, per leg, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.35 per contract, per leg, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.36 per contract, per leg, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to SPY, as follows: (i) Increase the base rebate level, from $0.33 per contract, per leg, to $0.36 per contract, per leg, (ii) increase the rebate level, from $0.34 per contract, per leg, to $0.37 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.35 per contract, per leg, to $0.38 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.36 per contract, per leg, to $0.39 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

In Non-Select Penny Pilot Symbols, the Exchange currently provides a rebate of $0.29 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of ADV of executed Priority Customer complex order contracts in the Non-Select Penny Pilot Symbols during a calendar month are provided a rebate of $0.31 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.33 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.34 per contract, per leg, in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. Again, the highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to the Non-Select Penny Pilot Symbols, as follows: (i) Increase the base rebate level, from $0.29 per contract, per leg, to $0.33 per contract, per leg, (ii) increase the rebate level, from $0.31 per contract, per leg, to $0.34 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.33 per contract, per leg, to $0.36 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.34 per contract, per leg, to $0.37 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

In the Non-Penny Pilot Symbols, the Exchange currently provides a rebate of $0.62 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of ADV of executed Priority Customer complex order contracts in the Non-Penny Pilot Symbols during a calendar month are provided a rebate of $0.64 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.66 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.67 per contract, per leg, in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. Again, the highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to the Non-Penny Pilot Symbols, as follows: (i) Increase the base rebate level, from $0.62 per contract, per leg, to $0.66 per contract, per leg, (ii) increase the rebate level, from $0.64 per contract, per leg, to $0.70 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.66 per contract, per leg, to $0.74 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.67 per contract, per leg, to $0.76 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

Further, the Exchange currently provides a rebate of $0.06 per contract, per leg, for Priority Customer complex orders in all symbols traded on the Exchange (excluding SPY) when these orders trade against quotes or orders in the regular orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange is proposing to adopt volume-based tiers similar to the volume-based tiers currently in place for complex orders that trade with non-Priority Customer complex orders in the complex order book. While keeping the base rebate at $0.06 per contract, per leg, the Exchange proposes to adopt increased rebates, as follows: (i) Increase the rebate level, from $0.06 per contract, per leg, to $0.07 per contract, per leg, for Members who achieve an ADV of 75,000 executed Priority Customer complex contracts, (ii) increase the rebate level, from $0.06 per contract, per leg, to $0.08 per contract, per leg, for Members who achieve an ADV of 125,000 executed Priority Customer complex contracts, and (iii) increase the rebate level, from $0.06 per contract, per leg, to $0.09 per contract, per leg, for Members who achieve an ADV of 250,000 executed Priority Customer complex contracts. The highest rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade against quotes or orders in the regular orderbook during such calendar month.

For SPY, the Exchange currently provides a rebate of $0.07 per contract, per leg, for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. The Exchange now proposes to adopt volume-based tiers for options on SPY, similar to the volume-based tiers currently in place for complex orders that trade with non-Priority Customer complex orders in the complex order book. While keeping the

base rebate at $0.07 per contract, per leg, the Exchange proposes to adopt increased rebates, as follows: (i) Increase the rebate level, from $0.07 per contract, per leg, to $0.08 per contract, per leg, for Members who achieve an ADV of 75,000 executed Priority Customer complex contracts, (ii) increase the rebate level, from $0.07 per contract, per leg, to $0.09 per contract, per leg, for Members who achieve an ADV of 125,000 executed Priority Customer complex contracts, and (iii) increase the rebate level, from $0.07 per contract, per leg, to $0.10 per contract, per leg, for Members who achieve an ADV of 250,000 executed Priority Customer complex contracts. Again, the highest rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts in SPY that trade against quotes or orders in the regular orderbook during such calendar month.

Finally, pursuant to Securities and Exchange Commission (''SEC'') approval, the Exchange currently allows Market Makers to enter quotations for complex order strategies in the complex order book.[10] Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange has adopted maker fees that apply to transactions in the complex order book when they interact with Priority Customer orders in options overlying AA, ABX, EFA, GLD, MSFT, MU, NVDA, VXX, VZ, WFC, XLB and XOP (''Complex Quoting Symbols''). Specifically, the Exchange currently charges a maker fee of $0.35 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders when these orders interact with Priority Customer orders in the Complex Quoting Symbols. Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book are not charged a fee and do not receive a rebate when interacting with other Priority Customer orders.

The Exchange now proposes to increase the maker fee for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in the Complex Quoting Symbols from $0.35 per contract to $0.37 per contract when these orders interact with Priority Customer orders in the complex order book. The Exchange does not propose any change to fees for Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book. Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers add or remove liquidity from the complex order book in the Complex Quoting Symbols. The Exchange does not propose any change to this discount. As such, Market Makers will continue to receive the two cent discount.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act'')[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols, the Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols, the Complex Quoting Symbols and SPY.

The Exchange believes that its proposal to assess a $0.32 per contract taker fee for regular Market Maker and Market Maker Plus orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') currently charges $0.39 per contract for Specialist and Market Maker orders in its regular order book.[13] The Exchange also notes that with this proposed rule change, the fee charged to regular Market Maker and Market Maker Plus orders in the Select Symbols will remain lower than the fee currently charged by the Exchange to certain other market participants.

The Exchange also believes that its proposal to assess a $0.33 per contract taker fee for regular Firm Proprietary/Broker-Dealer and Professional Customer orders and $0.36 per contract taker fee for regular Non-ISE Market Maker orders in the Select Symbols is reasonable and equitably allocated because the fee is also within the range of fees assessed by other exchanges employing similar pricing schemes. By comparison, the proposed fees assessed to regular Firm Proprietary/Broker-Dealer and Professional Customer orders and to regular Non-ISE Market Maker orders are lower than the rates assessed by PHLX for similar orders. PHLX currently charges a taker fee of $0.45 per contract for equivalent orders in its regular order book.[14]

The Exchange also believes that its proposal to assess a $0.25 per contract taker fee for all regular Priority Customer orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. The proposed fee is substantially lower than the $0.39 per contract taker fee currently charged by PHLX for Customer orders in its regular order book.[15] Therefore, while ISE is proposing a fee increase, the resulting fee remains lower than the fee currently charged by PHLX. Further, the proposed increase will bring this fee closer to the fee the Exchange currently charges to other market participants. The Exchange also notes, however, that with this proposed rule change, the fee charged to regular Priority Customer orders will remain lower (as it historically has always been) than the fee currently charged by the Exchange to other market participants.

The Exchange believes that the price differentiation between the various market participants is justified because Market Makers have obligations to the market that the other market participants do not. The Exchange believes that, in this instance, it is equitable to assess a higher fee to market participants that do not have the quoting requirements that Exchange Market Makers have. While ISE is proposing fee increases for Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer and Priority Customer orders in the Select Symbols, the resulting fees remain lower than the fees currently charged by PHLX for similar orders.

The Exchange believes that its proposal to assess a $0.37 per contract taker fee for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders, and $0.39 per contract for Non-ISE Market Maker complex orders, in the Select Symbols (excluding SPY) is reasonable and equitably allocated because the fee is within the range of

[10] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[14] *Id.*

[15] *Id.*

fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, PHLX currently charges $0.39 per contract for removing liquidity in complex orders for Specialist, Market Maker, Firm, Broker-Dealer and Professional orders.[16] Therefore, while ISE is proposing a fee increase for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, the resulting fee will remain lower than the fee currently charged by PHLX for similar orders, while the resulting fee from the proposed fee increase for Non-ISE Market Maker orders will be equal to the fee currently charged by PHLX for similar orders. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, in this instance, it is appropriate and not unfairly discriminatory to assess a higher transaction fee to Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange believes that its proposal to increase the taker fee to $0.38 per contract for ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders, and to increase the taker fee to $0.40 per contract for Non-ISE Market Maker complex orders, in SPY is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, PHLX currently charges $0.39 per contract for removing liquidity in complex orders in SPY for Specialist, Market Maker, Firm, Broker-Dealer and Professional orders.[17] Therefore, while ISE is proposing fees increases for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders, the resulting fees will remain lower than the fees currently charged by PHLX for similar orders, while the resulting fee from the proposed fee increase for Non-ISE Market Maker complex orders will only be marginally higher than the fee currently charged by PHLX for similar orders. In addition, the Exchange believes that charging Non-ISE Market Maker complex orders a higher rate than the fee charged to Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders in SPY is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, in this instance, it is appropriate and not unfairly discriminatory to assess a higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange believes that its proposal to assess a $0.37 per contract taker fee for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders in the Non-Select Penny Pilot Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, PHLX currently charges $0.22 per contract plus a payment for order flow fee of $0.25 per contract (applicable to customer orders), for a total rate of $0.47 per contract for adding and removing liquidity in complex orders for Specialist and Market Maker orders and charges anywhere from $0.25 per contract to $0.45 per contract for Firm, Broker-Dealer and Professional orders.[18]

The Exchange believes it is reasonable and equitable to charge Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders a taker fee of $0.80 per contract, and to charge Non-ISE Market Maker orders a taker fee of $0.83 per contract for complex orders in the Non-Penny Pilot Symbols because the Exchange is seeking to recoup the cost associated with paying a higher per contract rebate to Priority Customers. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders in the Non-Penny Pilot Symbols is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, in this instance, it is appropriate and not unfairly discriminatory to assess a higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange believes that increasing the fees applicable to orders executed in the complex order book when trading against Priority Customer orders in the Complex Quoting Symbols is appropriate given the functionality developed by the Exchange that allows market makers to quote in the complex order book. Specifically, the Exchange believes that its proposal to assess a maker fee of $0.37 per contract for the Complex Quoting Symbols when orders in these symbols interact with Priority Customer orders is reasonable and equitable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. In fact, the proposed fee is considerably less than that charged by other exchanges. For example, the maker fee for a broker-dealer complex order in XOP at PHLX is $0.60 per contract[19] while the same order that is electronically delivered at the Chicago Board Options Exchange (''CBOE'') is $0.45 per contract.[20] Additionally, one of the primary goals of this fee change is to maintain the attractive and competitive economics for Priority Customer complex orders, in light of the enhanced manner in which complex orders now trade on the Exchange.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. Accordingly, Market Makers who remove liquidity in the Select Symbols, the Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols, the Complex Quoting Symbols and SPY from the complex order book will be charged $0.02 less per contract when trading with Priority Customer orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* CBOE Fees Schedule, at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase those rebate amounts. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange also believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. Again, the Exchange already provides this rebate and is now proposing to increase those rebate amounts through volume-based tiers. The Exchange believes paying these rebates would also attract additional order flow to the Exchange.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the symbols that are subject of this proposed rule change.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[21] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–71 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–ISE–2012–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–71 and should be submitted on or before September 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19979 Filed 8–14–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7974]

60-Day Notice of Proposed Information Collection: Request for Commodity Jurisdiction Determination, Form DS–4076

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request for Commodity Jurisdiction (CJ) Determination.
- *OMB Control Number:* 1405–0163.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

- *Form Number:* DS–4076.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 1,260.
- *Estimated Number of Responses:* 1,260.
- *Average Hours per Response:* 10 hours.
- *Total Estimated Burden:* 12,600 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from August 15, 2012.

ADDRESSES: Comments and questions should be directed to Nicholas Memos, Office of Defense Trade Controls Policy, U.S. Department of State, who may be reached via the following methods:

- *Internet:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov*. You can search for the document by selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID,'' checking the ''Open for Comment'' box, and then clicking ''Search.'' If necessary, use the ''Narrow by Agency'' option on the Results page.
- *Email: memosni@state.gov*.
- *Mail:* Nicholas Memos, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

You must include the information collection title, the form number, and the OMB control number in the subject line of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2829, or via email at *memosni@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State.

The information submitted pursuant to this collection will be used to evaluate whether a particular defense article or defense service is covered by the U.S. Munitions List, and therefore is subject to export licensing jurisdiction of the Department of State. This collection may also be used to request a change in U.S. Munitions List category designation, request the removal a defense article from the U.S. Munitions List, or request the reconsideration of a previous commodity jurisdiction determination.

Methodology: These forms/information collections are to be sent electronically to the Directorate of Defense Trade Controls via the Directorate of Defense Trade Controls Web site.

Dated: June 27, 2012.

Robert S. Kovac,

Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2012–20041 Filed 8–14–12; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241), the Office of the United States Trade Representative (USTR) is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested persons to submit comments to assist it in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the NTE.

The TPSC invites written comments from the public on issues that USTR should examine in preparing the NTE.

In 2013, USTR will once again release in conjunction with the NTE report two reports dealing with additional trade barriers—one on SPS measures and one on standards-related measures. USTR will invite written comments from the public on issues that should be examined in preparing those two reports through a separate Notice in the **Federal Register** that will be forthcoming. Information regarding such measures should NOT be submitted in response to this Notice.

DATES: Public comments are due not later than October 15, 2012.

ADDRESSES: Submissions should be made via the Internet at *www.regulations.gov* docket number USTR–2012–0021. For alternatives to on-line submissions please contact Donald W. Eiss (202–395–3475). The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the NTE or on submitting comments in response to this notice should be directed to Donald W. Eiss at (202) 395–3475.

SUPPLEMENTARY INFORMATION: The NTE sets out an inventory of the most important foreign barriers affecting U.S. exports of goods and services, U.S. foreign direct investment, and protection of intellectual property rights. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws and strengthening the rules-based trading system. The 2012 NTE Report may be found on USTR's Internet Home Page (*http://www.ustr.gov*) under the tab ''Reports''.

To ensure compliance with the NTE's statutory mandate and the Obama Administration's commitment to focus on the most significant foreign trade barriers, USTR will be guided by the existence of active private sector interest in deciding which restrictions to include in the NTE.

Topics on which the TPSC Seeks Information: To assist USTR in preparing the NTE, commenters should submit information related to one or more of the following categories of foreign trade barriers:

(1) Import policies (e.g., tariffs and other import charges, quantitative

restrictions, import licensing, and customs barriers);

(2) Government procurement restrictions (e.g.,''buy national policies'' and closed bidding);

(3) Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(4) Lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

(5) Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals);

(6) Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties);

(7) Government-tolerated anticompetitive conduct of state-owned or private firms that restrict the sale or purchase of U.S. goods or services in the foreign country's markets;

(8) Trade restrictions affecting electronic commerce (e.g., tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

(9) Other barriers (e.g., barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector).

In responding to this notice, commenters should place particular emphasis on any practices that may violate U.S. trade agreements. The TPSC is also interested in receiving new or updated information pertinent to the barriers covered in the 2012 NTE as well as information on new barriers. If USTR does not include in the NTE information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

Estimate of Increase in Exports: Each comment should include an estimate of the potential increase in U.S. exports that would result from removing any foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Estimates should be expressed within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. These estimates will help USTR conduct comparative analyses of a barrier's effect over a range of industries.

Requirements for Submissions: Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate submission for each country. Comments addressing SPS or standards-related measures should not be submitted in response to this request but should be submitted in response to the separate request for comments which will be forthcoming.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under docket number USTR–2012–0021.

To find this docket, enter the docket number in the ''Enter Keyword or ID'' window at the *http://www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with that docket number. Find a reference to this notice by selecting ''Notices'' under ''Document Type'' on the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the ''Help'' tab.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, please identify the name of the country to which the submission pertains in the ''Comments'' field. For example: ''See attached comment for (name of country)''. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Comments'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. The top of any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL''. Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. If a comment contains no business confidential information, the file name should begin with the character ''P'', followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Public inspection of submissions: Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2012–20077 Filed 8–14–12; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Categorical Exclusion From Further Environmental Review for Standard Terminal Arrival Route Procedures and Standard Instrument Departure Procedures for Washington Dulles International Airport

AGENCY: Air Traffic Procedures Advisory Committee. Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of its environmental review of two standard terminal arrival route (STAR) procedures and two standard instrument departure (SID) procedures at Washington Dulles International Airport (IAD). As required by the National Environmental Policy Act, an evaluation has been performed on the two proposed STAR procedures and the two proposed SID procedures to determine the level of environmental review warranted. The FAA has elected to ''Categorically Exclude from further environmental review'' the proposed STAR procedures identified as GIBBZ (RNAV) STAR and DOCCS STAR and the proposed SID procedures identified

as RNLDI (RNAV) SID (previously named BLUES ONE (RNAV) SID) and BUNZZ ONE (RNAV) SID.

DATES: Effective upon publication. A Categorical Exclusion (Cat Ex) from environmental review does not require a formal public hearing or a formal public comment period prior to the Cat Ex becoming effective.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Kyker, Environmental Specialist, Air Traffic Eastern Service Center, Operations Support Group, 1701 Columbia Ave., College Park, GA 30337.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FAA has elected to ''Categorically Exclude from further environmental review'' the proposed procedures as follows: GIBBZ (RNAV) STAR, DOCCS STAR, RNLDI (RNAV) SID (previously named BLUES ONE (RNAV) SID) and BUNZZ ONE (RNAV) SID.

Project: Publish GIBBZ (RNAV) STAR, DOCCS STAR, RNLDI (RNAV) SID (previously named BLUES ONE (RNAV) SID) and BUNZZ ONE (RNAV) SID.

Location: Washington Dulles International Airport.

This project consists of publishing procedures identified as the GIBBZ (RNAV) STAR, DOCCS STAR, RNLDI (RNAV) SID (previously named BLUES ONE (RNAV) SID) and BUNZZ ONE (RNAV) SID. On June 4, 2012, the BLUES (RNAV) SID was renamed to the RNLDI RNAV SID. RNAV facilitates more efficient design of airspace and procedures which collectively result in improved safety, access, predictability, and operational efficiency. Improved access and flexibility for point-to-point operations help enhance reliability and reduce delays by defining more precise terminal area procedures. The review process indicated that the proposed project will not adversely impact the environment. Consequently, the FAA has elected to ''Categorically Exclude from further environmental review'' the proposed Standard Terminal Arrival procedures, based upon compliance with FAA Order 1050.1E, § 311(i).

Issued in Atlanta, GA, on August 1, 2012.

Barry A. Knight,

Acting Manager, Operations Support Group FAA, Air Traffic, Eastern Service Center.

[FR Doc. 2012–19873 Filed 8–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Categorical Exclusion From Further Environmental Review for Standard Terminal Arrival Route Procedures for Ronald Reagan Washington National Airport

AGENCY: Air Traffic Procedures Advisory Committee. Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of its environmental review of two standard terminal arrival route (STAR) procedures, and one conventional arrival procedure, at Ronald Reagan Washington National Airport (DCA). As required by the National Environmental Policy Act, an evaluation has been performed on the three proposed procedures to determine the level of environmental review warranted. The FAA has elected to ''Categorically Exclude from further environmental review'' the three proposed arrival procedures identified as FRDMM1 (RNAV), TRUPS1 (RNAV) and NUMMY.

DATES: Effective upon publication. A Categorical Exclusion (Cat Ex) from environmental review does not require a formal public hearing or a formal public comment period prior to the Cat Ex becoming effective.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Kyker, Environmental Specialist, Air Traffic Eastern Service Center, Operations Support Group, 1701 Columbia Ave., College Park, GA 30337.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FAA has elected to ''Categorically Exclude from further environmental review'' the proposed arrival procedures as follows: FRDMM1 (RNAV), TRUPS1 (RNAV), and NUMMY.

Project: Publish FRDMM1 (RNAV), TRUPS1 (RNAV), and NUMMY.

Location: Ronald Reagan Washington National Airport (DCA).

This project consists of publishing RNAV arrival procedures identified as the FRDMM1 (RNAV) and the TRUPS1 (RNAV) and publishing the NUMMY conventional arrival procedure. RNAV facilitates more efficient design of airspace and procedures which collectively result in improved safety, access, predictability, and operational efficiency. Improved access and flexibility for point-to-point operations help enhance reliability and reduce delays by defining more precise terminal area procedures. The NUMMY is a conventional arrival procedure which accommodates the non-RNAV aircraft into the DC Metro area from the west. The review process indicated that the proposed project will not adversely impact the environment. Consequently, the FAA has elected to ''Categorically Exclude from further environmental review'' the proposed procedures, based upon compliance with FAA Order 1050.1E, § 311(i).

Issued in Atlanta, GA, on August 1, 2012.

Barry A. Knight,

Acting Manager, Operations Support Group FAA, Air Traffic, Eastern Service Center.

[FR Doc. 2012–19874 Filed 8–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0083]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**.

DATES: Please submit comments by September 14, 2012.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2012–0083.

FOR FURTHER INFORMATION CONTACT: Owen Lindauer, Ph.D., 202–366–2655, Office of Program Development and Environmental Review (HEPE–10), Office of Planning Environment and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave.

SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: USDOT Survey of the USE of Categorical Exclusions in Transportation Projects Since 2005.

OMB Control #: 2125–XXXX.

Background: U.S. Department of Transportation (USDOT) is directed to conduct a survey in section 1318 of *Moving Ahead for Progress in the 21st Century* (MAP–21) not later than 60 days after the date of enactment (October 1, 2012) to survey the use of categorical exclusions in transportation projects since 2005 and publish the review of the survey that includes a description of the types of actions categorically excluded, and any requests previously received by the Secretary for new categorical exclusions. This provision of law also directs USDOT solicit requests from State Departments of Transportation, Transit authorities, Metropolitan Planning Organizations, and other government agencies for new categorical exclusions. A report of the results of this survey must be published within this same 60 day period. Then, this legislation requires that a notice of proposed rulemaking be published within 120 days of enactment of MAP–21.

Respondents: State, Local, and Tribal Governments. The target group of respondents are individuals who are responsible for implementing the transportation project development process and are familiar with the environmental requirements for processing projects that are categorically excluded from the requirements to prepare either an environmental impact statement (EIS) or an environmental assessment (EA). The target groups identified in legislation include individuals with this knowledge and experience who work at State Departments of Transportation, Transit authorities, Metropolitan Planning Organizations and other agencies.

State Departments of Transportation = 52, MPOs = about 375, Transit agencies = about 50, Tribal and other government agencies = as many as 600.

Total respondents = 1077.

Total burden hours = 2154 (2 hours per response).

Estimated Average Burden per Response: The estimated average reporting burden per response is two hours.

Estimated Total Annual Burden: This survey will occur once. The estimated total burden for all respondents is 2,154 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 8, 2012.

Steven Smith,

Chief, Information Technology Division.

[FR Doc. 2012–19872 Filed 8–14–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0083]

Requests for Administrative Waivers of the Coastwise Trade Laws: Vessel Calypso; 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 September 14, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0083. 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: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Calypso is:

Intended Commercial Use of Vessel: The vessel is an 87 foot yacht. The intended use of the vessel is for private chartering purposes, carrying no more than 12 passengers.

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico, California, Washington, Oregon.''

The complete application is given in DOT docket MARAD–2012–0083 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: August 9, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–20010 Filed 8–14–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0084]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CHAT DE MER; 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 September 14, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0084. 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: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CHAT DE MER is:

Intended Commercial Use of Vessel: Primarily carrying passengers that want a tour of San Francisco Bay.

Geographic Region: ''California.''

The complete application is given in DOT docket MARAD–2012–0084 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 (65 FR 19477–78).

By Order of the Maritime Administrator.

Dated: August 9, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–20032 Filed 8–14–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0082]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KUMATAGE; 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 September 14, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0082. 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: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KUMATAGE is:

Intended Commercial Use of Vessel: ''For small day charter for 6–12 passengers or less.''

Geographic Region: ''MA, RI, FL.''

The complete application is given in DOT docket MARAD–2012–0082 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 (65 FR 19477–78).

By Order of the Maritime Administrator.

Dated: August 6, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–20012 Filed 8–14–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 15, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette. B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Joel Goldberger, 202–927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments: The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has 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 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 the requested information.

Information Collections Open for Comment: Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Application or Foreign Account Tax Compliance Act (FATCA) Individual Identification Number.

OMB Number: 1545–XXXX.

Form Number: 8956.

Abstract: The IRS is developing New Form 8956 under the authority of IRC section 1471(b), which was added by Public Law 111–47, section 501(a). Section 1471 is part of the new Foreign Account Tax Compliance Act (FATCA) legislative framework to obtain reporting from foreign financial institutions on the accounts held in their institutions by US persons.

Current Actions: This is a new form.

Affected Public: Business and other for profit and not-for-profit institutions.

Estimated Number of Respondents: 260,000.

Estimated Time per Respondent: Two hours 59 minutes.

Estimated Total Annual Burden Hours: 759,200.

Title: Registration for Participating, Limited, or Registered Deemed Compliant Foreign Financial Institution Status.

OMB Number: 1545–XXXX.

Form Number: 8957.

Abstract: The IRS is developing New Form 8956 under the authority of IRC section 1471(b), which was added by Public Law 111–47, section 501(a). Section 1471 is part of the new Foreign Account Tax Compliance Act (FATCA) legislative framework to obtain reporting from foreign financial institutions on the accounts held in their institutions by U.S. persons.

Current Actions: This is a new form.

Affected Public: Business and other for profit and not-for-profit institutions.

Estimated Number of Respondents: 260,000.

Estimated Time per Respondent: 8 hours seven minutes.

Estimated Total Annual Burden Hours: 2,116,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection of information displays a valid OMB control number.

Approved: August 8, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–19972 Filed 8–14–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Wednesday, September 19, 2012, in conference room 23, at 131 M Street NE., Washington, DC. The meeting will convene at 9:30 a.m. and end at 3:30 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The agenda will include a review of the VA research portfolio and a summary of special projects. The Council will also provide feedback on the direction/focus of VA's research initiatives.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested members of the public may submit written statements for the Council's review to Margaret Hannon, Designated Federal

Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Margaret.Hannon@va.gov.* Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Hannon at (202) 443–5614.

By Direction of the Secretary.

Dated: August 9, 2012.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–19971 Filed 8–14–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Residential Dishwashers and Cooking Products; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–TP–0039]

RIN 1904–AC01

Energy Conservation Program: Test Procedures for Residential Dishwashers and Cooking Products

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to amend its test procedures for residential dishwashers to update certain obsolete dishware, flatware and food items, make minor amendments to the definition of the normal cycle, and update the ambient temperature and preconditioning requirements as well as the industry test method referenced in DOE's test procedure. DOE also proposes to add water pressure, drain height, rack position, loading, rinse aid container, and soil preparation specifications to the dishwasher test procedure. DOE additionally proposes to amend the test procedures for both dishwashers and conventional cooking products for the measurement of energy use in fan-only mode.

DATES: DOE will accept comments, data, and information regarding this SNOPR submitted no later than August 30, 2012. See section IV, ''Public Participation,'' for details.

ADDRESSES: Any comments submitted must identify the SNOPR for Test Procedures for Residential Dishwashers and Conventional Cooking Products, and provide docket number EERE–2010–BT–TP–0039 and/or Regulatory Information Number (RIN) 1904–AC01. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: Res-DW–Dehumid-CookingProd-2010-TP-0039@ee.doe.gov*. Include docket number EERE–2010–BT–TP–0039 and/or RIN 1904–AC27 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *cwhiteman@omb.eop.gov*.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

A link to the docket web page can be found at: *www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE-2010-BT-TP-0039*. This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through *www.regulations.gov*.

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *Wes.Anderson@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

For further information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2] These include residential dishwashers and conventional cooking products,[3] the subject of today's notice. (42 U.S.C. 6292(a)(6) and (10); 6295(cc))

Under the Act, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) establishing Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use: (1) As the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA, and (2) for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether the products comply with these energy conservation standards. (42 U.S.C. 6295(s))

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

[3] The term ''conventional cooking products,'' as used in this notice, refers to residential electric and gas kitchen ovens, ranges, and cooktops (other than microwave ovens).

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary of Energy, and not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

DOE's test procedure for dishwashers is found in the Code of Federal Regulations (CFR) at 10 CFR part 430, subpart B, appendix C. DOE's test procedures for conventional ranges, cooktops, and ovens (including microwave ovens, which are considered separately from the conventional cooking products covered in today's rule) are found at 10 CFR part 430, subpart B, appendix I. For background on the establishment of the first DOE test procedures for dishwashers and conventional cooking products, subsequent amendments to those procedures, and the rulemaking history for today's supplemental notice of proposed rulemaking (SNOPR), please see the SNOPR issued on May 25, 2012. (77 FR 31444) (May 2012 SNOPR). In today's SNOPR, DOE considers comments received on the dishwasher test procedure in response to the May 2012 SNOPR and during a public meeting held June 1, 2012 (June 2012 Public Meeting). DOE will provide further response to comments received on the May 2012 SNOPR, as appropriate, in any final rule to establish amended test procedures.

II. Discussion

A. Proposals

Obsolete Dishware and Food Items

In the May 2012 SNOPR, DOE proposed to update obsolete flatware and detergent specifications. DOE has determined that certain additional flatware, dishware, and food items used in the test procedure are also obsolete, or has received comments in this test procedure rulemaking indicating that the items may be obsolete. These items include: The cup and saucer, the bread and butter plate, the fruit bowl, the dinner fork, the salad fork, the teaspoon, the knife, the margarine, and the coffee. In today's SNOPR, DOE proposes to use the items listed in Table I in place of the obsolete or potentially obsolete items. DOE further proposes that use of these items be required 30 days after publication of any final amended test procedures and seeks comment on whether the specified items can be procured in 30 days.

Item	Obsolete or potentially obsolete item	Proposed item
Cup	8 oz. Ceramic Cup; Corning Comcor®/Corelle® 6014162; alternatively, Arzberg 3824732100.	0.20 liter Coffee Cup; Arzberg 2000–00001–4732–1; alternatively, Arzberg 3824732100.
Saucer	6 inch Saucer; Corning Comcor®/Corelle® 6010972; alternatively, Arzberg 3824731100.	14 cm Saucer; Arzberg 2000–00001–4731–1; alternatively, Arzberg 3824731100.
Bread and butter plate	6.75 inch Bread and Butter; Corning Comcor®/Corelle® 6003887; alternatively, Arzberg 8500217100.	6.75 inch Bread and Butter; Corning Comcor®/Corelle® 6003887; alternatively, 17 cm Bread and Butter; Arzberg 2000–00001–0217–1.
Fruit bowl	10 oz. Dessert Bowl; Corning Comcor®/Corelle® 6003899; alternatively, Arzberg 3820513100.	10 oz. Dessert Bowl; Corning Comcor®/Corelle® 6003899; alternatively, Arzberg 38205131001 or Arzberg 2000–00001–0615–1;.
Knife	Oneida® Accent 2619KPVF	Table Knife, WMF "Gastro 0800" 12.0803.6047.
Dinner Fork	Oneida® Accent 2619FRSF	Dessert Fork, WMF "Signum 1900" 12.1905.6040.
Salad Fork	Oneida® Accent 2619FSLF	Cake Fork, WMF "Signum 1900" 12.1964.6040.
Teaspoon	Oneida® Accent 2619STSF	Coffee/Tea Spoon", WMF "Signum 1900" 12.1910.6040.
Margarine	Fleischmann's corn oil (6 g of fat per 14 g serving) not whipped.	Fleischmann's Original stick margarine.
Coffee	Folgers, Decaffeinated Drip Grind	Folgers Classic Decaf.

Definition of Normal Cycle

In the May 2012 SNOPR, DOE stated that the current DOE dishwasher test procedure defines the normal cycle as "the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature." (Section 1.6 of 10 CFR part 430, subpart B, appendix C) DOE noted that it is aware that certain dishwashers have multiple wash and/or drying temperature options for the cycle setting required under the normal cycle definition. For these dishwashers, DOE proposed to clarify in the definition that the normal cycle shall include the wash and drying temperature options recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature. DOE sought comment on the wash and drying temperature options to be selected in the case that the cycle setting required under the normal cycle definition has multiple wash and/or drying temperature options but the manufacturer does not provide such a recommendation.

In response to the May 2012 SNOPR, commenters suggested that in the absence of a manufacturer recommendation concerning temperature options for the normal cycle, the highest energy consumption temperature options should be selected. This approach is consistent with the approach taken in DOE's recent rulemaking to amend the test procedure for residential clothes washers (77 FR 13888, Mar. 7, 2012). In that rulemaking, DOE amended part (B) of the definition of energy test cycle to state that where multiple alternative selections offer a wash/rinse temperature selection for which a temperature use factor has been developed and that is not available on the cycle recommended by the manufacturer for washing cotton or linen clothes described in part (A) of the energy test cycle definition, the alternate cycle selection with the highest energy consumption for that TUF must be included in the energy test cycle. For consistency with the approach taken in the clothes washer test procedure rulemaking, and to ensure that the test procedure does not

under-estimate the energy use of the dishwasher, DOE proposes in today's SNOPR that in the definition of normal cycle, in the absence of a manufacturer recommendation on temperature options, the highest energy consumption temperature options for washing and drying must be selected.

Ambient Temperature

DOE proposed in the May 2012 SNOPR to maintain the current room ambient air temperature requirement of 75 degrees Fahrenheit (°F) ±5 °F, while allowing greater tolerance on the room air temperature during standby mode and off mode testing in accordance with provisions incorporated by reference from the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power'', Edition 2.0 2011–01 (IEC Standard 62301). DOE received comments that the more stringent active mode ambient temperature conditions should apply to all testing, including standby mode and active mode testing performed separately from active mode testing to ensure accurate, repeatable, and reproducible results. Commenters also stated that the test procedure should clarify that the tolerances specified indicate the allowable limits of variation in temperature, but do not permit the deliberate variation with those limits. Commenters also suggested that DOE tighten the tolerance on the ambient temperature to ± 2 °F, because a 1 °F ambient temperature change can result in a 1.5 kilowatt-hour (kWh) change in estimated annual energy use (EAEU), although the commenters acknowledged that this tighter tolerance could be burdensome for certain manufacturers or laboratories.

In specifying tolerances in its test procedures, DOE provides a range of temperatures under which the test results are considered valid, regardless of the reasons for why a particular temperature within the range was selected or achieved. Therefore, DOE is not proposing to state that the test should be conducted at the nominal center of the ambient temperature range. DOE recognizes the impact of ambient temperature on the active mode measurement, however, and as an alternative to the ±5 °F tolerance previously proposed, DOE proposes to tighten the tolerance to ±2 °F. DOE seeks comment on the capabilities of test laboratories to maintain this tolerance and the burden associated with it. DOE is not proposing in today's SNOPR to require that standby mode and off mode testing be conducted under the same ambient temperature as active mode testing because no data are available to suggest that the standby mode and off mode power of residential dishwashers varies significantly within the allowable ambient temperature range of IEC Standard 62301, and because this approach would increase the burden for those manufacturers or laboratories that choose to conduct standby mode and off mode testing separately from active mode testing.

Preconditioning

DOE proposed in the May 2012 SNOPR to require that the preconditioning cycle for soil-sensing dishwashers be run using the cycle setting selected for active mode, and that the power supply to the unit be continuously maintained throughout testing, including after the preconditioning cycle and in between all energy test cycles, to maintain calibration of the turbidity sensor. Comments received from manufacturers indicated that certain dishwashers may be designed to self-calibrate in one cycle, but may sometimes require an additional cycle to perform this calibration. In addition, commenters noted that two preconditioning cycles would help to clean out residual dirt from the machine prior to sensor calibration and energy testing. DOE agrees that two preconditioning cycles would ensure a clean unit at the start of testing and proper sensor calibration in soil-sensing dishwashers that may, under certain conditions, not self-calibrate in one cycle. Therefore, in today's SNOPR, DOE proposes two preconditioning cycles, clarifying that the second preconditioning cycle is to be used to determine detergent dosing. DOE seeks comment on the burden associated with requiring an additional preconditioning cycle.

Updated Industry Test Method

In the May 2012 SNOPR, DOE referenced AHAM's current dishwasher test method, DW–1–2009, in the discussion of its proposal to update obsolete flatware, but did not propose to incorporate that updated test method. In today's SNOPR, DOE proposes to incorporate by reference the updated industry test standard AHAM DW–1–2009, which upon acceptance by ANSI is designated as ANSI/AHAM DW–1–2010, American National Standard, ''Household Electric Dishwashers.'' DOE seeks comment on whether the incorporation of this standard will affect the measured energy use of dishwashers tested according to DOE's test procedure, and if so the magnitude of that effect. DOE will determine, as a result of these comments, whether to retain the current industry standard or update the standard to ANSI/AHAM DW–1–2010.

Water Pressure

In the May 2012 SNOPR, DOE proposed that the water supply pressure during testing be maintained at 35 ±2.5 pounds per square in gauge (psig) when the water is flowing. DOE received comments that, for repeatability and reproducibility, the duration of the transient pressure drop when the water supply valve first opens should be minimized. Commenters suggested allowing a maximum time of 2 seconds to ensure that the water is flowing into the dishwasher at the proper pressure during the test. DOE agrees that transient pressure variations should be minimized for reasons of test stability and reproducibility, and, based on commenters indication of laboratory capabilities, proposes to require that proper pressure be achieved within 2 seconds. DOE seeks comment on this requirement, in particular whether this requirement can be reasonably achieved in all laboratories.

Drain Height

Drain height is not currently specified in the dishwasher test procedure, and DOE received comments that such a specification should be added to reduce testing variability. The commenters recommended that the drain height should be specified according to the manufacturer's installation instructions. In the absence of such instructions, a drain height of 20 inches would be specified, which according to the commenters is a standard height. DOE agrees that the use of manufacturer's instructions for drain height, or a standard height in the absence of such information, would improve reproducibility of the test and is proposing in today's SNOPR corresponding amendments to the dishwasher test procedure, including a standard drain height of 20 inches. DOE seeks comment and information on the standard drain height, and may adjust the value accordingly.

Rack Position and Loading

Commenters on the May 2012 SNOPR noted that the dishwasher test procedure does not specify an upper rack position or where the soiled dishes are placed on the racks, and recommended adjusting the rack position and loading the soiled dishware according to the manufacturer's recommendation. DOE concludes that such clarifications would improve test repeatability and reproducibility, and proposes such

amendments to the dishwasher test procedure in today's SNOPR. DOE seeks comment on this proposal.

Rinse Aid Container

The dishwasher test procedure precludes the use of rinse aid during testing, including preconditioning. DOE was notified by commenters that some laboratories may be filling the rinse aid container in certain dishwashers with water during testing to prevent the energy consumption of an indicator light that is energized when the rinse aid level is low. However, as one commenter noted, the thermal mass of the water in the rinse aid container would necessitate additional water heating energy during the test. For consistency in testing, therefore, DOE clarifies in today's SNOPR that the rinse aid container should not be filled with water for energy testing. DOE welcomes comment on this proposal.

Soil Preparation

DOE received comments on the May 2012 SNOPR stating that DOE should clarify in the dishwasher test procedure the length of time that soils may sit before they are applied to the dishware to prevent stiffening and settling. DOE therefore proposes in today's SNOPR that the test procedure require the potatoes be used within 30 minutes of preparation and the reconstituted milk be allowed to be stored for use over the course of 1 day, as recommended by commenters. DOE's proposal includes provisions for reconstituting the milk. DOE also proposes to adopt the commenters' recommendation that the 1-pound packages of ground beef shall be stored frozen for no more than 6 months.

Fan-Only Mode Energy Use

In the May 2012 SNOPR, DOE proposed a test method to measure the energy use of dishwashers and cooking products in fan-only mode. DOE received comments on the May 2012 SNOPR stating that fan-only mode energy use should be measured only if it is not a user-selectable item. Commenters also indicated that DOE's proposal for measuring the energy use of fan-only mode at the end of each test cycle would create a considerable test burden. In response to these comments, DOE continues to consider the approach set forth in the May 2012 SNOPR but is also considering an alternative approach. Under this approach, the energy use of fan-only mode would be measured only if it is not a user-selectable item. DOE understands that this change will not significantly alter the May 2012 proposal because fan-only mode is almost always not a user-selectable item. For cooking products, fan-only mode runs automatically for safety reasons, and for dishwashers, DOE understands that fan-only mode energy use is not typically selected independently but would be a function of the drying option selected as part of the test cycle. Also under the alternative approach, the energy use of fan-only mode would be measured for a brief time period, such as 10 minutes, and then extrapolated over the length of the entire fan-only mode cycle, which DOE research suggested may range from 10 minutes to several hours for both dishwashers and conventional ovens. To adopt this alternative approach, however, DOE would need additional, representative data on the length of these cycle times, so that the extrapolation provides an accurate measurement of the energy use during the fan-only mode cycle. DOE therefore seeks representative data on the length of the fan-only mode cycle for dishwashers and conventional cooking products. In the absence of such data, DOE may adopt the proposal set forth in the May 2012 SNOPR.

Technical Correction

In the May 2012 SNOPR, DOE inadvertently proposed in section 4.4.2 of the dishwasher test procedure language that refers to section 1.11 of the test procedure. DOE corrects that proposal in today's SNOPR to properly refer to section 1.13.

Other than the specific amendments newly proposed in today's SNOPR, DOE continues to propose the test procedure amendments originally included in the December 2010 NOPR and the September 2011 SNOPR. For the reader's convenience, DOE has reproduced in this SNOPR the entire body of proposed regulatory text from the December 2010 NOPR and September 2011 and May 2012 SNOPRs, further amended as appropriate according to today's proposals. DOE's supporting analysis and discussion for the portions of the proposed regulatory text not affected by this SNOPR may be found in the December 2010 NOPR (75 FR 75290 (Dec. 2, 2010)), the September 2011 SNOPR (76 FR 58346 (Sept. 20, 2011)), and the May 2012 SNOPR (77 FR 31444 (May 25, 2012)).

B. Compliance With Other EPCA Requirements

EPCA requires test procedures to be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

For the reasons stated in the December 2010 NOPR and September 2011 and May 2012 SNOPRs, DOE tentatively concluded that the amended test procedures would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct. DOE continues to make these assertions for today's SNOPR because the substituted items replace items that DOE determined to obsolete, or has received comments in this test procedure rulemaking process that the items are obsolete. The replacement items are intended to be inexpensive, representative of commonly-found items, and in some cases already used by manufacturers in testing dishwashers. In addition, DOE is proposing a definition of normal cycle for dishwashers supported by manufacturers because it will lead to consistent, representative results. The updated industry test method for dishwashers was also supported by manufactures because it will lead to, among other things, reduced test variation, as would the proposals for consistent preparation time for the soils used in the test procedure, the positioning of the dishwasher rack during testing, the method of loading, the tighter tolerances on ambient temperature, the added specifications for water pressure measurement and drain height, and the clarifications for the rinse aid container. Finally, DOE is proposing an alternative method of measuring the energy use in fan-only mode for dishwashers and cooking products that could significantly decrease overall testing time.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the December 2010 NOPR and September 2011 and May 2012 SNOPRs remain unchanged for this SNOPR. These determinations are set forth in the December 2010 NOPR (75 FR 75290, 75317–19 (Dec. 2, 2010)), the September 2011 SNOPR (76 FR 58346, 58355 (Sept. 20, 2011)), and the May 2012 SNOPR (77 FR 31444, May 25, 2012). An update to the Regulatory Flexibility Act certification is set forth below.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed

for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *www.gc.doe.gov*.

DOE reviewed today's supplemental proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE tentatively concluded that the December 2010 NOPR and September 2011 SNOPR would not have a significant impact on a substantial number of small entities, and today's SNOPR contains no revisions to that proposal that would result in a significant impact on a substantial number of small entities. The updates to the factual basis for this certification are as follows:

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335228, titled ''Other Major Household Appliance Manufacturing,'' is 500 employees; this classification specifically includes residential dishwasher manufacturers. Additionally, the threshold number for NAICS classification code 335221, titled ''Household Cooking Appliance Manufacturing,'' is 750 employees; this classification specifically includes manufacturers of residential conventional cooking products. The threshold number for NAICS classification code 335211, titled ''Electric Housewares and Household Fan Manufacturing,'' is 750 employees; this classification specifically includes manufacturers of dehumidifiers.

DOE surveyed the AHAM member directory to identify manufacturers of residential dishwashers and conventional cooking products. DOE then consulted publicly-available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a ''small business manufacturing facility'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE estimates that there are no small businesses that manufacture dishwashers and two small businesses that manufacture conventional cooking products. Only one provision of today's supplemental proposal would affect manufacturers of conventional cooking products, the alternative proposal to measure the energy use in fan-only mode. Under today's supplemental proposal, that energy use would not be measured at the end of each test cycle. Rather, the energy use in fan-only mode would be measured for a brief period, such as 10 minutes, and then extrapolated over the duration of the entire cycle. This proposal could significantly decrease the test burden for manufacturers of conventional cooking products.

For these reasons, DOE continues to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). DOE seeks comment on the updates to the certification that are set forth above.

IV. Public Participation

Submission of Comments

DOE will accept comments, data, and information regarding this SNOPR no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable, except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file

format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Buildings and facilities, Business and industry, Energy conservation, Grant programs-energy, Housing, Reporting and recordkeeping requirements, Technical assistance.

10 CFR Part 430

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

Issued in Washington, DC, on July 24, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 429.23 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.23 Conventional cooking tops, conventional ovens, microwave ovens.

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

3. Section 429.36 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.36 Dehumidifiers.

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

5. Section 430.3 is amended by:

a. Redesignating paragraphs (g)(1) through (5) as (g)(2) through (6);

b. Adding new paragraph (g)(1);

c. Revising newly redesginated paragraph (g)(2); and

d. Adding paragraph (l)(2).

The additions and revisions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(g) * * *

(1) ANSI/AHAM DH–1–2008 (''DH–1–2008''), *Dehumidifiers,* (2008, ANSI approved May 9, 2008), IBR approved for Appendix X to subpart B.

(2) ANSI/AHAM DW–1–2010, American National Standard, Household Electric Dishwashers, approved September 10, 2010, IBR approved for Appendix C to subpart B and § 430.32.

* * * * *

(l) * * *

(2) IEC Standard 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01), IBR approved for Appendix C, Appendix I, Appendix J2, and Appendix X to subpart B.

* * * * *

6. Section 430.23 is amended by revising paragraphs (c), (i), and (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = $(D_e \times S) + (D_e \times N \times (M - (E_D/2)))$ may be used for units manufactured until (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

(B) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2)))$ must be used for units manufactured on or after (*date*

180 days after date of publication of the final rule in the Federal Register)

(C) For dishwashers not having a truncated normal cycle, EAOC = ($D_e \times S$) + ($D_e \times N \times M$) may be used for units manufactured until (*date 180 days after date of publication of the final rule in the Federal Register*)

(D) For dishwashers not having a truncated normal cycle, EAOC = ($D_e \times E_{TLP}$) + ($D_e \times N \times (M + M_{WS} + E_F)$) must be used for units manufactured on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

Where

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

S = the annual simplified standby energy consumption in kilowatt-hours per year and determined according to section 5.7 of appendix C to this subpart,

E_{TLP} = the annual combined low-power mode energy consumption in kilowatt-hours per year and determined according to section 5.8 of appendix C to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine energy consumption per cycle for the normal cycle as defined in section 1.12 of appendix C to this subpart, in kilowatt-hours and determined according to section 5.1.1 of appendix C to this subpart for non-soil-sensing dishwashers and section 5.1.2 of appendix C to this subpart for soil-sensing dishwashers,

M_{WS} = the machine energy consumption per cycle for water softener regeneration, in kilowatt-hours and determined according to section 5.1.3 of appendix C to this subpart,

E_F = the fan-only mode energy consumption per cycle, in kilowatt-hours and determined according to section 5.2 of appendix C to this subpart, and

E_D = the drying energy consumption defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle and determined according to section 5.3 of appendix C to this subpart.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(i)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = ($D_e \times S$) + ($D_e \times N \times (M - (E_D/2))$) + ($D_e \times N \times W$) may be used for units manufactured until (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

(B) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = ($D_e \times E_{TLP}$) + ($D_e \times N \times (M + M_{WS} + E_F - (E_D/2))$) + ($D_e \times N \times (W + W_{WS})$) must be used for units manufactured on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

(C) For dishwashers not having a truncated normal cycle, EAOC = ($D_e \times S$) + ($D_e \times N \times M$) + ($D_e \times N \times W$) may be used for units manufactured until (*date 180 days after date of publication ofthe final rule in the* ***Federal Register***)

(D) For dishwashers not having a truncated normal cycle,

EAOC = ($D_e \times E_{TLP}$) + ($D_e \times N \times (M + M_{WS} + E_F)$) + ($D_e \times N \times (W + W_{WS})$) must be used for units manufactured on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

Where

D_e, S, E_{TLP}, N, M, M_{WS}, E_F, and E_D, are defined in paragraph (c)(1)(i) of this section,

W = the water energy consumption per cycle for the normal cycle as defined in section 1.12 of appendix C to this subpart, in kilowatt-hours per cycle and determined according to section 5.5 of appendix C to this subpart, and

W_{WS} = the water softener regeneration water energy consumption per cycle in kilowatt-hours per cycle and determined according to section 5.5 of appendix C to this subpart.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(ii)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, $EAOC_g$ = ($D_e \times S$) + ($D_e \times N \times (M - (E_D/2))$) + ($D_g \times N \times W_g$) may be used for units manufactured until (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

(B) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart,

$EAOC_g$ = ($D_e \times E_{TLP}$) + ($D_e \times N \times (M + M_{WS} + E_F - (E_D/2))$) + ($D_g \times N \times (W_g + W_{WSg})$) must be used for units manufactured on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

(C) For dishwashers not having a truncated normal cycle, $EAOC_g$ = ($D_e \times S$) + ($D_e \times N \times M$) + ($D_g \times N \times W_g$) may be used for units manufactured until (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

(D) For dishwashers not having a truncated normal cycle, $EAOC_g$ = ($D_e \times E_{TLP}$) + ($D_e \times N \times (M + M_{WS} + E_F)$) + ($D_g \times N \times (W_g + W_{WSg})$) must be used for units manufactured on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***)

Where

D_e, S, E_{TLP}, N, M, M_{WS}, E_F, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary,

W_g = the water energy consumption per cycle for the normal cycle as defined in section 1.12 of appendix C to this subpart, in Btus per cycle and determined according to section 5.6 of appendix C to this subpart, and

W_{WSg} = the water softener regeneration energy consumption per cycle in Btu per cycle and determined according to section 5.6 of appendix C to this subpart.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(iii)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(2) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year must be rounded to the nearest kilowatt-hour per year and is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart,

(A) EAEU = $(M - (E_D/2) + W) \times N + S$ may be used for units manufactured:

(I) before (*date 180 days after date of publication of the final rule in the* ***Federal Register***) to make representations of energy efficiency; and

(II) before the compliance date of any amended standards to demonstrate compliance.

(B) EAEU = $(M + M_{WS} + E_F - (E_D/2) + W + W_{WS}) \times N + (E_{TLP})$ must be used for units manufactured:

(I) on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***) to make representations of energy efficiency; and

(II) on or after the compliance date of any amended standards to demonstrate compliance.

Where

M, M_{WS}, S, E_D, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS}, are defined in paragraph (c)(1)(ii) of this section.

(C) Manufacturers calculating EAEU pursuant to paragraph (c)(2)(i)(A) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(A), (c)(1)(ii)A, or (c)(1)(iii)(A) of this section, as appropriate. Manufacturers calculating EAEU pursuant to paragraph (c)(2)(i)(B) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(B), (c)(1)(ii)(B), or (c)(1)(ii)(B) of this section, as appropriate.

(ii) For dishwashers not having a truncated normal cycle:

(A) EAEU = $(M + W) \times N + S$ may be used for units manufactured:

(I) before (*date 180 days after date of publication of the final rule in the* ***Federal Register***) to make representations of energy efficiency; and

(II) before the compliance date of any amended standards to demonstrate compliance.

(B) EAEU = $(M + M_{WS} + E_F + W + W_{WS}) \times N + E_{TLP}$ must be used for units manufactured:

(I) on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***) to make representations of energy efficiency; and

(II) on or after the compliance date of any amended standards to demonstrate compliance.

Where,

M, M_{WS}, S, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS} are defined in paragraph (c)(1)(ii) of this section.

(C) Manufacturers calculating EAEU pursuant to paragraph (c)(2)(ii)(A) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(C), (c)(1)(ii)(C), or (c)(1)(iii)(C) of this section, as appropriate. Manufacturers calculating EAEU pursuant to paragraph (c)(2)(ii)(B) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(D), (c)(1)(ii)(D), or (c)(1)(iii)(D) of this section, as appropriate.

(3) The water consumption, V, and the sum of the water consumption, V, and the water consumption during water softener regeneration, V_{WS}, expressed in gallons per cycle and defined in section 5.4 of appendix C to this subpart, must be rounded to one decimal place.

(i) Water consumption, V, may be measured for units manufactured:

(A) Before (*date 180 days after date of publication of the final rule in the* ***Federal Register***) to make representations of energy efficiency; and

(B) Before the compliance date of any amended standards to demonstrate compliance.

(ii) Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAOC as described in paragraph (c)(1)(i)(A), (c)(1)(i)(C), (c)(1)(ii)(A), (c)(1)(ii)(C), (c)(1)(iii)(A), or (c)(1)(iii)(C) of this section, as appropriate. Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAUE as described in paragraph (c)(2)(i)(A) or (c)(2)(ii)(A) of this section, as appropriate.

(iii) The sum of the water consumption, V, and the water consumption during water softener regeneration, V_{WS}, must be measured for units manufactured:

(A) on or after (*date 180 days after date of publication of the final rule in the* ***Federal Register***) to make representations of energy efficiency; and

(B) on or after the compliance date of any amended standards to demonstrate compliance.

(C) Manufacturers calculating water consumption pursuant to paragraph (c)(3)(iii) of this section should calculate EAOC as described in paragraph (c)(1)(i)(B), (c)(1)(i)(D), (c)(1)(ii)(B), (c)(1)(ii)(D), (c)(1)(iii)(B), or (c)(1)(iii)(D) of this section, as appropriate. Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAUE as described in paragraph (c)(2)(i)(B) or (c)(2)(ii)(B) of this section, as appropriate.

(4) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix C to this subpart.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, and conventional ovens shall be the sum of the following products:

(i) The total integrated annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWhs) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The total annual gas energy consumption for any natural gas usage, in British thermal units (Btus) per year, times the representative average unit cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus

(iii) The total annual gas energy consumption for any propane usage, in Btus per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be as determined according to sections 4.3, 4.2.2, and 4.1.2, respectively, of appendix I to this subpart. For conventional gas cooking tops, total integrated annual electrical energy consumption shall be equal to E_{CTSO}, defined in section 4.2.2.2.4 of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

(2) The cooking efficiency for conventional cooking tops and conventional ovens shall be the ratio of the cooking energy output for the test to the cooking energy input for the test, as determined according to sections 4.2.1 and 4.1.3, respectively, of appendix I to this subpart. The final cooking efficiency values shall be rounded off to three significant digits.

(3) [Reserved]

(4) The energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total annual energy input, as determined according to sections 4.3, 4.2.3.1, and 4.1.4.1, respectively, of appendix I to this subpart. The final energy factor values shall be rounded off to three significant digits.

(5) The integrated energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful

cooking energy output to the total integrated annual energy input, as determined according to sections 4.3, 4.2.3.2, and 4.1.4.2, respectively, of appendix I to this subpart. The final integrated energy factor values shall be rounded off to three significant digits.

(6) There shall be two estimated annual operating costs, two cooking efficiencies, and two energy factors for convertible cooking appliances—

(i) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with natural gas; and

(ii) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with LP-gas.

(7) There shall be two integrated energy factors for convertible cooking appliances—

(i) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with natural gas; and

(ii) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with LP-gas.

(8) The estimated annual operating cost for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(1) of this section using the total annual gas energy consumption for natural gas times the representative average unit cost for natural gas.

(9) The estimated annual operating cost for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(1) of this section using the representative average unit cost for propane times the total annual energy consumption of the test gas, either propane or natural gas.

(10) The cooking efficiency for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(2) of this section when the appliance is tested with natural gas.

(11) The cooking efficiency for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(2) of this section, when the appliance is tested with either natural gas or propane.

(12) The energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with natural gas.

(13) The integrated energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(7)(i) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas.

(14) The energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with either natural gas or propane.

(15) The integrated energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(7)(ii) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas or propane.

(16) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

(z) *Dehumidifiers.* (1) The energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh), shall be measured in accordance with section 4.1 of appendix X of this subpart.

(2) The integrated energy factor for dehumidifiers, expressed in L/kWh, shall be determined according to paragraph 5.2 of appendix X to this subpart.

* * * * *

Appendix C to Subpart B of Part 430—[Amended]

7. Appendix C to subpart B of part 430 is amended:

a. By revising the introductory text after the appendix heading;

b. By revising section 1, Definitions;

c. By revising section 2, Testing Conditions;

d. In section 3. Instrumentation, by:

1. Revising section 3.5; and

2. Adding section 3.8;

e. By revising section 4, Test Cycle and Measurements: and

f. By revising section 5, Calculation of Derived Results From Test Measurements.

The additions and revisions read as follows:

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

Note: The procedures and calculations that refer to the combined low-power mode, fan-only mode, and water softener energy consumption (*i.e.,* sections 2.6.1.1, 2.6.2.1, 2.6.3.1, 4.1, 4.1.1, 4.1.2, 4.2.2, 4.4, 4.4.1, 4.4.2, 5.1.3, 5.2, 5.2.1, 5.2.2, 5.4.3, 5.5.1.2, 5.5.2.2, 5.6.1.2, 5.6.2.2, and 5.8 of this Appendix C) need not be performed to determine compliance with energy conservation standards for dishwashers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after (*date 180 days after date of publication of the test procedure final rule in the* ***Federal Register***) must be based upon results generated under this test procedure using sections 4.4, 4.4.1, 4.4.2, and 5.8 and disregarding sections 4.3 and 5.7 of this Appendix, consistent with the requirements of 42 U.S.C. 6293(c)(2). Upon the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption, compliance with the applicable provisions of this test procedure will also be required.

1. Definitions

1.1 *Active mode* means a mode in which the dishwasher is connected to a mains power source, has been activated, and is performing one of the main functions of washing, rinsing, or drying (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical, and/or electrical means, or is involved in functions necessary for these main functions, such as admitting water into the dishwasher, pumping water out of the dishwasher, circulating air, or regenerating an internal water softener.

1.2 *AHAM* means the Association of Home Appliance Manufacturers.

1.3 *Combined low-power mode* means the aggregate of available modes other than active mode.

1.4 *Compact dishwasher* means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this Appendix.

1.5 *Cycle* means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.6 *Cycle finished mode* means a standby mode which provides continuous status display following operation in active mode.

1.7 *Cycle type* means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.8 *Fan-only mode* means an active mode that is not user-selectable, and in which a fan circulates air for a finite period of time after

the end of the cycle, as indicated to the consumer.

1.9 *IEC 62301* means the standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0, 2011–01) (incorporated by reference; see § 430.3).

1.10 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.11 *Non-soil-sensing dishwasher* means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.12 *Normal cycle* means the cycle type, including wash and drying temperature options, recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature. In the absence of a manufacturer recommendation on washing and drying temperature options, the highest energy consumption options must be selected.

1.13 *Off mode* means a mode in which the dishwasher is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.14 *Power-dry feature* means the introduction of electrically-generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.15 *Preconditioning cycle* means any cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.16 *Sensor heavy response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3). For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.17 *Sensor light response* means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3).

1.18 *Sensor medium response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3). For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.19 *Simplified standby mode* means the lowest power consumption mode which cannot be switched off or influenced by the user and that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions.

1.20 *Soil-sensing dishwasher* means a dishwasher that has the ability to adjust any energy-consuming aspect of a wash cycle based on the soil load of the dishes.

1.21 *Standard dishwasher* means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this Appendix.

1.22 *Standby mode* means a mode in which the dishwasher is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.23 *Truncated normal cycle* means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.24 *Truncated sensor heavy response* means the sensor heavy response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.25 *Truncated sensor light response* means the sensor light response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.26 *Truncated sensor medium response* means the sensor medium response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.27 *Water-heating dishwasher* means a dishwasher which, as recommended by the manufacturer, is designed for heating cold inlet water (nominal 50 °F) or designed for heating water with a nominal inlet temperature of 120 °F. Any dishwasher designated as water-heating (50 °F or 120 °F inlet water) must provide internal water heating to above 120 °F in a least one wash phase of the normal cycle.

1.28 *Water-softening dishwasher* means a dishwasher which incorporates a water softening system that periodically consumes additional water and energy during the cycle to regenerate.

2. Testing Conditions

2.1 *Installation requirements.* Install the dishwasher according to the manufacturer's instructions, including drain height. If the manufacturer does not provide instructions for a specific drain height, the drain height shall be 20 inches. The racks shall be positioned according to the manufacturer recommendation for washing a full load of normally soiled dishes, and the rinse aid container shall remain empty. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.2 *Electrical energy supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher at 115 volts ±2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer. Maintain a continuous electrical supply to the unit throughout testing, including the preconditioning cycle, specified in section 2.9 of this Appendix, and in between all test cycles.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher at 240 volts ±2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer. Maintain a continuous electrical supply to the unit throughout testing, including the preconditioning cycle, specified in section 2.9 of this Appendix, and in between all test cycles.

2.2.3 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this Appendix.

2.3.1 *Dishwashers to be tested at a nominal 140 °F inlet water temperature.* Maintain the water supply temperature at 140° ±2 °F.

2.3.2 *Dishwashers to be tested at a nominal 120 °F inlet water temperature.* Maintain the water supply temperature at 120° ±2 °F.

2.3.3 *Dishwashers to be tested at a nominal 50 °F inlet water temperature.* Maintain the water supply temperature at 50° ±2 °F.

2.4 *Water pressure.* Using a water pressure gauge as specified in section 3.4 of this Appendix, maintain the pressure of the water supply at 35 ±2.5 pounds per square inch gauge (psig) when the water is flowing. The pressure shall be achieved within 2 seconds of opening the water supply valve.

2.5 *Ambient temperature.*

2.5.1 *Active mode ambient and machine temperature.* Using a temperature measuring device as specified in section 3.1 of this Appendix, maintain the room ambient air temperature at 75 ° ±2 °F and ensure that the dishwasher and the test load are at room

ambient temperature at the start of each test cycle.

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.6 *Test cycle and load.*

2.6.1 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 140 °F.*

2.6.1.1 If the unit is a water-softening dishwasher, it must be tested first on the normal cycle without a test load for water softener regeneration, as specified in section 4.1 of this Appendix. The water softener setting shall be selected according to manufacturer instructions for a water hardness of 217 mg/L (217 ppm or 12.6 grains per gallon). Ensure that dishwasher salt is supplied to the water softener system according to the manufacturer's instructions.

2.6.1.2 All non-soil-sensing dishwashers to be tested according to section 4.2 of this Appendix at a nominal inlet temperature of 140 °F must then be tested on the normal cycle and truncated normal cycle without a test load if the dishwasher does not heat water in the normal cycle. Water-softening dishwashers shall be tested using the lowest water hardness water softener setting.

2.6.2 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.*

2.6.2.1 If the unit is a water-softening dishwasher, it must be tested first without a test load on the normal cycle for water softener regeneration, as specified in section 4.1 of this Appendix. The water softener setting shall be selected according to manufacturer instructions for a water hardness of 217 mg/L (217 ppm or 12.6 grains per gallon). Ensure that dishwasher salt is supplied to the water softener system according to the manufacturer's instructions.

2.6.2.2 All non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F must then be tested according to section 4.2 of this Appendix on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in section 2.7 of this Appendix. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity. Water-softening dishwashers shall be tested using the lowest water hardness water softener setting.

2.6.3 *Soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F, 120 °F, or 140 °F.*

2.6.3.1 Water-softening dishwashers must be tested first without a test load on the normal cycle for water softener regeneration, as specified in section 4.1 of this Appendix. The water softener setting shall be selected according to manufacturer instructions for a water hardness of 217 mg/L (217 ppm or 12.6 grains per gallon). Ensure that dishwasher salt is supplied to the water softener system according to the manufacturer's instructions.

2.6.3.2 All soil-sensing dishwashers shall then be tested according to section 4.2 of this Appendix. If soil-sensing is available as an option in the normal cycle, the normal cycle shall be selected, with the soil-sensing option if necessary. If soil-sensing is not available for the normal cycle, the cycle type that uses the soil-sensing system, and contains all the elements of a normal cycle including the power-dry feature (if such a feature is provided) shall be selected. The dishwasher shall be tested first for the sensor heavy response, then tested for the sensor medium response, and finally for the sensor light response with the following combinations of soiled and clean test loads. Water-softening dishwashers shall be tested using the lowest water hardness water softener setting.

2.6.3.2.1 For tests of the sensor heavy response, as defined in section 1.16 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Four of the eight place settings, except for the flatware, must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) and as additionally specified in section 2.7.5 of this Appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the four place settings, except for the flatware, must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1 and as additionally specified in section 2.7.5 of this Appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1.

2.6.3.2.2 For tests of the sensor medium response, as defined in section 1.18 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the eight place settings, except for the flatware must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) and as additionally specified in section 2.7.5 of this Appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings, except for the flatware, must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1 and as additionally specified in section 2.7.5 of this Appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1.

2.6.3.2.3 For tests of the sensor light response, as defined in section 1.17 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the eight place settings, except for the flatware, must be soiled with half of the soil load specified for a single place setting according to sections 5.3 through 5.7 of ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) and as additionally specified in section 2.7.5 of this Appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings, except for the flatware, must be soiled with half of the soil load specified for a single place setting according to sections 5.3 through 5.7 of ANSI/AHAM DW–1 and as additionally specified in section 2.7.5 of this Appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1.

2.7 *Test load.*

2.7.1 *Test load items.*

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Dinner Plate	Corning Comcor®/Corelle®.	10 inch Dinner Plate	6003893.		
Bread and Butter Plate.	Corning Comcor®/Corelle®.	6.75 inch Bread & Butter.	6003887	Arzberg	2000–00001–0217–1
Fruit Bowl	Corning Comcor®/Corelle®.	10 oz. Dessert Bowl	6003899	Arzberg	3820513100
				Arzberg	2000–00001–0615–1
Cup	Arzberg	0.20 liter Coffee Cup	2000–00001–4732–1	Arzberg	3824732100
Saucer	Arzberg	14 cm Saucer	2000–00001–4731–1	Arzberg	3824731100
Serving Bowl	Corning Comcor®/Corelle®.	1 qt. Serving Bowl	6003911.		

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Platter	Corning Comcor®/Corelle®.	9.5 inch Oval Platter	6011655.		
Glass—Iced Tea	Libbey		551 HT.		
Flatware—Knife	Oneida®—Accent		2619KPVF	WMF—Gastro 0800	12.0803.6047
Flatware—Dinner Fork	Oneida®—Accent		2619FRSF	WMF—Signum 1900	12.1905.6040
Flatware—Salad Fork	Oneida®—Accent		2619FSLF	WMF—Signum 1900	12.1964.6040
Flatware—Teaspoon	Oneida®—Accent		2619STSF	WMF—Signum 1900	12.1910.6040
Flatware—Serving Fork.	Oneida®—Flight		2865FCM	WMF—Signum 1900	12.1902.6040
Flatware—Serving Spoon.	Oneida®—Accent		2619STBF	WMF—Signum 1900	12.1904.6040

2.7.2 *Place setting.* A place setting shall consist of one cup, one saucer, one dinner plate, one bread and butter plate, one fruit bowl, one iced tea glass, one dinner fork, one salad fork, one knife, and two teaspoons.

2.7.3 *Serving pieces.* Serving pieces shall consist of two serving bowls, one platter, one serving fork, and two serving spoons.

2.7.4 *Soils.* The soils shall be as specified in section 5.4 of ANSI/AHAM DW–1 (incorporated by reference, see § 430.3), except for the following substitutions.

2.7.4.1 *Margarine.* The margarine shall be Fleischmann's Original stick margarine.

2.7.4.2 *Coffee.* The coffee shall be Folgers Classic Decaf.

2.7.5 *Soil Preparation.* Soils shall be prepared according to section 5.5 of ANSI/AHAM DW–1 (incorporated by reference, see § 430.3), with the following additional specifications.

2.7.5.1 *Milk.* The nonfat dry milk shall be reconstituted with water according by mixing ⅔ cup of nonfat dry milk with 2 cups of water until well mixed. The reconstituted milk may be stored for use over the course of 1 day.

2.7.5.2 *Instant mashed potatoes.* The potato mixture shall be applied within 30 minutes of preparation.

2.7.5.3 *Ground beef.* The 1-pound packages of ground beef shall be stored frozen for no more than 6 months.

2.8 *Testing requirements.* Provisions in this Appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water-heating dishwashers as defined in section 1.27 of this Appendix.

2.9 *Preconditioning requirements.* Precondition the dishwasher twice by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. For each preconditioning, set the dishwasher to the preconditioning cycle as defined in section 1.15 of this Appendix, without using a test load, and initiate the cycle. During the second preconditioning, measure the prewash fill water volume, V_{pw}, if any, and the main wash fill water volume, V_{mw}.

2.10 *Detergent.* Use half the quantity of detergent specified according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3), using Cascade with the Grease Fighting Power of Dawn powder as the detergent formulation. Determine the amount of detergent (in grams) to be added to the prewash compartment (if provided) or elsewhere in the dishwasher (if recommended by the manufacturer) and the main wash compartment according to sections 2.10.1 and 2.10.2 of this Appendix.

2.10.1 *Prewash Detergent Dosing.* If the cycle setting for the test cycle includes prewash, determine the quantity of dry prewash detergent, D_{pw}, in grams (g) that results in 0.25 percent concentration by mass in the prewash fill water as:

$$D_{pw} = V_{pw} \times \rho \times k \times 0.25/100$$

Where,

V_{pw} = the prewash fill volume of water in gallons,

ρ = water density = 8.343 pounds (lb)/gallon for dishwashers to be tested at a nominal inlet water temperature of 50 °F (10 °C), 8.250 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 120 °F (49 °C), and 8.205 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 140 °F (60 °C), and

k = conversion factor from lb to g = 453.6 g/lb.

2.10.2 *Main Wash Detergent Dosing.* Determine the quantity of dry main wash detergent, D_{mw}, in grams (g) that results in 0.25 percent concentration by mass in the main wash fill water as:

$$D_{mw} = V_{mw} \times \rho \times k \times 0.25/100$$

Where,

V_{mw} = the main wash fill volume of water in gallons, and

ρ and k are defined in section 2.10.1 of this Appendix.

3. Instrumentation

* * * * *

3.5 *Watt-hour meter.* The watt-hour meter must have a resolution of .1 watt-hour or less and a maximum error of no more than 1 percent of the measured value for any demand greater than 5 watts.

* * * * *

3.8 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

4. Test Cycle and Measurements

4.1 *Water softener regeneration for water-softening dishwashers.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this Appendix, setting the dishwasher to the cycle type to be tested according to section 2.6.1.1, 2.6.2.1, or 2.6.3.1 of this Appendix, initiating the cycle, and allowing the cycle to proceed to completion.

4.1.1 Measure the water consumption, $V_{WS,i}$, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix, where i is the number of times the cycle has been conducted. Measure the machine electrical energy consumption, $M_{WS,i}$, expressed as the number of kilowatt-hours of electricity consumed by the machine during the entire test cycle, using a watt-hour meter as specified in section 3.5 of this Appendix.

4.1.2 Repeat the cycle as specified in section 4.1.1 of this Appendix. If:

$$\left| V_{WS,1} - V_{WS,2} \right| > 1.1$$

Then V_{WSmax} is defined as the larger of $V_{WS,1}$ and $V_{WS,2}$, and V_{WSavg} is defined as the smaller of $V_{WS,1}$ and $V_{WS,2}$; and M_{WSmax} is defined as the machine electrical energy consumption for the cycle associated with V_{WSmax}, and M_{WSavg} is defined as the machine electrical energy consumption for the cycle associated with V_{WSavg};

Otherwise, repeat the cycle as specified in section 4.1.1 of this Appendix until:

$$V_{WS,i} > 1.1 \times \frac{\left(\sum_{j=1}^{i-1} V_{WS,j} \right)}{(i-1)}$$

Then,

$V_{WSmax} = V_{WS,i}$

$M_{WSmax} = M_{WS,i}$

$$V_{WSavg} = \frac{\left(\sum_{j=1}^{i-1} V_{WS,j} \right)}{(i-1)}$$

And

$$M_{WSavg} = \frac{\left(\sum_{j=1}^{i-1} M_{WS,j}\right)}{(i-1)}$$

Otherwise, if a maximum total of 10 cycles have been conducted and no cycle is determined to have water consumption that is 10 percent higher than the average water consumption of the other cycles, then the unit shall be deemed not a water-softening dishwasher.

4.2 *Active mode cycle.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this Appendix, setting the dishwasher to the cycle type to be tested according to section 2.6.1.2, 2.6.2.2, or 2.6.3.2 of this Appendix, initiating the cycle, and allowing the cycle to proceed to completion.

4.2.1 *Machine electrical energy consumption.* Measure the machine electrical energy consumption, M, expressed as the number of kilowatt-hours of electricity consumed by the machine during the entire test cycle, using a water supply temperature as set forth in section 2.3 of this Appendix and using a watt-hour meter as specified in section 3.5 of this Appendix.

4.2.2 *Fan electrical energy consumption.* If the dishwasher is capable of operation in fan-only mode, measure the fan electrical energy consumption, M_F, expressed as the number of kilowatt-hours of electricity consumed by the machine in fan-only mode, by measuring the watt-hours consumed for a period of 10 minutes in fan-only mode, using a watt-hour meter as specified in section 3.5 of this Appendix. Multiply that value by [the number of minutes spent in fan-only mode, L_F] and divide by 10,000.

4.2.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter specified in section 3.3 of this Appendix.

4.3 *Simplified standby mode power.* Connect the dishwasher to a standby wattmeter or a standby watt-hour meter as specified in sections 3.6 and 3.7, respectively, of this Appendix. Select the conditions necessary to achieve operation in the simplified standby mode as defined in section 1.19 of this Appendix. Monitor the power consumption but allow the dishwasher to stabilize for at least 5 minutes. Then monitor the power consumption for at least an additional 5 minutes. If the power level does not change by more than 5 percent from the maximum observed value during the later 5 minutes and if there is no cyclic or pulsing behavior of the load, the load can be considered stable. For stable operation, simplified standby mode power, S_m, can be recorded directly from the standby watt meter in watts or accumulated using the standby watt-hour meter over a period of at least 5 minutes. For unstable operation, the energy must be accumulated using the standby watt-hour meter over a period of at least 5 minutes and must capture the energy use over one or more complete cycles. Calculate the average simplified standby mode power, S_m, expressed in watts by dividing the accumulated energy consumption by the duration of the measurement period.

4.4 *Standby mode and off mode power.* Connect the dishwasher to a standby mode and off mode watt meter as specified in section 3.8 of this Appendix. Establish the testing conditions set forth in sections 2.1, 2.2, and 2.5.2 of this Appendix. For dishwashers that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the dishwasher to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.4.1 and 4.4.2 of this Appendix.

4.4.1 If the dishwasher has an inactive mode, as defined in section 1.10 of this Appendix, measure and record the average inactive mode power of the dishwasher, P_{IA}, in watts.

4.4.2 If the dishwasher has an off mode, as defined in section 1.13 of this Appendix, measure and record the average off mode power, P_{OM}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Machine energy consumption.*

5.1.1 *Machine energy consumption for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.2.1 of this Appendix as the per-cycle machine electrical energy consumption. Express the value, M, in kilowatt-hours per cycle.

5.1.2 *Machine energy consumption for soil-sensing electric dishwashers.* The machine energy consumption for the sensor normal cycle, M, is defined as:

$$M = (M_{hr} \times F_{hr}) + (M_{mr} \times F_{mr}) + (M_{lr} \times F_{lr})$$

Where,

M_{hr} = the value recorded in section 4.2.1 of this Appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

M_{mr} = the value recorded in section 4.2.1 of this Appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

M_{lr} = the value recorded in section 4.2.1 of this Appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33, and

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.1.3 *Machine energy consumption during water softener regeneration for water-softening dishwashers.* The machine energy consumption for water softener regeneration, M_{WS}, is defined as:

$$M_{WS} = (M_{WSmax} - M_{WSavg}) \times N_{WS}/N$$

Where,

M_{WSmax} = the value of the machine electrical energy consumption during a cycle including water softener regeneration recorded in section 4.1 of this Appendix, expressed in kilowatt-hours,

M_{WSavg} = the value of the average machine electrical energy consumption during cycles not including water softener regeneration recorded in section 4.1 of this Appendix, expressed in kilowatt-hours,

N_{WS} = the representative average number of water softener regeneration cycles per year = 36 cycles per year, and

N = the representative average dishwasher use of 215 cycles per year.

5.2 *Fan-only mode energy consumption.*

5.2.1 *Electrical energy consumption for fan-only mode for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.2.2 of this Appendix as the per-cycle electrical energy consumption for fan-only mode. Express the value, E_F, in kilowatt-hours per cycle. If the dishwasher is not capable of operation in fan-only mode, $E_F = 0$.

5.2.2 *Electrical energy consumption for fan-only mode for soil-sensing electric dishwashers.* The fan-only mode electrical energy consumption, E_F, for the sensor normal cycle is defined as:

$$E_F = (E_{Fhr} + E_{Fmr} + E_{Flr})/3$$

Where,

E_{Fhr} = the value recorded in section 4.2.2 of this Appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Fmr} = the value recorded in section 4.2.2 of this Appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Flr} = the value recorded in section 4.2.2 of this Appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

If the dishwasher is not capable of operation in fan-only mode, $E_F = 0$.

5.3 *Drying energy.*

5.3.1 *Drying energy consumption for non-soil-sensing electric dishwashers.* Calculate the amount of energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle. Express the value, E_D, in kilowatt-hours per cycle.

5.3.2 *Drying energy consumption for soil-sensing electric dishwashers.* The drying energy consumption, E_D, for the sensor normal cycle is defined as:

$$E_D = (E_{Dhr} + E_{Dmr} + E_{Dlr})/3$$

Where,

E_{Dhr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Dmr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Dlr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor light response, expressed in kilowatt-hours per cycle.

5.4 *Water consumption.*

5.4.1 *Water consumption for non-soil-sensing electric dishwashers using*

electrically heated, gas-heated, or oil-heated water. Take the value recorded in section 4.2.3 of this Appendix as the per-cycle water consumption. Express the value, V, in gallons per cycle.

5.4.2 *Water consumption for soil-sensing electric dishwashers using electrically heated, gas-heated, or oil-heated water.* The water consumption for the sensor normal cycle, V, is defined as:

$V = (V_{hr} \times F_{hr}) + (V_{mr} \times F_{mr}) + (V_{lr} \times F_{lr})$

Where,

V_{hr} = the value recorded in section 4.2.3 of this Appendix for the test of the sensor heavy response, expressed in gallons per cycle.

V_{mr} = the value recorded in section 4.2.3 of this Appendix for the test of the sensor medium response, expressed in gallons per cycle,

V_{lr} = the value recorded in section 4.2.3 of this Appendix for the test of the sensor light response, expressed in gallons per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33, and

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.4.3 *Water consumption during water softener regeneration for water-softening dishwashers using electrically heated, gas-heated, or oil-heated water.* The water consumption for water softener regeneration, V_{WS}, is defined as:

$V_{WS} = (V_{WSmax} - V_{WSavg}) \times N_{WS}/N$

Where,

V_{WSmax} = the value of the total water consumption during a cycle including water softener regeneration recorded in section 4.1 of this Appendix, expressed in gallons per cycle,

V_{WSavg} = the value of the average total water consumption during cycles not including water softener regeneration recorded in section 4.1 of this Appendix, expressed in gallons per cycle,

N_{WS} = the representative average number of water softener regeneration cycles per year = 36 cycles per year, and

N = the representative average dishwasher use of 215 cycles per year.

5.5 *Water energy consumption for non-soil-sensing or soil-sensing dishwashers using electrically heated water.*

5.5.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

5.5.1.1 Calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this Appendix for non-soil-sensing dishwashers and section 5.4.2 of this Appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5.1.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WS}, expressed in kilowatt-hours per cycle and defined as:

$W_{WS} = V_{WS} \times T \times K$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this Appendix,

T = nominal water heater temperature rise = 90 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.*

5.5.2.1 Calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this Appendix for non-soil-sensing dishwashers and section 5.4.2 of this Appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5.2.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WS}, expressed in kilowatt-hours per cycle and defined as:

$W_{WS} = V_{WS} \times T \times K$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this Appendix,

T = nominal water heater temperature rise = 70 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.6 *Water energy consumption per cycle using gas-heated or oil-heated water.*

5.6.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

5.6.1.1 Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this Appendix for non-soil-sensing dishwashers and section 5.4.2 of this Appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6.1.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WSg}, expressed in kilowatt-hours per cycle and defined as:

$W_{WSg} = V_{WS} \times T \times C/e$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6.2 *Dishwashers that operate with a nominal 120 °F inlet water temperature, only.*

5.6.2.1 Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this Appendix for non-soil-sensing dishwashers and section 5.4.2 of this Appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6.2.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WSg}, expressed in kilowatt-hours per cycle and defined as:

$W_{WSg} = V_{WS} \times T \times C/e$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.7 *Annual simplified standby energy consumption.* Calculate the estimated annual simplified standby energy consumption. First determine the number of standby hours per year, H_s, defined as:

$H_s = H - (N \times L)$

Where,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year, and

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated

sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option.

Then calculate the estimated annual simplified standby power use, S, expressed in kilowatt-hours per year and defined as:

$S = S_m \times ((H_s)/1000)$

Where,

S_m = the simplified standby mode power in watts as determined in section 4.3 of this Appendix.

5.8 *Annual combined low-power mode energy consumption.* Calculate the annual combined low-power mode energy consumption for dishwashers, E_{TLP}, expressed in kilowatt-hours per year, according to the following:

$E_{TLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

Where:

P_{IA} = dishwasher inactive mode power, in watts, as measured in section 4.4.1 of this Appendix for dishwashers capable of operating in inactive mode; otherwise, $P_{IA} = 0$,

P_{OM} = dishwasher off mode power, in watts, as measured in section 4.4.2 of this Appendix for dishwashers capable of operating in off mode; otherwise, $P_{OM} = 0$,

S_{IA} = annual hours in inactive mode as defined as S_{LP} if no off mode is possible, $[S_{LP}/2]$ if both inactive mode and off mode are possible, and 0 if no inactive mode is possible,

S_{OM} = annual hours in off mode as defined as S_{LP} if no inactive mode is possible, $[S_{LP}/2]$ if both inactive mode and off mode are possible, and 0 if no off mode is possible,

S_{LP} = combined low-power annual hours for cycle finished, off, and inactive mode as defined as $[H - (N \times (L + L_F))]$ for dishwashers capable of operating in fan-only mode; otherwise, $S_{LP} = 8{,}465$,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option,

L_F = the duration of the fan-only mode for the normal cycle for non-soil-sensing dishwashers; the average duration of the fan-only mode for sensor light response, sensor medium response, and sensor heavy response for soil-sensing dishwashers, and

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

Appendix I to Subpart B of Part 430—[Amended]

8. Appendix I to subpart B of part 430 is amended:

a. By revising the Note after the appendix heading;

b. By revising section 1. Definitions;

c. In section 2. Test Conditions, by:

1. Revising sections 2.1, 2.1.1, 2.1.2, 2.1.3, 2.2.1.2, 2.5.2, 2.6, 2.9.1.1, 2.9.1.3, and 2.9.2.1;

2. Deleting section 2.9.2.2;

d. In section 3. Test Methods and Measurements, by:

1. Revising sections 3.1.1, 3.1.1.1, 3.1.1.2, 3.1.2, and 3.1.2.1;

2. Adding new sections 3.1.1.2.1, 3.1.1.2.2, 3.1.2.1.1, and 3.1.2.1.2;

4. Redesignating sections 3.1.3 and 3.1.3.1 as 3.1.4 and 3.1.4.1 and revising newly redesignated section 3.1.4.1;

5. Adding new sections 3.1.3, 3.1.3.1, 3.1.3.2, and 3.1.3.3;

6. Revising sections 3.2.1, 3.2.1.1, 3.2.1.2, 3.2.1.3, and 3.2.1.4;

7. Revising section 3.2.2 and 3.2.2.1 and adding new section 3.2.2.2;

8. Redesignating section 3.2.3 as 3.2.4 and revising newly redesignated section 3.2.4;

9. Adding new section 3.2.3;

10. Revising sections 3.3.7 through 3.3.11; and

11. Deleting sections 3.3.12 and 3.3.13;

e. In section 4. Calculation of Derived Results From Test Measurements, by:

1. Revising sections 4.1.1 and 4.1.1.1;

2. Removing section 4.1.2.2;

3. Redesignating sections 4.1.2.3, 4.1.2.3.1, 4.1.2.3.2, 4.1.2.4, 4.2.1.5, 4.1.2.5.1, 4.1.2.5.2, 4.1.2.6, 4.1.2.6.1, and 4.1.2.6.2 as 4.1.2.2, 4.1.2.2.1, 4.1.2.2.2, 4.1.2.3, 4.1.2.4, 4.1.2.4.1, 4.1.2.4.3, 4.1.2.5, 4.1.2.5.1, and 4.1.2.5.3;

4. Revising newly designated section 4.1.2.2.1, 4.1.2.2.2, 4.1.2.3, 4.1.2.4.1, 4.1.2.4.3, 4.1.2.5.1, and 4.1.2.5.3;

5. Adding new sections 4.1.2.4.2 and 4.1.2.5.2;

6. Revising section 4.1.4;

7. Adding new sections 4.1.4.1 and 4.1.4.2;

8. Revising sections 4.2.1.1 and 4.2.1.2;

9. Revising section 4.2.2.1;

10. Adding new sections 4.2.2.1.1 and 4.2.2.1.2;

11. Revising section 4.2.2.2.2;

12. Removing section 4.2.2.2.3;

13. Revising section 4.2.3;

14. Adding new sections 4.2.3.1 and 4.2.3.2; and

15. Revising section 4.3.

The additions and revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

Note: The procedures and calculations in this Appendix I need not be performed to determine compliance with energy conservation standards for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens at this time. However, any representation related to standby mode and off mode energy consumption of conventional ranges, conventional cooking tops, and conventional ovens made after (*date 180 days after date of publication of the test procedure final rule in the* **Federal Register**) and of microwave ovens made after September 6, 2011 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). Upon the compliance date of any energy conservation standard that incorporates standby mode and off mode energy consumption, compliance with the applicable provisions of this test procedure will also be required. Future revisions may add relevant provisions for measuring active mode in microwave ovens.

1. Definitions

1.1 *Active mode* means a mode in which the product is connected to a mains power source, has been activated, and is performing the main functions of producing heat by means of a gas flame, electric resistance heating, or microwave energy, or circulating air internally or externally to the cooking product. Delay start mode is a one-off, user-initiated, short-duration function that is associated with an active mode.

1.2 *Built-in* means the product is supported by surrounding cabinetry, walls, or other similar structures.

1.3 *Combined low-power mode* means the aggregate of available modes other than active mode.

1.4 *Cycle finished mode* means a standby mode in which a conventional cooking top, conventional oven, or conventional range provides continuous status display following operation in active mode.

1.5 *Drop-in* means the product is supported by horizontal surface cabinetry.

1.6 *Fan-only mode* means an active mode that is not user-selectable and in which a fan circulates air internally or externally to the cooking product for a finite period of time after the end of the heating function, as indicated to the consumer.

1.7 *Forced convection* means a mode of conventional oven operation in which a fan is used to circulate the heated air within the oven compartment during cooking.

1.8 *Freestanding* means the product is not supported by surrounding cabinetry, walls, or other similar structures.

1.9 *IEC 62301 First Edition* means the test standard published by the International Electrotechnical Commission, titled

''Household electrical appliances—Measurement of standby power,'' Publication 62301 (First Edition 2005–06) (incorporated by reference; see § 430.3).

1.10 *IEC 62301 Second Edition* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

1.11 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.12 *Normal nonoperating temperature* means the temperature of all areas of an appliance to be tested are within 5 °F (2.8 °C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed.

1.13 *Off mode* means a mode in which the product is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.14 *Primary energy consumption* means either the electrical energy consumption of a conventional electric oven or the gas energy consumption of a conventional gas oven.

1.15 *Secondary energy consumption* means any electrical energy consumption of a conventional gas oven.

1.16 *Standard cubic foot (L) of gas* means that quantity of gas that occupies 1 cubic foot (L) when saturated with water vapor at a temperature of 60 °F (15.6 °C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.17 *Standby mode* means any modes where the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.18 *Thermocouple* means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

1.19 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

A—Number of Hours in a Year
C—Specific Heat
E—Energy Consumed
Eff—Cooking Efficiency
H—Heating Value of Gas
K—Conversion for Watt-hours to Kilowatt-hours
K_e—3.412 Btu/Wh, Conversion for Watt-hours to Btu's
M—Mass
n—Number of Units
O—Annual Useful Cooking Energy Output
P—Power
Q—Gas Flow Rate
R—Energy Factor, Ratio of Useful Cooking Energy Output to Total Energy Input
S—Number of Self-Cleaning Operations per Year
T—Temperature
t—Time
V—Volume of Gas Consumed
W—Weight of Test Block

2. Test Conditions

2.1 *Installation.* A free standing kitchen range shall be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above and on either side of the appliance. There shall be no side walls. A drop-in, built-in, or wall-mounted appliance shall be installed in an enclosure in accordance with the manufacturer's instructions. These appliances are to be completely assembled with all handles, knobs, guards, and the like mounted in place. Any electric resistance heaters, gas burners, baking racks, and baffles shall be in place in accordance with the manufacturer's instructions; however, broiler pans are to be removed from the oven's baking compartment.

2.1.1 *Conventional electric ranges, ovens, and cooking tops.* These products shall be connected to an electrical supply circuit with voltage as specified in section 2.2.1 of this Appendix with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1 of this Appendix. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.2 *Conventional gas ranges, ovens, and cooking tops.* These products shall be connected to a gas supply line with a gas meter installed between the supply line and the appliance being tested, according to manufacturer's specifications. The gas meter shall be as described in section 2.9.2 of this Appendix. Conventional gas ranges, ovens, and cooking tops with electrical ignition devices or other electrical components shall be connected to an electrical supply circuit of nameplate voltage with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1 of this Appendix. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this Appendix. The microwave oven shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). A watt meter shall be installed in the circuit and shall be as described in section 2.9.1.3 of this Appendix.

* * * * *

2.2.1.2 *Supply voltage waveform.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.4 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

* * * * *

2.5.2 *Standby mode and off mode ambient temperature.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.12 of this Appendix, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4 of this Appendix, as applicable.

* * * * *

2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of 1 watt-hour (3.6 kJ) or less and a maximum error no greater than 1.5 percent of the measured value for any demand greater than 5 watts. The watt-hour meter for measuring the energy consumption of microwave ovens shall have resolution of 0.1 watt-hour (0.36 kJ) or less and a maximum error no greater than 1.5 percent of the measured value.

* * * * *

2.9.1.3 *Standby mode and off mode watt meter.* The watt meter used to measure conventional range, conventional cooking top, and conventional oven standby mode and off mode power consumption shall have a resolution as specified in Section 4, Paragraph 4.4 of IEC 62301 (Second Edition) (incorporated by reference, see § 430.3). The watt meter used to measure microwave oven standby mode and off mode power consumption shall have a resolution as specified in Section 4, Paragraph 4.5 of IEC 62301 (First Edition) (incorporated by reference, see § 430.3), and shall also be able to record a ''true'' average power as specified

in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition).

2.9.2 *Gas Measurements.*

2.9.2.1 *Positive displacement meters.* The gas meter to be used for measuring the gas consumed by the gas burners of the oven or cooking top shall have a resolution of 0.01 cubic foot (0.28 L) or less and a maximum error no greater than 1 percent of the measured value for any demand greater than 2.2 cubic feet per hour (62.3 L/h).

3. Test Methods and Measurements

* * * * *

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, *Test Conditions,* of this Appendix and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in section 1.12 and described in section 2.6 of this Appendix. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for one complete thermostat ''cut-off/cut-on'' of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in section 2, *Test Conditions,* of this Appendix. Turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in section 1.12 and described in section 2.6 of this Appendix. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

3.1.1.2 *Conventional oven standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For conventional ovens that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in 3.1.1.2.1 and 3.1.1.2.2. For units in which power varies as a function of displayed time in standby mode, either: (1) Set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the tests (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.1.2.1 If the conventional oven has an inactive mode, as defined in section 1.11 of this Appendix, measure and record the average inactive mode power of the conventional oven, P_{IA}, in watts.

3.1.1.2.2 If the conventional oven has an off mode, as defined in section 1.13 of this Appendix, measure and record the average off mode power of the conventional oven, P_{OM}, in watts.

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in section 2, *Test Conditions,* of this Appendix. Turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in section 1.12 and described in section 2.6 of this Appendix. Set the test block in the center of the surface unit under test. The small test block, W_2, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3, shall be used on electric surface units over 7 inches (178 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

3.1.2.1 *Conventional cooking top standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For conventional cooktops that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional cooking top to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.2.1.1 and 3.1.2.1.2 of this Appendix. For units in which power varies as a function of displayed time in standby mode, either: (1) Set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.2.1.1 If the conventional cooking top has an inactive mode, as defined in section 1.11 of this Appendix, measure and record the average inactive mode power of the conventional cooking top, P_{IA}, in watts.

3.1.2.1.2 If the conventional cooking top has an off mode, as defined in section 1.13 of this Appendix, measure and record the average off mode power of the conventional cooking top, P_{OM}, in watts.

3.1.3 *Conventional range standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For conventional ranges that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional range to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.3.1 and 3.1.3.2 of this Appendix. For units in which power varies as a function of displayed time in standby mode, either: (1) Set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are

deemed to be representative of average energy use.

3.1.3.1 If the conventional range has an inactive mode, as defined in section 1.11 of this Appendix, measure and record the average inactive mode power of the conventional range, P_{IA}, in watts.

3.1.3.2 If the conventional range has an off mode, as defined in section 1.13 of this Appendix, measure and record the average off mode power of the conventional range, P_{OM}, in watts.

3.1.4 *Microwave oven.*

3.1.4.1 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition). For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in Section 5, Paragraph 5.3.2(a), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.17 or 1.13 of this Appendix, respectively, or both, test the microwave oven in each mode in which it can operate.

* * * * *

3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, E_O, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours (kJ) any electrical energy, E_{IO}, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours (kJ) any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.2.1.2 *Conventional oven fan-only mode energy consumption.* If the conventional oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption, E_{OF}, expressed in watt-hours (kJ) of electricity consumed by the conventional oven for a period of 10 minutes, using a watt-hour meter as specified in section 2.9.1.1 of this Appendix. Multiply this value by [the time in minutes that the conventional oven remains in fan-only mode, t_{OF}] and divide by 10.

3.2.1.3 *Energy consumption of self-cleaning operation.* Measure the energy consumption, E_S, in watt-hours (kJ) of electricity or the volume of gas consumption, V_S, in standard cubic feet (L) during the self-cleaning test set forth in section 3.1.1.1 of this Appendix. For a gas oven, also measure in watt-hours (kJ) any electrical energy, E_{IS}, consumed by ignition devices or other electrical components required during the self-cleaning test.

3.2.1.4 *Standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.1.2 of this Appendix. If the conventional oven is capable of operating in inactive mode, as defined in section 1.11 of this Appendix, measure the average inactive mode power of the conventional oven, P_{IA}, in watts as specified in section 3.1.1.2.1 of this Appendix. If the conventional oven is capable of operating in off mode, as defined in section 1.13 of this Appendix, measure the average off mode power of the conventional oven, P_{OM}, in watts as specified in section 3.1.1.2.2 of this Appendix.

3.2.2 *Conventional surface unit test energy consumption.*

3.2.2.1 *Conventional surface unit average test energy consumption.* For the surface unit under test, measure the energy consumption, E_{CT}, in watt-hours (kJ) of electricity or the volume of gas consumption, V_{CT}, in standard cubic feet (L) of gas and the test block temperature, T_{CT}, at the end of the 15 minute (reduced input setting) test interval for the test specified in section 3.1.2 of this Appendix and the total time, t_{CT}, in hours, that the unit is under test. Measure any electrical energy, E_{IC}, consumed by an ignition device of a gas heating element or other electrical components required for the operation of the conventional gas cooking top in watt-hours (kJ).

3.2.2.2 *Conventional surface unit standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.2.1 of this Appendix. If the conventional surface unit is capable of operating in inactive mode, as defined in section 1.11 of this Appendix, measure the average inactive mode power of the conventional surface unit, P_{IA}, in watts as specified in section 3.1.2.1.1 of this Appendix. If the conventional surface unit is capable of operating in off mode, as defined in section 1.13 of this Appendix, measure the average off mode power of the conventional surface unit, P_{OM}, in watts as specified in section 3.1.2.1.2 of this Appendix.

3.2.3 *Conventional range standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.3 of this Appendix. If the conventional range is capable of operating in inactive mode, as defined in section 1.11 of this Appendix, measure the average inactive mode power of the conventional range, P_{IA}, in watts as specified in section 3.1.3.1 of this Appendix. If the conventional range is capable of operating in off mode, as defined in section 1.13 of this Appendix, measure the average off mode power of the conventional range, P_{OM}, in watts as specified in section 3.1.3.2 of this Appendix.

3.2.4 *Microwave oven test standby mode and off mode power.* Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, as defined in section 1.17 of this Appendix, measure the average standby mode power of the microwave oven, P_{SB}, in watts as specified in section 3.1.4.1 of this Appendix. If the microwave oven is capable of operating in off mode, as defined in section 1.13 of this Appendix, measure the average off mode power of the microwave oven, P_{OM}, as specified in section 3.1.4.1 of this Appendix.

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3.3.7 For conventional ovens, record the conventional oven standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable. For conventional cooktops, record the conventional cooking top standby mode and off mode test measurements P_{IA}

and P_{OM}, if applicable. For conventional ranges, record the conventional range standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable.

3.3.8 For the surface unit under test, record the electric energy consumption, E_{CT}, or the gas volume consumption, V_{CT}, the final test block temperature, T_{CT}, and the total test time, t_{CT}. For a gas cooking top which uses electrical energy for ignition of the burners, also record E_{IC}.

3.3.9 Record the heating value, Hn, as determined in section 2.2.2.2 of this Appendix for the natural gas supply.

3.3.10 Record the heating value, Hp, as determined in section 2.2.2.3 of this Appendix for the propane supply.

3.3.11 Record the average standby mode power, P_{SB}, for the microwave oven standby mode, as determined in section 3.2.4 of this Appendix for a microwave oven capable of operating in standby mode. Record the average off mode power, P_{OM}, for the microwave oven off mode power test, as determined in section 3.2.4 of this Appendix for a microwave oven capable of operating in off mode.

4. Calculation of Derived Results From Test Measurements

* * * * *

4.1.1 *Test energy consumption.* For a conventional oven with a thermostat which operates by cycling on and off, calculate the test energy consumption, E_O, expressed in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens, and defined as:

$$E_O = E_{AB} + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times \left(E_{CD} - E_{AB}\right)\right]$$

for electric ovens, and,

$$E_O = \left(V_{AB} \times H\right) + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times \left(V_{CD} - V_{AB}\right) \times H\right]$$

for gas ovens,

Where:

H = either H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3 of this Appendix, expressed in Btus per standard cubic foot (kJ/L).

T_O = 234 °F (130 °C) plus the initial test block temperature.

and,

$$E_{AB} = \frac{\left(E_A + E_B\right)}{2}, \quad E_{CD} = \frac{\left(E_C + E_D\right)}{2},$$

$$V_{AB} = \frac{\left(V_A + V_B\right)}{2}, \quad V_{CD} = \frac{\left(V_C + V_D\right)}{2},$$

$$T_{AB} = \frac{\left(T_A + T_B\right)}{2}, \quad T_{CD} = \frac{\left(T_C + T_D\right)}{2},$$

Where:

T_A = block temperature in °F (°C) at the end of the last ''ON'' period of the conventional oven before the test block reaches T_O.

T_B = block temperature in °F (°C) at the beginning of the ''ON'' period following the measurement of T_A.

T_C = block temperature in °F (°C) at the end of the ''ON'' period which starts with T_B.

T_D = block temperature in °F (°C) at the beginning of the ''ON'' period which follows the measurement of T_C.

E_A = electric energy consumed in Wh (kJ) at the end of the last ''ON'' period before the test block reaches T_O.

E_B = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period following the measurement of T_A.

E_C = electric energy consumed in Wh (kJ) at the end of the ''ON'' period which starts with T_B.

E_D = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period which follows the measurement of T_C.

V_A = volume of gas consumed in standard cubic feet (L) at the end of the last ''ON'' period before the test block reaches T_O.

V_B = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period following the measurement of T_A.

V_C = volume of gas consumed in standard cubic feet (L) at the end of the ''ON'' period which starts with T_B.

V_D = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period which follows the measurement of T_C.

4.1.1.1 *Average test energy consumption.* If the conventional oven can be operated with or without forced convection, determine the average test energy consumption, E_O and E_{IO}, in watt-hours (kJ) for electric ovens and Btus (kJ) for gas ovens using the following equations:

$$E_O = \frac{(E_O)_1 + (E_O)_2}{2}$$

$$E_{IO} = \frac{(E_{IO})_1 + (E_{IO})_2}{2}$$

Where:

$(E_O)_1$ = test energy consumption using the forced convection mode in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this Appendix.

$(E_O)_2$ = test energy consumption without using the forced convection mode in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this Appendix.

$(E_{IO})_1$ = electrical energy consumption in watt-hours (kJ) of a gas oven in forced convection mode as measured in section 3.2.1.1 of this Appendix.

$(E_{IO})_2$ = electrical energy consumption in watt-hours (kJ) of a gas oven without using the forced convection mode as measured in section 3.2.1.1 of this Appendix.

* * * * *

4.1.2.2.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, E_{SC}, expressed in kilowatt-hours (kJ) per year for electric ovens and in Btus (kJ) for gas ovens, and defined as:

$E_{SC} = E_S \times S_e \times K$, for electric ovens,

Where:

E_S = energy consumption in watt-hours, as measured in section 3.2.1.3 of this Appendix.

S_e = 4, average number of times a self-cleaning operation of a conventional electric oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

or

$E_{SC} = V_S \times H \times S_g$, for gas ovens,

Where:

V_S = gas consumption in standard cubic feet (L), as measured in section 3.2.1.3 of this Appendix.

H = H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.2 and 2.2.2.3 of this Appendix in Btus per standard cubic foot (kJ/L).

S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

4.1.2.2.2 *Annual secondary energy consumption for self-cleaning operation of gas ovens.* Calculate the annual secondary energy consumption for self-cleaning operations of a gas oven, E_{SS}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{SS} = E_{IS} \times S_g \times K$,

Where:

E_{IS} = electrical energy consumed during the self-cleaning operation of a conventional gas oven, as measured in section 3.2.1.3 of this Appendix.

S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.1.2.3 *Annual combined low-power mode energy consumption of a single conventional oven.* Calculate the annual standby mode and off mode energy consumption for conventional ovens, E_{OTLP}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{OTLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional oven inactive mode power, in watts, as measured in section 3.2.1.4 of this Appendix.

P_{OM} = conventional oven off mode power, in watts, as measured in section 3.2.1.4 of this Appendix.

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven has fan-only mode, S_{TOT} equals $(8{,}540.1 - (t_{OF}/60))$ hours, where t_{OF} is the conventional oven fan-only mode duration, in minutes, as measured in section 3.2.1.2 of this Appendix, and 60 is the conversion factor for minutes to hours; otherwise, S_{TOT} is equal to 8,540.1 hours.

If the conventional oven has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional oven has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT} and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional oven has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OM} is equal to S_{TOT};

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

* * * * *

4.1.2.4.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption of a conventional electric oven, E_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AO} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this Appendix.

4.1.2.4.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual electrical energy consumption of a conventional electric oven, IE_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AO} = E_{CO} + E_{SC} + E_{OTLP}, + (E_{OF} \times N_{OE})$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this Appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this Appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this Appendix.

N_{OE} = representative number of annual conventional electric oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability and 204 cycles for a conventional electric oven with self-clean capability.

4.1.2.4.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, E_{AOG}, expressed in Btus (kJ) per year and defined as:

$E_{AOG} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this Appendix.

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, E_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AOE} = E_{SO} + E_{SS}$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this Appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this Appendix.

If the conventional gas oven uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AOE} = E_{SO} + E_{SS} + E_{OTLP} + (E_{OF} \times N_{OG})$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this Appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this Appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this Appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this Appendix.

N_{OG} = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

* * * * *

4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, E_{TO}, in kilowatt-hours (kJ) per year and defined as:

$E_{TO} = E_{ACO} + E_{ASC}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this Appendix.

4.1.2.5.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual energy consumption, IE_{TO}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TO} = E_{ACO} + E_{ASC} + E_{OTLP} + (E_{OF} \times N_{OE})$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this Appendix.

E_{OTLP} = annual combined low-power mode energy consumption for the cooking appliance as determined in section 4.1.2.3 of this Appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this Appendix.

N_{OE} = representative number of annual conventional electric oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability and 204 cycles for a conventional electric oven with self-clean capability.

4.1.2.5.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, E_{TOG}, in Btus (kJ) per year and defined as:

$E_{TOG} = E_{ACO} + E_{ASC}$,

Where:

E_{ACO} = average annual primary energy consumption for cooking in Btus (kJ) per year and is calculated as:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

Where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

and,

E_{ASC} = average annual self-cleaning energy consumption in Btus (kJ) per year and is calculated as:

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this Appendix.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, E_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$E_{TOE} = E_{ASO} + E_{AAS}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this Appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this Appendix.

If the oven also uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TOE} = E_{ASO} + E_{AAS} + E_{OTLP} + (E_{OF} \times N_{OG})$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this Appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this Appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this Appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this Appendix.

N_{OG} = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

* * * * *

4.1.4 *Conventional oven energy factor and integrated energy factor.*

4.1.4.1 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, R_O, using the following equations:

$$R_O = \frac{O_O}{E_{AO}},$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

E_{AO} = total annual energy consumption for electric ovens as determined in section 4.1.2.4.1 of this Appendix.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + (E_{AOE} \times K_e)},$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this Appendix.

E_{AOE} = total annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this Appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btu's.

4.1.4.2 *Conventional oven integrated energy factor.* Calculate the integrated energy factor, or the ratio of useful cooking energy output to the total integrated energy input, IR_O, using the following equations:

$$IR_O = \frac{O_O}{IE_{AO}},$$

For electric ovens,

Where:

$$IR_O = \frac{O_O}{E_{AOG} + (IE_{AOE} \times K_e)},$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this Appendix.

IE_{AOE} = total integrated annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this Appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btus.

* * * * *

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

IE_{AO} = total integrated annual energy consumption for electric ovens as determined in section 4.1.2.4.2 of this Appendix.

For gas ovens:

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the electric surface unit under test, defined as:

$$Eff_{SU} = W \times C_P \times \left(\frac{T_{SU}}{K_e \times E_{CT}} \right),$$

Where:

W = measured weight of test block, W_2 or W_3, expressed in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg ÷ °C), specific heat of test block.

T_{SU} = temperature rise of the test block: final test block temperature, T_{CT}, as determined in section 3.2.2 of this Appendix, minus the initial test block temperature, T_I, expressed in °F (°C) as determined in section 2.7.5 of this Appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

E_{CT} = measured energy consumption, as determined according to section 3.2.2.1 of this Appendix, expressed in watt-hours (kJ).

4.2.1.2 *Gas surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the gas surface unit under test, defined as:

$$Eff_{SU} = \left(\frac{W_3 \times C_P \times T_{SU}}{E} \right),$$

Where:

W_3 = measured weight of test block as measured in section 3.3.2 of this Appendix, expressed in pounds (kg).

C_p and T_{SU} are the same as defined in section 4.2.1.1 of this Appendix.

and,

$E = V_{CT} + (E_{IC} \times K_e)$,

Where:

V_{CT} = total gas consumption in standard cubic feet (L) for the gas surface unit test as measured in section 3.2.2.1 of this Appendix.

E_{IC} = electrical energy consumed in watt-hours (kJ) by an ignition device of a gas surface unit as measured in section 3.2.2.1 of this Appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

* * * * *

4.2.2.1 *Conventional electric cooking top.*

4.2.2.1.1 *Annual energy consumption of a conventional electric cooking top.* Calculate the annual electrical energy consumption of an electric cooking top, E_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$E_{CA} = \frac{O_{CT}}{Eff_{CT}},$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this Appendix.

4.2.2.1.2 *Integrated annual energy consumption of a conventional electric cooking top.* Calculate the total integrated annual electrical energy consumption of an electric cooking top, IE_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$IE_{CA} = \frac{O_{CT}}{Eff_{CT}} + E_{CTLP},$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this Appendix.

E_{CTLP} = conventional cooking top combined low-power mode energy consumption = $[(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional cooking top inactive mode power, in watts, as measured in section 3.1.2.1.1 of this Appendix.

P_{OM} = conventional cooking top off mode power, in watts, as measured in section 3.1.2.1.2 of this Appendix.

If the conventional cooking top has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooking top has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooking top has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.2.2.2 *Total integrated annual energy consumption of a conventional gas cooking top.* Calculate the total integrated annual energy consumption of a conventional gas cooking top, IE_{CA}, in Btus (kJ) per year, defined as:

$IE_{CA} = E_{CC} + E_{CTSO}$,

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this Appendix.

E_{CTSO} = conventional cooking top combined low-power mode energy consumption = $[(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional cooking top inactive mode power, in watts, as measured in section 3.1.2.1.1 of this Appendix.

P_{OM} = conventional cooking top off mode power, in watts, as measured in section 3.1.2.1.2 of this Appendix.

If the conventional cooking top has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooking top has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooking top has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.3 *Conventional cooking top energy factor and integrated energy factor.*

4.2.3.1 *Conventional cooking top energy factor.* Calculate the energy factor or ratio of useful cooking energy output for cooking to the total energy input, R_{CT}, as follows:

For an electric cooking top, the energy factor is the same as the cooking efficiency as determined according to section 4.2.1.3 of this Appendix.

For gas cooking tops,

$$R_{CT} = \frac{O_{CT}}{E_{CC}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this Appendix.

4.2.3.2 *Conventional cooking top integrated energy factor.* Calculate the integrated energy factor or ratio of useful cooking energy output for cooking to the total integrated energy input, IR_{CT}, as follows:

For electric cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total annual integrated energy consumption of cooking top determined according to section 4.2.2.1.2 of this Appendix.

For gas cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total integrated annual energy consumption of cooking top determined according to section 4.2.2.2.2 of this Appendix.

4.3 *Combined components.* The annual energy consumption of a kitchen range (*e.g.,* a cooking top and oven combined) shall be the sum of the annual energy consumption of each of its components. The integrated annual energy consumption of a kitchen range shall be the sum of the annual energy consumption of each of its components plus the total annual fan-only mode energy consumption for the oven component, E_{TOF}, defined as:

$E_{TOF} = E_{OF} \times N_R$,

Where,

N_R = representative number of annual conventional oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability, 204 cycles for a conventional electric oven with self-clean capability, 183 cycles for a conventional gas oven without self-clean capability, and 197 cycles for a conventional gas oven with self-clean capability, plus the conventional range integrated annual combined low-power mode energy consumption, E_{RTLP}, defined as:

$E_{RTLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

Where:

P_{IA} = conventional range inactive mode power, in watts, as measured in section 3.1.3.1 of this Appendix.

P_{OM} = conventional range off mode power, in watts, as measured in section 3.1.3.2 of this Appendix.

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven component of the conventional range has fan-only mode, S_{TOT} equals $(8{,}329.2 - (t_{OF}/60))$ hours, where t_{OF} is the conventional oven fan-only mode duration, in minutes, as measured in section 3.2.1.2 of this Appendix, and 60 is the conversion factor for minutes to hours; otherwise, S_{TOT} is equal to 8,329.2 hours.

If the conventional range has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional range has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional range has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to S_{TOT};

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

The annual energy consumption for other combinations of ovens and cooktops will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component. The integrated energy factor of other combinations of ovens and cooktops is the sum of the annual useful cooking energy output of each component divided by the sum of the total integrated annual energy consumption of each component.

9. Appendix X to subpart B of part 430 is revised to read as follows:

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

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 3.2, 3.2.1 through 3.2.4, 4.2, 4.2.1 through 4.2.4, 5.1, and 5.2 of this Appendix X) need not be performed to determine compliance with energy conservation standards for dehumidifiers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after (*date 180 days after date of publication of the test procedure final rule in the* **Federal Register**) must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). Upon the compliance date for any energy conservation standards that incorporate standby mode and off mode energy consumption, compliance with the applicable provisions of this test procedure will be required.

1. Scope

This Appendix covers the test requirements used to measure the energy performance of dehumidifiers.

2. Definitions

a. ANSI/AHAM DH–1 means the test standard published by the American National Standards Institute and the Association of Home Appliance Manufacturers, titled ''Dehumidifiers,'' ANSI/AHAM DH–1–2008, (incorporated by reference; see § 430.3).

b. *Active mode* means a mode in which a dehumidifier is connected to a mains power source, has been activated, and is performing the main functions of removing moisture from air by drawing moist air over a refrigerated coil using a fan, or circulating air through activation of the fan without activation of the refrigeration system.

c. *Bucket full/removed mode* means a standby mode in which the dehumidifier has automatically powered off its main function by detecting when the water bucket is full or has been removed.

d. *Energy factor for dehumidifiers* means a measure of energy efficiency of a dehumidifier calculated by dividing the water removed from the air by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

e. *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

f. *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

g. *Off mode* means a mode in which the dehumidifier is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the dehumidifier is in the off position is included within the classification of an off mode.

h. *Off-cycle mode* means a standby mode in which the dehumidifier:

(1) Has cycled off its main function by humidistat or humidity sensor;

(2) Does not have its fan or blower operating; and

(3) Will reactivate the main function according to the humidistat or humidity sensor signal.

i. *Product capacity for dehumidifiers* means a measure of the ability of the dehumidifier to remove moisture from its surrounding atmosphere, measured in pints collected per 24 hours of continuous operation.

j. *Standby mode* means any modes where the dehumidifier is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

3. Test Apparatus and General Instructions

3.1 *Active mode.* The test apparatus and instructions for testing dehumidifiers shall conform to the requirements specified in Section 3, ''Definitions,'' Section 4, ''Instrumentation,'' and Section 5, ''Test Procedure,'' of ANSI/AHAM DH–1 (incorporated by reference, see § 430.3). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final minimum energy factor value to two decimal places as follows:

(i) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(ii) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

3.2 *Standby mode and off mode.*

3.2.1 *Installation requirements.* For the standby mode and off mode testing, the dehumidifier shall be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference, see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

3.2.2 *Electrical energy supply.*

3.2.2.1 *Electrical supply.* For the standby mode and off mode testing, maintain the electrical supply voltage and frequency indicated in Section 7.1.3, ''Standard Test Voltage,'' of ANSI/AHAM DH–1, (incorporated by reference, see § 430.3). The electrical supply frequency shall be maintained ± 1 percent.

3.2.2.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301, (incorporated by reference; see § 430.3).

3.2.3 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

3.2.4 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

4. Test Measurement

4.1 *Active mode.* Measure the energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh) and product capacity in pints per day (pints/day), in accordance with the test requirements specified in Section 7, ''Capacity Test and Energy Consumption Test,'' of ANSI/AHAM DH–1 (incorporated by reference, see § 430.3).

4.2 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this Appendix. For dehumidifiers that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301, (incorporated by reference; see § 430.3), allow sufficient time for the dehumidifier to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.2.1 through 4.2.4 of this Appendix.

4.2.1 If the dehumidifier has an inactive mode, as defined in section 2(f) of this Appendix, measure and record the average inactive mode power of the dehumidifier, P_{IA}, in watts.

4.2.2 If the dehumidifier has an off-cycle mode, as defined in section 2(h) of this Appendix, measure and record the average off-cycle mode power of the dehumidifier, P_{OC}, in watts.

4.2.3 If the dehumidifier has a bucket full/removed mode, as defined in section 2(c) of this Appendix, measure and record the average bucket full/removed mode power of the dehumidifier, P_{BFR}, in watts.

4.2.4 If the dehumidifier has an off mode, as defined in section 2(g) of this Appendix, measure and record the average off mode power, P_{OM}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Standby mode and off mode annual energy consumption.* Calculate the standby mode and off mode annual energy consumption for dehumidifiers, $E_{TSO,}$ expressed in kilowatt-hours per year, according to the following:

$$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OC} \times S_{OC}) + (P_{BFR} \times S_{BFR}) + (P_{OM} \times S_{OM})] \times K$$

Where:

P_{IA} = dehumidifier inactive mode power, in watts, as measured in section 4.2.1 of this Appendix.

P_{OC} = dehumidifier off-cycle mode power, in watts, as measured in section 4.2.2 of this Appendix.

P_{BFR} = dehumidifier bucket full/removed mode power, in watts, as measured in section 4.2.3 of this Appendix.

P_{OM} = dehumidifier off mode power, in watts, as measured in section 4.2.4 of this Appendix.

If the dehumidifier has an inactive mode and off-cycle mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; and the off mode annual hours, S_{OM}, is equal to 0;

S_{TOT} equals the total number of inactive mode, off-cycle mode, and off mode hours per year, defined as:

If the dehumidifier has bucket full/removed mode, S_{TOT} equals 3,024 hours;

If the dehumidifier does not have bucket full/removed mode, S_{TOT} equals 3,681 hours;

If the dehumidifier has an inactive mode and off mode but no off-cycle mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OM}, is equal to $S_{TOT}/2$; and the off-cycle mode annual hours, S_{OC}, is equal to 0;

If the dehumidifier has an inactive mode but no off-cycle mode or off mode, the

inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off-cycle mode annual hours, S_{OC}, and the off mode annual hours, S_{OM}, are each equal to 0;

If the dehumidifier has an off-cycle mode and off mode but no inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OM}, is equal to $S_{TOT}/2$; and the inactive mode annual hours, S_{IA}, is equal to 0;

If the dehumidifier has an off-cycle mode but no off mode or inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, and the inactive mode annual hours, S_{IA}, are each equal to 0;

If the dehumidifier has an off mode but no inactive mode or off-cycle mode, the off mode annual hours, S_{OM}, is equal to S_{TOT}, and the inactive mode annual hours, S_{IA}, and the off-cycle mode annual hours, S_{OC}, are both equal to 0;

If the dehumidifier has an inactive mode, off-cycle mode, and off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/3$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/3$; and the off mode annual hours, S_{OM}, is equal to $S_{TOT}/3$;

S_{BFR} = 657, dehumidifier bucket full/removed mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

5.2 *Integrated energy factor.* Calculate the integrated energy factor, IEF, expressed in liters per kilowatt-hour, rounded to two decimal places, according to the following:

$$IEF = L_W/(E_{active} + ((E_{TSO} \times 24)/S_{active}))$$

Where:

L_W = water removed from the air during dehumidifier energy factor test, in liters, as measured in section 4.1 of this Appendix.

E_{active} = dehumidifier energy factor test energy consumption, in kilowatt-hours, as measured in section 4.1 of this Appendix.

E_{TSO} = standby mode and off mode annual energy consumption, in kilowatt-hours per year, as calculated in section 5.1 of this Appendix.

24 = hours per day.

S_{active} = 1,095, dehumidifier active mode annual hours.

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Part III

Bureau of Consumer Financial Protection

12 CFR Parts 1024 and 1026

High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB–2012–0029]

RIN 3170–AA12

High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Truth in Lending Act by expanding the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protection Act of 1994 (HOEPA), by revising and expanding the triggers for coverage under HOEPA, and by imposing additional restrictions on HOEPA mortgage loans, including a pre-loan counseling requirement. The Dodd-Frank Act also amends the Truth in Lending Act and the Real Estate Settlement Procedures Act by imposing certain other requirements related to homeownership counseling. The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation Z (Truth in Lending) and Regulation X (Real Estate Settlement Procedures Act) to implement the Dodd-Frank Act's amendments to the Truth in Lending Act and the Real Estate Settlement Procedures Act.

DATES: Comments must be received on or before September 7, 2012, except that comments on the Paperwork Reduction Act analysis in part VIII of this **Federal Register** notice must be received on or before October 15, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0029 or RIN 3170–AA12, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul Ceja, Senior Counsel & Special Advisor; Stephen Shin and Pavneet Singh, Senior Counsels; and Courtney Jean, Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rule

Background

The Home Ownership and Equity Protection Act (HOEPA) was enacted in 1994 as an amendment to the Truth in Lending Act (TILA) to address abusive practices in refinancing and home-equity mortgage loans with high interest rates or high fees. Loans that meet HOEPA's high-cost triggers are subject to special disclosure requirements and restrictions on loan terms, and borrowers in high-cost mortgages have enhanced remedies for violations of the law.[1] The provisions of TILA, including HOEPA, are implemented in the Bureau's Regulation Z.[2]

In response to the recent mortgage crisis, Congress through the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) expanded HOEPA to apply to more types of mortgage transactions, including to purchase money mortgage loans and home-equity lines of credit. Congress also amended HOEPA's existing high-cost triggers, added a prepayment penalty trigger, and expanded the protections associated with high-cost mortgages. The Bureau is now proposing to amend Regulation Z to implement the Dodd-Frank Act amendments to HOEPA.

The proposal also would implement other homeownership counseling-related requirements that Congress adopted in the Dodd-Frank Act, that are not amendments to HOEPA. The proposal would generally require lenders to distribute a list of homeownership counselors or counseling organizations to consumers within a few days after applying for any mortgage loan. The proposal also would implement a requirement that first-time borrowers receive homeownership counseling before taking out a negatively amortizing loan.

Scope of HOEPA coverage

The proposed rule would implement the Dodd-Frank Act's amendments that expanded the universe of loans potentially covered by HOEPA. Under the proposed rule, most types of mortgage loans secured by a consumer's principal dwelling, including purchase money mortgage loans, refinances, closed-end home-equity loans, and open-end credit plans (*i.e.,* home-equity lines of credit, or HELOCs) are potentially subject to HOEPA coverage. Reverse mortgages would still be excluded.

Revised HOEPA thresholds

Under the Dodd-Frank Act, HOEPA protections would be triggered where:

- A loan's annual percentage rate (APR) exceeds the average prime offer rate by 6.5 percentage points for most first-lien mortgages and 8.5 percentage points for subordinate lien mortgages;
- A loan's points and fees exceed 5 percent of the total transaction amount, or a higher threshold for loans below $20,000; or
- The creditor may charge a prepayment penalty more than 36 months after loan consummation or account opening, or penalties that exceed more than 2 percent of the amount prepaid.

The proposed rule would implement the Dodd-Frank Act's amendments to HOEPA's triggers for determining coverage and would provide guidance on how to apply the triggers. For instance, for purposes of the APR trigger, the interest rate used to determine HOEPA coverage for variable-rate loans or plans would generally be based on the maximum margin permitted at any time during the loan or plan, added to the index rate in effect at consummation or account opening. The average prime offer rate for open-end credit plans would be determined based on the average prime offer rate for the most closely comparable closed-end

[1] For purposes of this notice of proposed rulemaking, the terms ''high-cost mortgage,'' ''HOEPA-covered loan'' or ''HOEPA loan'' refer interchangeably to mortgages that meet HOEPA's high-cost triggers.

[2] 12 CFR part 1026.

mortgage loan. The definition of ''points and fees'' would conform closely to what has previously been proposed to implement requirements of the Dodd-Frank Act concerning assessment of consumers' ability to repay mortgage loans, such as by including loan originator compensation for closed-end mortgage loans.

The Bureau is also seeking comment on whether to adopt certain adjustments or accommodations in its HOEPA implementing regulations if it adopts a broader definition of ''finance charge'' under Regulation Z. That change, which the Bureau is proposing in connection with its proposal to integrate mortgage disclosures,[3] would otherwise cause more loans to exceed the APR and points and fees triggers and be classified as high-cost mortgages under HOEPA.

Restrictions on loan terms

The proposed rule also would implement new Dodd-Frank Act restrictions and requirements concerning loan terms and origination practices for high-cost mortgages. For example:

- Balloon payments would largely be banned, and creditors would be prohibited from charging prepayment penalties and financing points and fees.
- Late fees would be restricted to four percent of the payment that is past due, fees for providing payoff statements would be restricted, and fees for loan modification or loan deferral would be banned.
- Creditors originating open-end credit plans would be required to assess consumers' ability to repay the loans. (Creditors originating high-cost, closed-end mortgage loans already are required to assess consumers' ability to repay.)
- Creditors and mortgage brokers would be prohibited from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage.
- Before making a high-cost mortgage, creditors would be required to obtain confirmation from a federally certified or approved homeownership counselor that the consumer has received counseling on the advisability of the loan.

Other counseling-related requirements

In addition to the proposed changes discussed above, the Bureau's proposal would implement two Dodd-Frank Act homeownership counseling-related provisions that are not amendments to HOEPA.

- The proposed rule would amend Regulation X[4] to implement a requirement under the Real Estate Settlement Procedures Act (RESPA) that lenders provide a list of federally certified or approved homeownership counselors or organizations to consumers within three business days of applying for any mortgage loan. The Bureau expects to create a Web site portal to make it easy for lenders and consumers to obtain lists of homeownership counselors in their areas.
- The proposed rule would amend Regulation Z to implement a requirement under TILA that creditors obtain confirmation that a first-time borrower has received homeownership counseling from a federally certified or approved homeownership counselor or counseling organization before making a negative amortization loan to the borrower. (A negative amortization loan is one in which the payment schedule can cause the loan's principal balance to increase over time.)

Effective date

The Bureau's proposal seeks comment on when a final rule should be effective. Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as possible. However, the Bureau understands that the final rule will require lenders and brokers to make systems changes and to retrain their staff. In addition, industry will at approximately the same time be implementing a number of other changes relating to other Dodd-Frank Act provisions, some of which will take effect within one year after issuance of final implementing rules. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes.

II. Background

A. HOEPA

HOEPA was enacted as part of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160, in response to evidence concerning abusive practices in mortgage loan refinancing and home-equity lending.[5] The statute applied generally to closed-end mortgage credit, but excluded purchase money mortgage loans and reverse mortgages. Coverage was triggered where a loan's APR exceeded comparable Treasury securities by specified thresholds for particular loan types, or where points and fees exceeded eight percent of the total loan amount or a dollar threshold.

For high-cost loans meeting either of those thresholds, HOEPA required lenders to provide special pre-closing disclosures, restricted prepayment penalties and certain other loan terms, and regulated various lender practices, such as extending credit without regard to a consumer's ability to repay the loan. HOEPA also provided a mechanism for consumers to rescind covered loans that included certain prohibited terms and to obtain higher damages than are allowed for other types of TILA violations. Finally, HOEPA amended TILA section 131, 15 U.S.C. 1641, to provide for increased liability to purchasers of HOEPA loans. Purchasers and assignees of loans not covered by HOEPA generally are liable only for legal violations apparent on the face of the disclosure statements, whereas purchasers of HOEPA loans generally are subject to all claims and defenses against the original creditor with respect to the mortgage.

The Board of Governors of the Federal Reserve System (Board) first issued regulations implementing HOEPA in 1995. 60 FR 15463 (March 24, 1995). The Board published additional significant changes in 2001 that lowered HOEPA's APR trigger for first-lien mortgage loans, expanded the definition of points and fees to include the cost of optional credit insurance and debt cancellation premiums, and enhanced the restrictions associated with HOEPA loans. *See* 66 FR 65604 (Dec. 20, 2001). In 2008, the Board exercised its authority under HOEPA to extend certain consumer protections concerning a consumer's ability to repay and prepayment penalties to a new category of ''higher-priced mortgage loans'' with APRs that are lower than those prescribed for HOEPA loans but that nevertheless exceed the average prime offer rate by prescribed amounts. 73 FR 44522 (July 30, 2008).

With the enactment of the Dodd-Frank Act, general rulemaking authority for TILA, including HOEPA, transferred from the Board to the Bureau on July 21, 2011. Pursuant to the Dodd-Frank Act and TILA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation Z, 12 CFR part 1026, implementing TILA (except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act). 76 FR 79768 (Dec. 22, 2011). This rule did not impose any new substantive obligations but did make technical and conforming changes to reflect the transfer of authority and

[3] *See* the Bureau's 2012 TILA–RESPA Proposal, available at *http://www.consumerfinance.gov/notice-and-comment/*.

[4] 12 CFR part 1024.

[5] HOEPA amended TILA by adding new sections 103(aa) and 129, 15 U.S.C. 1602(aa) and 1639.

certain other changes made by the Dodd-Frank Act. The Bureau's Regulation Z took effect on December 30, 2011. Sections 1026.31, 32 and 34 of the Bureau's Regulation Z implement the HOEPA provisions of TILA.

B. RESPA

Congress enacted RESPA, 12 U.S.C. 2601 *et seq.,* in 1974 to provide consumers with greater and more timely information on the nature and costs of the residential real estate settlement process and to protect consumers from unnecessarily high settlement charges, including through the use of disclosures and the prohibition of kickbacks and referral fees. RESPA's disclosure requirements generally apply to ''settlement services'' for ''federally related mortgage loans,'' a term that includes virtually any purchase money or refinance loan secured by a first or subordinate lien on one-to-four family residential real property. 12 U.S.C. 2602(1). Section 5 of RESPA generally requires that lenders provide potential borrowers of federally related mortgage loans a home buying information booklet containing information about the nature and costs of real estate settlement services, a good faith estimate of charges the borrower is likely to incur during the settlement process, and, as a new requirement pursuant to the Dodd-Frank Act, a list of certified homeownership counselors. *Id.* 2604. The booklet, good faith estimate, and list of homeownership counselors must be provided not later than three business days after the lender receives an application, unless the lender denies the application for credit before the end of the three-day period. *Id.* 2604(d).

Historically, Regulation X of the Department of Housing and Urban Development (HUD), 24 CFR part 3500, has implemented RESPA. The Dodd-Frank Act transferred rulemaking authority for RESPA to the Bureau, effective July 21, 2011. See sections 1061 and 1098 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and RESPA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation X, 12 CFR part 1024, implementing RESPA. 76 FR 78978 (Dec. 20, 2011). This rule did not impose any new substantive obligations but did make certain technical, conforming, and stylistic changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation X took effect on December 30, 2011.

C. The Dodd-Frank Act

Congress enacted the Dodd-Frank Act after a cycle of unprecedented expansion and contraction in the mortgage market sparked the most severe U.S. recession since the Great Depression.[6] The Dodd-Frank Act created the Bureau and consolidated various rulemaking and supervisory authorities in the new agency, including the authority to implement HOEPA, TILA, and RESPA.[7] At the same time, Congress significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to the crisis.

As part of these changes, sections 1431 through 1433 of the Dodd-Frank Act significantly amended HOEPA to expand the types of loans potentially subject to HOEPA coverage, to revise the triggers for HOEPA coverage, and to strengthen and expand the restrictions that HOEPA imposes on those mortgages.[8] Several provisions of the Dodd-Frank Act also require and encourage consumers to obtain homeownership counseling. Sections 1433(e) and 1414 require creditors to obtain confirmation that a borrower has obtained counseling from a federally approved counselor prior to extending a high-cost mortgage under HOEPA or (in the case of first-time borrowers) a negatively amortizing loan. The Dodd-Frank Act also amended RESPA to require distribution of a housing counselor list as part of the general mortgage application process. The Bureau is proposing this rule to implement the HOEPA and counseling requirements.[9]

D. The Market for High-Cost Mortgages

Historically, originations of high-cost mortgages have accounted for an extremely small percentage of the market. This may be due to a variety of factors, including the fact that HOEPA's assignee liability provisions make the loans relatively unattractive to secondary market investors, as well as general compliance burden and stigma. Data collected under the Home Mortgage Disclosure Act (HMDA) further indicate that the percentage share of HOEPA loans has generally been declining since 2004, the first year that HMDA reporters were required to identify HOEPA loans. Between 2004 and 2010, HOEPA loans typically comprised about 0.2 percent of originations of home-secured refinance or home-improvement loans made by lenders that report in HMDA. This percentage peaked at 0.44 percent in 2005 when, of about 8.2 million originations potentially covered by HOEPA, approximately 36,000 HOEPA loans were made. The percentage fell to 0.06 percent by 2010 when, of 5.3 million originations potentially covered by HOEPA, about 3,400 HOEPA loans were made. Similarly, the number of HMDA-reporting lenders that originate HOEPA loans is relatively small. From 2004 through 2009, about 1,000 to 2,300 (roughly 12 to 24 percent) of such lenders extended HOEPA loans. The vast majority (*i.e.,* 97 percent or more) of those lenders made fewer than ten HOEPA loans in each year between 2004 and 2009. In 2010, only about 650 lenders (roughly 8 percent of HMDA filers) reported any HOEPA loans, with just under 60 lenders accounting for about 60 percent of HOEPA lending.[10] As discussed above, the Dodd-Frank Act expanded the types of loans potentially covered by HOEPA by including purchase money mortgage loans and HELOCs. Notwithstanding this expansion, the Bureau believes that HOEPA lending will continue to constitute a small percentage of the mortgage lending market. *See* part VII, below, for a detailed discussion of the likely impact of the Dodd-Frank Act's amendments on HOEPA lending.

E. Other Rulemakings

In addition to this proposal, the Bureau currently is engaged in six other rulemakings relating to mortgage credit to implement requirements of the Dodd-Frank Act:

- *TILA–RESPA Integration:* On the same day that this proposal is released by the Bureau, the Bureau is releasing a proposed rule and forms combining the TILA mortgage loan disclosures with the Good Faith Estimate (GFE) and settlement statement required under

[6] For more discussion of the mortgage market, the financial crisis, and mortgage origination generally, *see* the Bureau's 2012 TILA–RESPA Proposal.

[7] Sections 1011 and 1021 of title X of the Dodd-Frank Act, the ''Consumer Financial Protection Act,'' Public Law 111–203, sections 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603.

[8] As amended, the HOEPA provisions of TILA will be codified at 15 U.S.C. 1602(bb) and 1639. *See* § 1100A(1)(A) of the Dodd-Frank Act.

[9] The Bureau notes that the Dodd-Frank Act renumbered existing TILA section 103(aa) concerning HOEPA's triggers as section 103(bb), 15 U.S.C. 1602(bb). *See* § 1100A(1)(A) of the Dodd-Frank Act. This proposal generally references TILA section 103(aa) to refer to the pre-Dodd-Frank provision, which is in effect until the Dodd-Frank Act's amendments take effect, and TILA section 103(bb) to refer to the provision as amended.

[10] These statistics are drawn from Federal Reserve *Bulletin* articles that summarize the HMDA data each year. For the most recent of these annual articles, see *www.federalreserve.gov/pubs/bulletin/2011/pdf/2010_HMDA_final.pdf.*

RESPA pursuant to Dodd-Frank Act section 1032(f) as well as sections 4(a) of RESPA and 105(b) of TILA, as amended by Dodd-Frank Act sections 1098 and 1100A, respectively (2012 TILA–RESPA Proposal). 12 U.S.C. 2603(a); 15 U.S.C. 1604(b).

• *Servicing:* The Bureau is in the process of developing a proposal to implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, and payment crediting, as well as forms for mortgage loan periodic statements and ''hybrid'' adjustable-rate mortgage reset disclosures, pursuant to sections 6 of RESPA and 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. The Bureau has publicly stated that in connection with the servicing rulemaking the Bureau is considering proposing rules on reasonable information management, early intervention for troubled and delinquent borrowers, and continuity of contact, pursuant to the Bureau's authority to carry out the consumer protection purposes of RESPA in section 6 of RESPA, as amended by Dodd-Frank Act section 1463. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g.

• *Loan Originator Compensation:* The Bureau is in the process of developing a proposal to implement provisions of the Dodd-Frank Act requiring certain creditors and mortgage loan originators to meet duty of care qualifications and prohibiting mortgage loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions, pursuant to TILA section 129B as established by Dodd-Frank Act sections 1402 and 1403. 15 U.S.C. 1639b.

• *Appraisals:* The Bureau, jointly with Federal prudential regulators and other Federal agencies, is in the process of developing a proposal to implement Dodd-Frank Act requirements concerning appraisals for higher-risk mortgages, appraisal management companies, and automated valuation models, pursuant to TILA section 129H as established by Dodd-Frank Act section 1471, 15 U.S.C. 1639h, and sections 1124 and 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as established by Dodd-Frank Act sections 1473(f), 12 U.S.C. 3353, and 1473(q), 12 U.S.C. 3354, respectively. In addition, the Bureau is developing rules to implement section 701(e) of the Equal Credit Opportunity Act (ECOA), as amended by Dodd-Frank Act section 1474, to require that creditors provide applicants with a free copy of written appraisals and valuations developed in connection with applications for loans secured by a first lien on a dwelling (collectively, Appraisals Rulemaking). 15 U.S.C. 1691(e).

• *Ability to Repay:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring creditors to determine that a consumer can repay a mortgage loan and establishing standards for compliance, such as by making a ''qualified mortgage,'' pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411 and 1412 (Ability to Repay Rulemaking). 15 U.S.C. 1639c.

• *Escrows:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring certain escrow account disclosures and exempting from the higher-priced mortgage loan escrow requirement loans made by certain small creditors, among other provisions, pursuant to TILA section 129D as established by Dodd-Frank Act sections 1461 and 1462 (Escrow Rulemaking). 15 U.S.C. 1639d.

With the exception of the requirements being implemented in the TILA–RESPA rulemaking, the Dodd-Frank Act requirements referenced above generally will take effect on January 21, 2013, unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. To provide an orderly, coordinated, and efficient comment process for these rulemakings, the Bureau is setting the deadline for comments on this proposed rule 60 days after the date the proposal is issued (September 7, 2012), instead of 60 days after this notice is published in the **Federal Register**. Because the precise date of publication cannot be predicted in advance, this method will allow interested parties that intend to comment on multiple proposals to plan accordingly and will ensure that the Bureau receives comments with sufficient time remaining to issue final rules by January 21, 2013. However, consistent with the requirements of the Paperwork Reduction Act, the comment period for the proposed analysis under that Act will end 60 days after publication of this notice in the **Federal Register**.

The Bureau regards the foregoing rulemakings as components of a larger undertaking; many of them intersect with one or more of the others. Accordingly, the Bureau is coordinating carefully the development of the proposals and final rules identified above. Each rulemaking will adopt new regulatory provisions to implement the various Dodd-Frank Act mandates described above. In addition, each of them may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a comprehensive regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry. Thus, many of the rulemakings listed above involve issues that extend across two or more rulemakings. In this context, each rulemaking may raise concerns that might appear unaddressed if that rulemaking were viewed in isolation. For efficiency's sake, however, the Bureau is publishing and soliciting comment on proposed answers to certain issues raised by two or more of its mortgage rulemakings in whichever rulemaking is most appropriate, in the Bureau's judgment, for addressing each specific issue. Accordingly, the Bureau urges the public to review this and the other mortgage proposals identified above, including those previously published by the Board, together. Such a review will ensure a more complete understanding of the Bureau's overall approach and will foster more comprehensive and informed public comment on the Bureau's several proposals, including provisions that may have some relation to more than one rulemaking but are being proposed for comment in only one of them.

For example, as discussed in detail in the section-by-section analysis under proposed § 1026.32(a) and (b) below, the Bureau's 2012 TILA–RESPA Proposal is proposing a simpler, more inclusive definition of the finance charge for closed-end, dwelling-secured credit transactions, similar to the definition that the Board proposed in its August 2009 proposed rulemaking concerning closed-end credit. *See* 74 FR 43232, 43241–45 (Aug. 26, 2009) (2009 Closed-End Proposal). The Board recognized at that time that the more inclusive finance charge would expand the coverage of HOEPA and similar State laws. *Id.* at 43244–45. To address that issue, among others, the Board in 2010 proposed to retain the existing treatment of third-party charges in the points and fees definition for HOEPA, notwithstanding the proposed expansion of the finance charge for disclosure purposes. *See* 75 FR 58539, 58637–38 (Sept. 24, 2010) (2010 Mortgage Proposal). Similarly, the

Board's 2010 Mortgage Proposal introduced a new metric for determining coverage of the ''higher-priced mortgage loan'' protections of Regulation Z [11] to be used in place of a transaction's APR, known as the ''transaction coverage rate'' (TCR), which does not reflect the additional charges that are reflected in the disclosed APR under the more inclusive finance charge definition. *Id.* at 58660–62.

The Bureau recognizes, as did the Board, that the proposed more inclusive finance charge could affect the coverage of higher-priced mortgage loan and HOEPA protections. The Bureau is also aware that, consequently, a more inclusive finance charge has implications for the HOEPA, Appraisals, Ability to Repay, and Escrows rulemakings identified above. Those impacts are analyzed in the 2012 TILA–RESPA Proposal, but the Bureau believes that it is also helpful to analyze potential impacts and modifications to particular regulatory triggers on a rule-by-rule basis. Accordingly, this proposal seeks comment on whether and how to account for the implications of the more inclusive finance charge on the scope of HOEPA coverage. *See* the section-by-section analysis to proposed § 1026.32(a) and (b), below.

F. The Board's Proposals

As noted above, the Bureau inherited rulemaking authority for Regulation Z from the Board in July 2011, including the authority to finalize several mortgage-related rulemakings that the Board proposed between 2009 and 2011 in part to respond to the mortgage crisis and to begin implementing new Dodd-Frank Act requirements. Several of the Board's pending mortgage-related proposals relate directly to provisions addressed in this proposal. As discussed in detail in the section-by-section analysis, below, this proposal re-publishes or otherwise incorporates certain portions of the Board's proposals.

2009 Closed-End Proposal. On August 26, 2009, the Board published proposed amendments to Regulation Z containing comprehensive changes to the disclosures for closed-end credit secured by real property or a consumer's dwelling. 74 FR 43232 (Aug. 26, 2009) (2009 Closed-End Proposal). In addition to the simpler, more inclusive definition of the finance charge discussed above, the Board's 2009 Closed-End Proposal proposed to establish a new § 1026.38(a)(5) for disclosure of prepayment penalties for closed-end mortgage loans. *See id.* at 43334, 43413. In doing so, the Board proposed several examples of prepayment penalties, including charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such ''balance,'' a minimum finance charge in a simple-interest transaction, and charges that a creditor waives unless the consumer prepays the obligation. The Board also proposed loan guarantee fees and fees imposed for preparing a payoff statement or other documents in connection with a prepayment as examples of charges that are not prepayment penalties.

2009 Open-End Proposal. On August 26, 2009, the Board published proposed amendments to Regulation Z containing comprehensive changes to the disclosures for HELOCs. 74 FR 43428 (Aug. 26, 2009) (2009 Open-End Proposal). Among other things, the Board's 2009 Open-End Proposal addressed the types of charges that should be disclosed as prepayment penalties for home equity lines of credit.

2010 Mortgage Proposal. On September 24, 2010, the Board proposed further amendments to Regulation Z regarding rescission rights, disclosure requirements in connection with modifications of existing mortgage loans, escrow requirements for higher-priced mortgage loans, and disclosures and requirements for reverse mortgage loans. This proposal was the second stage of the comprehensive review conducted by the Board of TILA's rules for home-secured credit. 75 FR 58539 (Sept. 24, 2010) (2010 Mortgage Proposal). As discussed above, the Board revisited in the 2010 Mortgage Proposal the effect of adopting a simpler, more inclusive definition of the finance charge for purposes of disclosing the APR to consumers. To ensure that loans would not be inappropriately classified as higher-priced mortgage loans under Regulation Z, the Board proposed to adopt the TCR. Under the proposal, the TCR would have been calculated solely to determine coverage under the Board's higher-priced mortgage rule.[12] As proposed, the TCR would have been calculated consistently with how the current APR is calculated, except that prepaid finance charges not paid to the creditor, its affiliate, or a mortgage broker would not have been included. *Id.* at 58660–62.

The Board's 2010 Mortgage Proposal also revisited the definition of prepayment penalty. The Board proposed to amend commentary to Regulation Z to clarify that, on a closed-end transaction, assessing interest for a period after the loan balance has been paid in full is a prepayment penalty, even if the charge results from the normal interest accrual amortization method used on the transaction. The amendment was intended to clarify a question that had been raised in connection with FHA loans and other lending programs, which, for purposes of allocating a consumer's payment to accrued interest and principal, treated all loan payments as being made on the scheduled due date even if payment was made prior to its scheduled due date. The amendment clarified that, in the case of a prepayment *in full* of any outstanding loan balance, such an interest accrual amortization method would be considered a prepayment penalty, even if it was the normal method for other payments on the transaction. *See id.* at 58586, 58756, 58781.

2011 Escrow Proposal. On March 2, 2011, the Board proposed to amend Regulation Z to implement amendments made by sections 1461 and 1462 of the Dodd-Frank Act to TILA relating to escrow accounts. 76 FR 11598 (March 2, 2011) (2011 Escrow Proposal). Among other things, the Board's 2011 Escrow Proposal proposed escrow-related disclosure requirements for higher-priced mortgage loans. In doing so, the Board proposed to use the TCR proposed in the 2010 Mortgage Proposal to determine whether a transaction is a higher-priced mortgage loan. The Board also proposed to use the ''average prime offer rate,'' as defined in current § 1026.35(a)(2), as the benchmark rate for higher-priced mortgage loan coverage *See id.* at 11609.

2011 ATR Proposal. On May 11, 2011, the Board proposed amendments to Regulation Z to implement section 1411 of the Dodd-Frank Act, which amended TILA to prohibit creditors from making mortgage loans without regard to the consumer's ability to repay. 76 FR 27390 (May 11, 2011) (2011 ATR Proposal). Section 1411 of the Dodd-Frank Act added section 129C to TILA, codified at 15 U.S.C. 1639c, which prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes). The Board's 2011 ATR Proposal also proposed to implement section 1412 of the Dodd-Frank Act, which created a new type of closed-end, dwelling-secured mortgage—a

[11] 12 CFR 1026.35.

[12] 12 CFR 1026.35.

''qualified mortgage''—to which, among other things, certain restrictions on points and fees and prepayment penalties apply. The Board's 2011 ATR Proposal also enumerated examples of prepayment penalties, drawing from both the 2009 Closed-End Proposal and the 2010 Mortgage Proposal. *See id.* at 27415–16. The proposal also proposed to implement the statutory definition of points and fees to be used in determining whether a mortgage is a qualified mortgage, which in turn incorporates the definition of points and fees in HOEPA. *Id.* at 27398–406.[13]

As discussed in detail throughout the section-by-section analysis below, the current proposal of the Bureau to implement the Dodd-Frank HOEPA amendments draws on the Board's 2009 Closed-End Proposal, 2009 Open-End Proposal, 2010 Mortgage Proposal, 2011 Escrow Proposal, and 2011 ATR Proposal.

III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act. On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the HUD Secretary's consumer protection functions relating to RESPA.[14] Accordingly, effective July 21, 2011 the authority of HUD to issue regulations pursuant to RESPA transferred to the Bureau. Section 1061 of the Dodd-Frank Act also transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board. The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.''[15] TILA, HOEPA (which is codified as part of TILA), RESPA, and title X of the Dodd-Frank Act are Federal consumer financial laws.[16] Accordingly, the Bureau has authority to issue regulations pursuant to TILA, RESPA, and title X of the Dodd-Frank Act.

A. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA. One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs. RESPA section 2(b), 12 U.S.C. 2601(b). In addition, in enacting RESPA, Congress found that consumers are entitled to be ''provided with greater and more timely information on the nature and costs of the settlement process and [to be] protected from unnecessarily high settlement charges caused by certain abusive practices * * *.'' RESPA section 2(a), 12 U.S.C. 2601(a). In the past, section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

B. TILA

As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of the Act. Except with respect to the substantive restrictions on high-cost mortgages provided in TILA section 129, TILA section 105(a) authorizes the Bureau to prescribe regulations that may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions that the Bureau determines are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' TILA section 102(a); 15 U.S.C. 1601(a).

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. However, Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). The Dodd-Frank Act also clarified the Bureau's rulemaking authority over high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of the TILA section 129 that apply to high-cost mortgages, as noted above. For the reasons discussed in this notice, the Bureau is proposing regulations to carry out TILA's purposes and is proposing such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance.

Pursuant to TILA section 103(bb)(2), 15 U.S.C. 1602(bb)(2), the Bureau may prescribe regulations to adjust the statutory percentage points for the APR threshold to determine whether a transaction is covered as a high-cost mortgage, if the Bureau determines that such an increase or decrease is consistent with the statutory consumer protections for high-cost mortgages and is warranted by the need for credit. Under TILA section 103(bb)(4), the Bureau may adjust the definition of points and fees for purposes of that threshold to include such charges that the Bureau determines to be appropriate.

With respect to the high-cost mortgage provisions of TILA section 129, TILA section 129(p), 15 U.S.C. 1639(p), as amended by the Dodd-Frank Act, grants the Bureau authority to create exemptions to the restrictions on high-cost mortgages and expand the protections that apply to high-cost mortgages. Under TILA section 129(p)(1), the Bureau may exempt specific mortgage products or categories from any or all of the prohibitions specified in subsections (c) through (i) of TILA section 129,[17] if the Bureau finds that the exemption is in the interest of the borrowing public and will

[13] 15 U.S.C. 1639c(b)(2)(C).

[14] Dodd-Frank Act section 1061(b)(7); 12 U.S.C. 5581(b)(7).

[15] 12 U.S.C. 5581(a)(1).

[16] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA, HOEPA, and RESPA).

[17] These subsections are: § 129(c) (No prepayment penalty); § 129(d) (Limitations after default); § 129(e) (No balloon payments); § 129(f) (No negative amortization); § 129(g) (No prepaid payments); § 129(h) (Prohibition on extending credit without regard to payment ability of consumer); and § 129(i) (Requirements for payments under home improvement contracts).

apply only to products that maintain and strengthen home ownership and equity protections.

TILA section 129(p)(2) grants the Bureau the authority to prohibit acts or practices in connection with:

- Mortgage loans that the Bureau finds to be unfair, deceptive, or designed to evade the provisions of HOEPA; and
- Refinancing of mortgage loans the Bureau finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower.

The authority granted to the Bureau under TILA section 129(p)(2) is broad. The provision is not limited to acts or practices by creditors. TILA section 129(p)(2) authorizes protections against unfair or deceptive practices ''in connection with mortgage loans,'' and it authorizes protections against abusive practices ''in connection with * * * refinancing of mortgage loans.'' Thus, the Bureau's authority is not limited to regulating specific contractual terms of mortgage loan agreements; it extends to regulating loan-related practices generally, within the standards set forth in the statute. The Bureau notes that TILA does not set forth a standard for what is unfair or deceptive, but those terms have settled meanings under other Federal and State consumer protection laws. The Conference Report for HOEPA indicates that, in determining whether a practice in connection with mortgage loans is unfair or deceptive, the Bureau should look to the standards employed for interpreting State unfair and deceptive trade practices statutes and the Federal Trade Commission Act, section 5(a), 15 U.S.C. 45(a).[18]

In addition, section 1433(e) of the Dodd-Frank Act created a new TILA section 129(u)(3), which authorizes the Bureau to implement pre-loan counseling requirements mandated by the Dodd-Frank Act for high-cost mortgages. Specifically, under TILA section 129(u)(3), the Bureau may prescribe regulations as the Bureau determines to be appropriate to implement TILA section 129(u)(1), which provides the Dodd-Frank Act's pre-loan counseling requirement for high-cost mortgages.

C. The Dodd-Frank Act

Section 1405(b) of the Dodd-Frank Act provides that, ''[n]otwithstanding any other provision of [title XIV of the Dodd-Frank Act], in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the [Bureau] may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the [Bureau] determines that such exemption or modification is in the interest of consumers and in the public interest.'' 15 U.S.C. 1601 note. Section 1401 of the Dodd-Frank Act, which amended TILA section 103(cc), 15 U.S.C. 1602(cc), generally defines residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan. Notably, the authority granted by section 1405(b) applies to ''disclosure requirements'' generally, and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to modify the disclosure requirements of TILA and RESPA.

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' 12 U.S.C. 5512(b)(1). Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). 12 U.S.C. 5512(b)(2). As discussed above, TILA and RESPA are Federal consumer financial laws. Accordingly, the Bureau proposes to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA and RESPA that carry out the purposes and prevent evasion of those laws. See part VI for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

For the reasons discussed below in the section-by-section analysis, the Bureau is proposing regulations pursuant to its authority under TILA, RESPA, and title X of the Dodd-Frank Act.

IV. Compliance Issues

A. Implementation Period

The Bureau expects to issue a final rule implementing the Dodd-Frank Act amendments addressed in the Bureau's proposal by January 21, 2013. As discussed above, the Bureau is seeking comment on when a final rule should be effective.

Under section 1400(c)(1) of the Dodd-Frank Act, regulations that are *required to be issued* to implement amendments under Title XIV by the Dodd-Frank Act take effect not later than one year from the date of the issuance of the final implementing regulations. The regulations proposed in this notice, while implementing amendments under Title XIV of the Dodd-Frank Act, are *not* regulations required to be issued by the Act. Therefore, the Dodd-Frank Act does not require the final regulation to be effective within one year from issuance of that final regulation. Title XIV amendments that are not required by the Dodd-Frank Act to be implemented by regulation take effect on the effective date established by the final regulations implementing the amendments.[19]

The Bureau recognizes the importance of the changes to be made by the Bureau's final rule for consumer protection, and the need to put these changes into place for consumers. For example, including within HOEPA's definition of ''high-cost mortgage'' high cost purchase money mortgages and HELOCs, will ensure that borrowers who obtain such high-cost mortgages will have the full benefit of the protections and enhanced remedies provided by HOEPA. In addition, for consumers applying for a high-cost mortgage, having the benefit of the advice of a homeownership counselor to assist them in understanding the terms of the mortgage, and how such a mortgage will fit in with their existing budget, will help consumers in fully assessing the possible consequences of such a mortgage. The Bureau believes consumers should have the benefit of the Dodd-Frank Act additional protections and requirements as soon as possible.

The Bureau also recognizes, however, that lenders, brokers, and (where applicable) servicers will need time to make systems changes and to retrain their staff, in order to address the Dodd-Frank Act changes implemented through the Bureau's final rule. In addition, the Bureau recognizes that industry will need to make changes to address a number of other requirements relating to other Dodd-Frank Act provisions, some of which, unlike the Bureau's HOEPA rulemaking, are required by the Dodd-Frank Act to take effect within one year after issuance of final implementing rules. The Bureau believes that ensuring that industry has sufficient time to make the necessary changes will ultimately benefit

[18] H.R. Rep. 103–652, at 162 (1994) (Conf. Rep.).

[19] *See* section 1400(c)(2) of the Dodd-Frank Act. Where regulations have not been issued by January 21, 2013 (*i.e.,* the date that is 18 months after the ''designated transfer date''), the effective date of the Dodd-Frank Act amendments is generally January 21, 2013. *See id.* § 1400(c)(3).

consumers through better industry compliance.

The Bureau therefore seeks public comment on the time period that should be provided to implement the changes that will be required by the final rule, taking into account the factors discussed above. As discussed in the section-by-section analysis to proposed § 1026.32(a)(1)(i) below, the Bureau also seeks comment on potential implementation periods relating to certain changes being proposed in the 2012 TILA–RESPA Proposal to the definition of finance charge under Regulation Z, and related mitigation measures that the Bureau is proposing in this rule to address the impacts on HOEPA coverage.

B. Corrections and Unintentional Violations of HOEPA

Section 1433(f) of the Dodd-Frank Act added new section 129(v) to TILA, 15 U.S.C. 1639(v), which allows a creditor or assignee of a high-cost mortgage in certain circumstances to correct a failure to comply, when acting in good faith, with HOEPA requirements. At this time the Bureau is not proposing to issue regulatory guidance concerning this provision. The Bureau solicits comment on the extent to which creditors or assignees are likely to invoke this provision, whether regulatory guidance would be useful, and if so what issues would be most important to address.

V. Section-by-Section Analysis

A. Regulation X

Section 1024.20 List of Homeownership Counselors

The Bureau is proposing a new § 1024.20 to implement an amendment made by section 1450 of the Dodd-Frank Act to section 5 of RESPA, 12 U.S.C. 2604. The amendment requires lenders to provide a list of homeownership counselors to potential borrowers of federally related mortgage loans. Specifically, the Dodd-Frank Act amended RESPA section 5(c) to require lenders to provide potential borrowers with a ''reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.'' [20]

The list of homeownership counselors is to be included with a ''home buying information booklet'' that the Bureau is directed to prepare ''to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services.'' [21] The Dodd-Frank Act amended RESPA section 5(a) to direct the Bureau to distribute the booklet to all lenders that make federally related mortgage loans. The Dodd-Frank Act also amended section 5(a) to require the Bureau to distribute lists of homeownership counselors to such lenders.

Under RESPA and its implementing regulations, a federally related mortgage loan includes purchase money mortgage loans, subordinate mortgages, refinancings, closed-end home-equity mortgage loans, home-equity lines of credit, and reverse mortgages.[22] Under RESPA section 5(b), as amended by the Dodd-Frank Act, the prescribed contents of the booklets include information specific to refinancings and home-equity lines of credit, as well as ''the costs incident to a real estate settlement or a federally related mortgage loan.''

RESPA sections 5(a) and (b), as amended, indicate that Congress intended the booklet and list of counselors to be provided to all applicants for federally related mortgage loans. However, section 5(d) of RESPA, in language that was not amended by the Dodd-Frank Act, requires lenders to provide the home buying information booklet ''to each person from whom [the lender] receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate.'' The information booklet mandated by section 5 of RESPA before its amendment by the Dodd-Frank Act is only required by current Regulation X to be provided to applicants for purchase money mortgages.[23]

Section 19(a) of RESPA provides the Bureau with the authority to ''prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of the [RESPA].'' Based on its reading of section 5 as a whole, and its understanding of the purposes of that section, the Bureau is proposing that the list of homeownership counselors be provided to all applicants for federally related mortgage loans (except for applicants for Home Equity Conversion Mortgages (HECMs), as discussed further below).

Section 5(a) as amended: (1) Specifically references helping consumers applying for federally related mortgage loans understand the nature and costs of real estate settlement services; and (2) directs the Bureau to distribute the booklet and the lists of housing counselors to lenders that make federally related mortgage loans. Moreover, the prescribed content of the booklet is not limited to information on purchase money mortgage loans. Additionally, the Bureau believes that a trained counselor can be useful to any consumer considering any type of mortgage loan. Mortgage transactions beyond purchase money transactions, such as refinancings and open-end home-secured credit transactions, can entail significant risks and costs for consumers—risks and costs that a trained homeownership counselor can assist consumers in fully understanding. Therefore, the Bureau's proposal would require the homeownership counselor list to be provided to applicants for refinancings and home-equity lines of credit, in addition to purchase money mortgages. The Bureau seeks comment from the public on the costs and benefits of the provision of the list of homeownership counselors to consumers who are applicants for refinances and home-equity lines of credit. The Bureau also solicits comment on the potential effect of the Bureau's proposal on access to homeownership counseling generally by consumers, and the effect of increased consumer demand for counseling on existing counseling resources. In particular, the Bureau solicits comment on the effect on counseling resources of providing the list beyond applicants for purchase money mortgages.

[20] Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) requires that homeownership counseling provided under programs administered by the U.S. Department of Housing and Urban Development (HUD) can only be provided by organizations or individuals certified by HUD as competent to provide homeownership counseling. Section 106(e) also requires HUD to establish standards and procedures for testing and certifying counselors.

[21] The Dodd-Frank Act also amends RESPA section 5(b) (12 U.S.C. 2604(b)) to require that the ''home buying information booklet'' (the RESPA ''special information booklet,'' prior to the Dodd-Frank Act), include ''[i]nformation about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.''

[22] 12 U.S.C. 2602(1), 12 CFR 1024.2.

[23] Currently, under Regulation X, the ''special information booklet'' must only be provided to applicants for first-lien purchase money mortgages, and not to applicants for refinancings, closed-end subordinate and home-equity loans, reverse mortgages, or open-end lines of credit (as long as a brochure issued by the Bureau regarding home-equity lines of credit is provided to the borrower). 12 CFR 1024.2, 1024.6. For open-end credit plans, Regulation X provides that a lender or mortgage broker that provides the borrower with a copy of the brochure entitled ''When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit,'' or a successor brochure issued by the Bureau, is deemed to be in compliance with the booklet requirement of Regulation X. *See id.* 1024.6(a)(2).

Proposed § 1024.20(a) requires a lender to provide to an applicant for a federally related mortgage loan a clear and conspicuous written list of five homeownership counselors or counseling organizations. The list provided by the lender pursuant to this requirement must include only homeownership counselors or counseling organizations from either the most current list of homeownership counselors or counseling organizations made available by the Bureau for use by lenders in complying with § 1024.20, or the most current list maintained by HUD of homeownership counselors or counseling organizations certified by HUD, or otherwise approved by HUD.[24]

Proposed § 1024.20(a) provides that the required list include five homeownership counselors or counseling organizations located in the zip code of the loan applicant's current address, or, if there are not the requisite five counselors or counseling organizations in that zip code, then counselors or organizations within the zip code or zip codes closest to the loan applicant's current address. The Bureau invites comment on this requirement and whether there are alternative methods of listing homeownership counselors or counseling organizations available to consumers that would serve the purposes of the statutory requirement and RESPA, in general.

To facilitate compliance with the proposed list requirement, the Bureau is expecting to develop a Web site portal that would allow lenders to type in the loan applicant's zip code to generate the requisite list, which could then be printed for distribution to the loan applicant. The Bureau believes that such an approach: (1) Could significantly mitigate any paperwork burden associated with requiring that the list be distributed to applicants for federally related mortgage loans; and (2) is consistent with the Dodd-Frank Act's amendment to section 5(a) of RESPA requiring the Bureau to distribute to lenders ''lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under [section 5(c)].'' The Bureau solicits comment on whether such a portal would be useful and whether there are other mechanisms through which the Bureau can help facilitate compliance and provide lists to lenders and consumers.

The Bureau also solicits comment on whether ''five'' is the appropriate number of counselors or organizations to be included on the list. The Bureau is aware that several State laws that impose requirements on creditors to provide consumers lists of housing counselors specify a list of five. *See, e.g.,* NY Real Property Actions and Proceedings Law § 1304(2); Arizona Revised Statute § 6–1703(A)(1). The Bureau is concerned that requiring a list of too few counselors or organizations would provide inadequate options to consumers and could increase the risk for steering by lenders to particular counselors. The Bureau is also concerned, however, that requiring a list of too many counselors or organizations could be overwhelming for consumers. In addition, the Bureau solicits comment on whether there should be a limitation on the number of listed counselors from the same counseling organization.

Proposed § 1024.20(a) requires that the list include: (1) each counselor's or organization's name, business address, telephone number and, if available from the Bureau or HUD, other contact information; and (2) contact information for the Bureau and HUD.

Proposed § 1024.20(a) requires the lender to provide the list no later than three business days after the lender, mortgage broker or dealer receives a loan application (or information sufficient to complete an application), but allows a mortgage broker or dealer to provide the list to those applicants from whom it receives or for whom it prepares applications. Where a mortgage broker or dealer provides the list, the lender is not required to provide an additional list but remains responsible for ensuring that the list has been provided to the loan applicant and satisfies the requirements of proposed § 1024.20. Proposed § 1024.20(a) sets out the requirements for providing the list to the loan applicant, *i.e.,* in person, by mail, or by other means of delivery. The list may be provided to the loan applicant in electronic form, subject to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001 *et seq.* The lender is not required to provide the list if, before the end of the three business day period, the lender denies the loan application or the loan applicant withdraws the application. For applications for open-end home-secured lines of credit covered under TILA, the timing and methods of delivery set out in Regulation Z, 12 CFR 1026.40, for disclosures involving such loans may be used instead of the requirements in proposed § 1024.20. Proposed § 1024.20(a) also provides flexibility in the requirements for providing the list when there are multiple lenders and multiple applicants in a mortgage loan transaction.

Proposed § 1024.20(c) would not require a lender to provide an applicant for a HECM, as that type of reverse mortgage is defined in 12 U.S.C. 1715z–20(b)(3), with the list required under proposed § 1024.20 if the lender is otherwise required by HUD to provide a list, and does provide a list, of HECM counselors or counseling agencies to the loan applicant. As discussed further in the section-by-section analysis below on the Bureau's proposed pre-loan counseling requirement for high-cost mortgages, Federal law currently requires homeowners to receive counseling before obtaining a HECM reverse mortgage insured by the Federal Housing Administration (FHA),[25] which is a part of HUD. HUD imposes various requirements related to HECM counseling, including requiring FHA-approved HECM mortgagees to provide prospective HECM borrowers with a list of HUD-approved HECM counseling agencies. The Bureau is concerned that a duplicative list requirement could cause confusion for consumers and unnecessary burden for lenders. Accordingly, the Bureau is proposing to

[24] The Bureau proposes to exercise its exemption authority under section 19(a) of RESPA and its modification authority under section 1405(b) of the Dodd-Frank Act to allow the list to include, in addition to HUD-certified homeownership counselors required by section 1450 of the Dodd-Frank Act, HUD-certified ''counseling organizations'' and counselors and counseling organizations ''otherwise approved by HUD.'' It is the Bureau's understanding that HUD, other than for its counseling program for HECMs, currently only approves housing counseling agencies and not individual counselors. However, the Bureau understands that HUD intends in the future to undertake a rulemaking to put requirements into place to certify individual counselors as competent to provide housing counseling in accordance with amendments to section 106 of the Housing and Urban Development Act of 1968 made by section 1445 of the Dodd-Frank Act. The Bureau is proposing to exercise its exemption or modification authority to provide flexibility in order to facilitate the availability of competent housing counselors for placement on the list. Permitting the list to include HUD-certified counseling organizations and homeownership counselors and counseling organizations ''otherwise approved by HUD'' may help facilitate the effective functioning of this new RESPA disclosure. It may also, therefore, help carry out the purposes of RESPA for more effective advance cost disclosure for consumers, by informing loan applicants of counseling resources available for assisting them in understanding their prospective mortgage loans and settlement costs. For the same reason, the Bureau believes this proposed modification of the types of counselors and organizations that may be included in the list is in the interests of consumers and the public. The Bureau intends to work closely with HUD to facilitate operational coordination and consistency between the counseling and certification requirements HUD puts into place and the Bureau's final rule.

[25] 12 U.S.C. 1715z–20(d)(2)(B).

exercise its exemption authority under RESPA section 19(a) to allow lenders that provide a list under HUD's HECM program to satisfy the requirements of proposed § 1024.20.

In its 2012 TILA–RESPA Proposal, the Bureau proposes to adopt a new definition of ''application'' in 12 CFR 1026.2(a)(3). The 2012 TILA–RESPA Proposal would create a new Loan Estimate to replace the RESPA Good-Faith Estimate (GFE) and the initial Truth in Lending Act disclosure. Like those disclosures and the list of homeownership counselors or counseling organizations, the Loan Estimate would be provided three business days after the lender's receipt of an application. However, to encourage lenders to provide the loan term and cost information in the Loan Estimate earlier in the loan process, the 2012 TILA–RESPA Proposal would propose to adopt a definition of application that differs from the definition of application in § 1024.2(b) of Regulation X by removing ''any other information deemed necessary by the loan originator'' from the § 1024.2(b) list of application elements. Thus, a lender would no longer be able to delay providing the statutorily required estimates by waiting to collect ''other information.'' Because consumers could benefit from receiving the list of homeownership counselors or counseling organizations at the same time as the Loan Estimate, the Bureau requests comment on whether to tie provision of the list to the definition of application in proposed § 1026.2(a)(3) instead of the definition in § 1024.2(b).

B. Regulation Z

Section 1026.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

1(d) Organization

1(d)(5)

Section 1026.1(d)(5) describes the organization of Subpart E of Regulation Z, which contains special rules for mortgage transactions. The Bureau proposes to revise § 1026.1(d)(5) to reflect the proposed amendments to §§ 1026.32 and 1026.34, which are discussed in detail below. Specifically, the Bureau proposes to revise § 1026.1(d)(5) to include the term ''open-end credit plan'' and remove the term ''closed-end'' where appropriate. In addition, the Bureau proposes to include a reference to the new prepayment penalties trigger for high-cost mortgages added by the Dodd-Frank Act.

Section 1026.31 General Rules

31(c) Timing of Disclosure

Section 1026.31(c) provides additional disclosure requirements for high-cost mortgages. As discussed in detail below, the Dodd-Frank Act expanded the types of loans potentially subject to HOEPA coverage. Therefore, the Bureau proposes to revise § 1026.31(c) and related commentary for clarity and consistency. Specifically, the Bureau proposes to include the term ''account opening'' in addition to ''consummation'' to reflect the fact that the Dodd-Frank Act expanded the requirements for high-cost mortgages to open-end credit plans.

Section 1026.32 Requirements for High-Cost Mortgages

32(a)(1) Coverage

The Bureau proposes to revise § 1026.32(a)(1) to implement the definition of ''high-cost mortgage'' under TILA section 103(bb)(1), as amended by the Dodd-Frank Act. As discussed below, TILA section 103(bb)(1) generally provides that the term ''high-cost mortgage'' means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if any of the prescribed thresholds are met.

The Dodd-Frank Act amended existing TILA section 103(aa)(1) by removing the exclusion of a residential mortgage transaction and an open-end credit plan from HOEPA coverage. Under TILA section 103(bb)(1)(A), reverse mortgage transactions remain excluded from the definition of a high-cost mortgage. Previously, the statutory protections for HOEPA loans were generally limited to closed-end refinancings and home-equity mortgage loans. The proposal, among other things, extends the statutory protections for high-cost mortgages to residential mortgage transactions, such as purchase money mortgage loans, and to open-end credit plans secured by the consumer's principal dwelling, *i.e.,* home-equity lines of credit. Accordingly, the Bureau proposes to reflect the revised scope of coverage and remaining statutory exclusion of reverse mortgage transactions in proposed § 1026.32(a)(1), to remove the list of exclusions provided in current § 1026.32(a)(2), and to amend § 1026.32(a)(2) for other purposes as discussed below.

Accordingly, proposed § 1026.32(a)(1) defines ''high-cost mortgage'' to mean any consumer credit transaction, other than a reverse mortgage transaction as defined in § 1026.33(a), that is secured by the consumer's principal dwelling and in which any one of the prescribed thresholds is met. Proposed comment 32(a)(1)–1 clarifies that a high-cost mortgage includes both a closed-end mortgage loan and an open-end credit plan secured by the consumer's principal dwelling. In particular, the comment further clarifies that with regard to determining coverage under § 1026.32, an open-end transaction is the account opening of an open-end credit plan. Under the proposal, an individual advance of funds or a draw on the credit line under an open-end credit plan subsequent to account opening does not constitute a ''transaction.'' Because HELOCs are open-end (revolving) lines of credit and the rate applicable to any advance of funds may vary under the plan, the Bureau believes this clarification is appropriate to permit creditors to determine coverage of an open-end credit plan as a high-cost mortgage at account opening.

Threshold Triggers

Prior to enactment of the Dodd-Frank Act, HOEPA coverage was triggered when a loan's annual percentage rate (APR) or its points and fees exceeded certain thresholds as prescribed by current TILA section 103(aa), which is implemented by current § 1026.32(a)(1). The Dodd-Frank Act adjusted the two existing thresholds and added a third threshold based on the inclusion of certain prepayment penalties. Under TILA section 103(bb)(1)(A), the revised thresholds generally provide that a consumer credit transaction is a high-cost mortgage if:

- The annual percentage rate at consummation of the transaction exceeds the average prime offer rate (APOR) for a comparable transaction by (1) more than 6.5 percentage points for transactions secured by a first mortgage on the consumer's principal dwelling or 8.5 percentage points, if the dwelling is personal property and the total transaction amount is less than $50,000; or (2) 8.5 percentage points for transactions secured by a subordinate mortgage on the consumer's principal dwelling;
- The total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of either, exceed: (1) In the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or (2) in the case of a loan for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (adjusted for inflation); or

• The transaction provides for prepayment fees and penalties that (1) may be imposed more than 36 months after consummation or account opening or (2) exceed, in the aggregate, more than 2 percent of the amount prepaid.

The Bureau proposes to revise the existing APR and points and fees thresholds in proposed § 1026.32(a)(1)(i) and (ii) and to add the new prepayment penalty threshold in proposed § 1026.32(a)(1)(iii). These amendments are discussed in detail below.

32(a)(1)(i)

Implementation of Dodd-Frank Act Amendments

Section 1431 of the Dodd-Frank Act amended the existing APR trigger in current TILA section 103(aa) by lowering the percentage point trigger and changing the APR benchmark. As noted above, amended TILA section 103(bb)(1)(A)(i) generally provides that a consumer credit transaction is a high-cost mortgage if the APR at consummation of the transaction exceeds the APOR for a comparable transaction by (1) more than 6.5 percentage points for transactions secured by a first mortgage on the consumer's principal dwelling or 8.5 percentage points, if the dwelling is personal property and the total loan amount is less than $50,000; or (2) 8.5 percentage points for transactions secured by a subordinate mortgage on the consumer's principal dwelling.

In addition to adjusting the percentage point triggers, TILA section 103(bb)(1)(A), as added by section 1431 of Dodd-Frank, also amends the benchmark for the APR trigger. The existing APR benchmark is the yield on Treasury securities having comparable periods of maturity. Under TILA section 103(bb)(1)(A)(i), the APR benchmark is the ''average prime offer rate,'' as defined in TILA section 129C(b)(2)(B). This definition essentially codifies Regulation Z's existing definition of ''average prime offer rate'' in § 1026.35(a)(2), which would become § 1026.35(a)(2)(ii) in the Bureau's rules.

The Bureau is proposing two alternatives in proposed § 1026.32(a)(1)(i) to implement the APR threshold for a high-cost mortgage under amended TILA section 103(bb)(1)(A)(i). Alternative 1 uses the APR as the rate to be compared to the APOR for determining HOEPA coverage for closed-end mortgage loans. Alternative 2 is substantially identical except that it would substitute a ''transaction coverage rate'' for the ''annual percentage rate'' as the rate to be compared to the APOR for closed-end mortgage loans. As discussed further below, the Bureau is proposing Alternative 2 in connection with its proposal to simplify and broaden the general definition of finance charge under Regulation Z. *See* 2012 TILA–RESPA Proposal. The Bureau would not adopt Alternative 2 if it does not change the definition of finance charge. As discussed below, the Bureau is seeking comment on whether to adopt Alternative 2 if it does expand the definition of finance charge. Because the proposal to broaden the definition of finance charge does not apply to open-end transactions, the Bureau proposes to retain the APR as the rate that will be compared to the APOR to determine whether an open-end credit plan is a high-cost mortgage under HOEPA.

Both alternatives otherwise generally mirror the statutory language with some exceptions for clarity, organization, or consistency with existing Regulation Z and the Bureau's other mortgage rulemakings as mandated by the Dodd-Frank Act. For example, the proposal refers to a ''first-lien'' or ''subordinate-lien'' transaction, instead of a ''first mortgage'' or ''subordinate or junior mortgage.'' Further, for the reasons stated in the section-by-section analysis to proposed § 1026.32(a)(1)(ii) below, the proposal refers to ''total loan amount'' rather than ''total transaction amount.''

TILA section 103(bb)(2)(A) and (B) provides the Bureau with authority to adjust the percentage points referenced in the APR threshold if the Bureau determines that the increase or decrease is consistent with the statutory protections for high-cost mortgages and is warranted by the need for credit. The Bureau does not propose to make such a determination at this time, either in conjunction with general implementation of the Dodd-Frank Act or, as discussed further below, in conjunction with the proposed expansion of the definition of finance charge. Therefore, both alternatives retain the numeric triggers in the statute for both closed-end and open-end credit transactions. However, the Bureau seeks comment and data on whether any adjustments to the numeric triggers generally, and in particular for open-end credit transactions, would better protect consumers from the risks associated with high-cost mortgages or are warranted by the need for credit.

In addition, the Bureau notes that the statute sets forth different threshold triggers for first-lien transactions depending on whether the transaction is secured by a dwelling that is personal property and the total loan amount is less than $50,000. The Bureau understands that first-lien transactions that are secured by a dwelling that is personal property, such as certain manufactured housing loans, often have higher APRs than other first-lien transactions secured by a dwelling that is not personal property. Accordingly, the Bureau also seeks comment or data specifically on the separate percentage point trigger for first-lien transactions that are secured by a dwelling that is personal property and for which the total loan amount is less than $50,000, and whether any adjustment to the percentage point or the total loan amount for such first-lien transactions would better protect consumers or is warranted by the need for credit.

Potential Expansion of the Definition of Finance Charge

Alternative 2 for proposed § 1026.32(a)(1)(i) would account for the changes in the calculation of the finance charge (and thus APR) that the Bureau is separately considering in the 2012 TILA–RESPA Proposal. Under that proposal, creditors would use a simpler, more inclusive definition of the finance charge for closed-end credit secured by real property or a dwelling, which is in turn used to compute the APR that is disclosed to consumers. As discussed in that proposal, the Bureau believes that the expanded definition could have significant benefits to consumers by making the APR a more useful and accurate tool for comparing the overall cost of credit. At the same time, the proposal could benefit creditors by reducing compliance burden and litigation risk because the finance charge calculation would be easier to perform. However, the Bureau recognizes that a more inclusive definition of the finance charge could expand the coverage of HOEPA because closed-end mortgage loans would have higher APRs, which would result in some additional loans being covered as high-cost mortgages.[26] The Bureau is therefore seeking comment in this proposal on whether, if it adopts the broader definition of finance charge in the TILA–RESPA rulemaking, it should compensate for that change to approximately offset the impact of a broader definition of finance charge on HOEPA coverage levels.

Currently, TILA and Regulation Z permit creditors to exclude several fees or charges from the finance charge, including most fees or charges imposed by third parties. Consumer groups,

[26] The revised definition would also affect calculation of HOEPA's threshold based on points and fees. Those effects and potential accommodations are discussed further below.

creditors, and government agencies have long been dissatisfied with the ''some fees in, some fees out'' approach to the finance charge. The Board therefore proposed expanding the definition of finance charge in its 2009 Closed-End Proposal, *see* 74 FR 43232, 43243–45 (Aug. 26, 2009), and the Bureau has after careful consideration decided to propose a similar change. Specifically, the 2012 TILA–RESPA Proposal would maintain TILA's definition of a finance charge as a fee or charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor. However, the proposal would require the finance charge to include additional creditor charges and most charges by third parties. The Bureau is proposing a revised definition of the finance charge pursuant to its authority under TILA sections 105(a) and (f), as well as other applicable statutory authority, because the Bureau believes that the simpler finance charge could effectuate the purposes of TILA and facilitate compliance by enhancing consumer understanding and reducing compliance costs.

One effect of the expansion of the definition of finance charge, however, would be to expand the number of loans exceeding HOEPA's APR trigger and other statutory and regulatory provisions that incorporate an APR threshold for coverage. As discussed in detail in the Board's 2010 Mortgage Proposal, there are currently some differences between the APR and the APOR, which is the benchmark rate under the Dodd-Frank Act for determining HOEPA coverage. The APOR is generally calculated using data that includes only contract interest rate and points, but not other origination fees. *See* 75 FR 58539, 58660–62 (Sept. 24, 2010). The current APR includes not only discount points and origination fees but also other charges the creditor retains and certain third-party charges. The proposed simpler, more inclusive finance charge, which would also include most third-party charges, would widen the disparity between the APR and the APOR and expand coverage of HOEPA.

The Bureau notes that, in response to the Board's 2009 Closed-End Proposal, most industry commenters raised significant concerns about loans being inappropriately covered by HOEPA and potential negative impacts on consumer access to credit. Consumer advocates and some other commenters, however, supported the more inclusive finance charge and the expanded coverage of HOEPA. They maintained that expanded HOEPA coverage was warranted because the more inclusive finance charge would be a more accurate measure of the cost of credit and, therefore, would render HOEPA coverage more accurate as well.

During outreach conducted in conjunction with the Bureau's 2012 TILA–RESPA Proposal, similar concerns were expressed by both industry and consumer advocates. Participants in a Small Business Review Panel and other industry stakeholders expressed concerns that one unintended consequence of a more inclusive definition of finance charge could be that more loans would qualify as high-cost loans subject to additional requirements under TILA section 129 and under similar State laws. Industry stakeholders urged that the proposed revisions to the finance charge be viewed in the context of Dodd-Frank Act rulemakings revising the thresholds for HOEPA and other statutory regimes because of the relationship between the APR and those thresholds. Specifically, they noted that those thresholds are tied to the APR, such that any changes to the APR calculation could be costly to implement and should be done in conjunction with other related changes. Consumer advocates asserted that expanded HOEPA coverage is warranted because the more inclusive definition would provide a more accurate measure of the cost of credit.

The Bureau does not currently have sufficient data to model the impact of the more expansive definition of finance charge on coverage under HOEPA or the impact of potential modifications that the Bureau could make to the triggers to more closely approximate existing coverage levels. As described in the Dodd-Frank Act section 1022 analysis below, the Bureau is working to secure data to assist in analyzing potential impacts. The Bureau seeks comment on its plans for data analysis as described below, as well as additional data and comment on the potential impacts of a broader finance charge definition on coverage under HOEPA and potential modifications to the triggers.

In conjunction with its efforts to quantify the effect of an expanded definition of finance charge, the Bureau is carefully weighing whether modifications may be warranted to approximate coverage levels under the current definition. It is not clear from the legislative history of the Dodd-Frank Act whether Congress was aware of the Board's 2009 Closed-End Proposal to expand the current definition of finance charge or whether Congress considered the interplay between an expanded definition and coverage under the high-cost mortgage provision. In light of this fact and the concerns raised by commenters on the Board's 2009 Closed-End Proposal regarding effects on access to credit, the Bureau believes that it is appropriate to explore alternatives to implementation of the expanded finance charge definition for purposes of HOEPA coverage.

As discussed below, the Bureau has considered two such modifications and is proposing one of them, the TCR, as Alternative 2 to proposed § 1026.32(a)(1)(i). The Bureau seeks comments and data on these and any other potential modifications to HOEPA's APR coverage thresholds. The Bureau also seeks comment on the timing of implementation for any change to the definition of finance charge and any related change to the HOEPA APR threshold, as discussed further below.

Adjustment to numeric APR triggers. One method of modifying the triggers to maintain approximate current coverage would be to exercise the Bureau's authority under TILA section 103(bb)(2)(A) and (B) to adjust the percentage point triggers. As discussed above, TILA section 103(bb)(2)(A) and (B) permits certain adjustments to the percentage point triggers if the Bureau determines that the increase or decrease is consistent with the statutory protections for high-cost mortgages and is warranted by the need for credit. In determining whether to increase or decrease the number of percentage points in the high-cost mortgage trigger, the Bureau must consult with representatives of consumers, including low-income consumers, and lenders.

Due to data limitations, however, the Bureau does not currently have sufficient information to propose a specific numeric adjustment to the percentage point triggers as a means of approximating current coverage levels in the event that the Bureau adopts the broader definition of finance charge. The Bureau also notes that the Board previously proposed and sought comment on use of the TCR, rather than adjustments to numeric thresholds.[27] The Bureau therefore seeks comment on the advisability and grounds for using the percentage point mechanism to adjust for the adoption of a broader definition of finance charge, particularly if different types of modifications were adopted for other mortgage rulemakings involving APR thresholds.

Transaction coverage rate. As discussed above, another alternative method of compensating for the broader definition of finance charge would be to replace the APR benchmark for closed-end mortgage loans with the transaction

[27] *See, e.g.,* 75 FR 58660–62 and 76 FR 11609.

coverage rate (TCR). The Bureau has proposed this as Alternative 2 for proposed § 1026.32(a)(1)(i), for substantially the same reasons that the Board proposed adopting the TCR to address the impact of the expanded definition of finance charge upon other regulatory triggers.[28] Specifically, the ''transaction coverage rate'' would be defined as the rate used to determine whether a closed-end mortgage loan is a high-cost mortgage subject to § 1026.32. (As discussed below, the Bureau does not propose to change the coverage metric for open-end credit plans.) As previously proposed by the Board in § 226.45(a)(2)(i) under the 2011 Escrow Proposal (which would become § 1026.35(a)(2)(i) in the Bureau's rules), the TCR would be determined in accordance with the applicable rules of Regulation Z for the calculation of the APR for a closed-end transaction, except that the prepaid finance charge would include only charges that will be retained by the creditor, a mortgage broker, or any affiliate of either.[29]

The TCR would not reflect certain costs paid to third parties that would be disclosed to consumers as part of the finance charge under the current and proposed definitions. For example, the current finance charge reflects mandatory credit life insurance, and the proposed more inclusive finance charge would reflect such additional third-party charges as title insurance premiums. However, the TCR would not include either amount. *See* 75 FR 58539, 58661 (Sept. 24, 2010); 76 FR 11598, 11626 (Mar. 2, 2011). Thus, the TCR might result in some loans not being classified as high-cost mortgages that would otherwise qualify under an APR threshold.

The Bureau is considering ways to supplement the data analysis described below to better assess this issue, and specifically seeks comment and data on the potential effect of the TCR relative to the APR calculated using both the current and proposed definitions of finance charge. While the Bureau is seeking data to assist it in evaluating alternatives, the Bureau expects that the margin of difference between the TCR and the current APR would be significantly smaller than the margin between the current APR and the APR calculated using the expanded finance charge definition. This expectation is due to the fact that the expanded finance charge definition would add in such large third-party charges as lender's title insurance, whereas relatively few third-party fees would be excluded by the TCR approach that are not already excluded under current rules; mandatory credit life and disability insurance premiums would be in this category, for example, but such insurance typically is offered as voluntary coverage, which is already excluded under current rules. The Bureau consequently expects that, relative to current rules, the TCR would remove from HOEPA coverage fewer overall transactions than the expanded finance charge would add.

Thus, the Bureau believes that the TCR may maintain the primary benefits of HOEPA while also offering other significant benefits. First, the Bureau believes that the TCR would be easier to calculate than the current APR, and could therefore result in reduced compliance burden and litigation costs for creditors. Second, the TCR has been proposed in two prior proposals of the Board relating to higher-priced mortgage loans. Thus, the TCR could provide an efficacious way of achieving a common framework for application of various regulatory thresholds.

At the same time, the Bureau also seeks comment on the potential advantages and disadvantages to both consumers and creditors of using different metrics for purposes of disclosures and for purposes of determining coverage of various regulatory regimes. As discussed above, the Bureau believes that the potential compliance burden is mitigated with regard to TCR because both TCR and APR under the expanded definition of finance charge would be easier to compute than the APR today using the current definition. However, the Bureau seeks comment on the issue generally and in particular on whether use of the TCR or other modifications should be optional, so that creditors could use the broader definition of finance charge to calculate the APR and points and fees triggers if they would prefer. The Board's 2010 Mortgage Proposal structured the TCR as a mandatory requirement out of concern that identical transactions extended by two different creditors could have inconsistent coverage under regulations governing higher-priced mortgage loans, but similarly sought comment on the issue.

The Bureau has authority to modify the APR test in § 1026.32(a)(1)(i) under TILA section 105(a) to carry out the purposes of TILA. In its 2012 TILA–RESPA Proposal, the Bureau is proposing to amend the definition of finance charge to promote the informed use of credit and to facilitate creditors' compliance with disclosure requirements under TILA. Should the Bureau finalize that aspect of the proposal, adoption of the TCR may ensure that the special protections provided under HOEPA are not expanded in a manner that Congress may not have intended or that could impair access to credit.

Furthermore, the Bureau has authority pursuant to TILA section 105(a) to provide additional requirements, classifications, differentiations, or other provisions, and to provide for such adjustments and exceptions for all or any class of transactions as are necessary, in the Bureau's judgment, to effectuate the purposes of TILA and facilitate compliance.[30] The Bureau understands that most lenders currently do not make HOEPA loans, and previous comments received on the Board's proposal suggest that some lenders may cease making loans that are defined as high-cost mortgages solely as a result of the proposed more inclusive finance charge. The Bureau is therefore evaluating whether the proposed use of the TCR could maintain the special protections for consumers of high-cost mortgages while ensuring that the effects of a more inclusive finance charge would not restrict the availability of credit. In addition, the Bureau believes that the proposal to use the TCR would facilitate compliance by substituting a simpler calculation for the finance charge for purposes of determining whether a transaction is a high-cost mortgage. Creditors would therefore have more certainty about the calculation for purposes of determining coverage of closed-end mortgage loans. Therefore, the Bureau believes that the proposed adjustment may effectuate the

[28] The Board proposed the TCR in the 2010 Mortgage Proposal, *see* 75 FR 58660–62, and the 2011 Escrow Proposal, *see* 76 FR 11609. The Board's proposals would substitute the TCR for the APR for purposes of determining thresholds for higher-priced mortgage loans.

[29] The wording of the Board's proposed definition of ''transaction coverage rate'' varied slightly between the 2010 Mortgage Proposal and the 2011 Escrow Proposal as to treatment of charges retained by mortgage broker affiliates. The Bureau proposes to use the 2011 Escrow Proposal version, which would apply to charges that will be retained by the creditor, a mortgage broker, or any affiliate of either. The Bureau believes that this approach is consistent with the rationale articulated by the Board in its earlier proposals and with certain other parts of the Dodd-Frank Act that distinguish between charges retained by the creditor, mortgage broker, or affiliates of either company. *See, e.g.,* Dodd-Frank Act section 1403.

[30] The Bureau's authority under section 105(a) does not extend to the substantive protections contained in TILA section 129 that apply to high-cost mortgages, but applies to all other provisions of TILA including the section that defines high-cost mortgages and APR. The Bureau is striving to develop a coverage framework across various rulemakings that is consistent with Congress' intent in identifying specific, limited categories of covered transactions that are subject to various substantive protections, including the protections for high-cost mortgages.

purposes of TILA, as amended by HOEPA, and facilitate compliance without undermining consumer protections against abusive practices, the availability of credit, or the interest of the borrowing public.

Open-end transactions. The proposal for a more inclusive finance charge applies only to closed-end transactions. Therefore, for purposes of the coverage trigger in § 1026.32(a)(1)(i), the Bureau proposes to use the TCR for closed-end transactions only. The Bureau believes that an adjustment for open-end transactions would not be necessary or appropriate because the APR for open-end credit plans solely includes interest and not other fees or charges. Accordingly, the annual percentage rate would be used for open-end transactions.

Effective dates. In addition to seeking comment on the issues raised above concerning potential modifications to the HOEPA APR triggers if the Bureau adopts a broader definition of finance charge, the Bureau seeks comment on the timing of implementation. As discussed above, the Bureau has proposed to expand the definition of finance charge as part of the 2012 TILA–RESPA Proposal, which has no statutory deadline for final rules. The Bureau expects that it may take some time to finalize the disclosures proposed in that rule, since it anticipates conducting quantitative testing of the forms. The Bureau does not necessarily have to wait until the disclosures are finalized to issue a final rule about whether to expand the definition of finance charge, and is specifically seeking comment in connection with that proposal about whether it should decide the finance charge issue (and finalize that aspect of the proposal) earlier in light of the potential impact on other rulemakings.

The Bureau also seeks comment on effective dates as part of this rulemaking. The Bureau expects to issue a final rule regarding implementation of the Dodd-Frank Act amendments to HOEPA by January 21, 2013, since the statute will otherwise automatically take effect on that date. The Bureau also expects to issue several other final rules by January 21, 2013, to implement other provisions of title XIV of the Dodd-Frank Act that set similar thresholds for compliance based on mortgage loans' APRs or points and fees. The Bureau is seeking comment on an appropriate implementation period for the final rules.

The Bureau believes that it would be preferable for any change to the definition of finance charge and any related changes to regulatory thresholds to take effect at the same time, in order to provide for consistency and efficient systems modification. The Bureau also believes that it may be advantageous to consumers and creditors for these changes to occur at the same time that creditors are implementing new title XIV requirements involving APR and points and fees thresholds, rather than waiting until the Bureau finalizes other aspects of the 2012 TILA-RESPA final rule relating to disclosures. If the Bureau expands the definition of finance charge, this approach would likely provide the benefits to consumers of the final rule at an earlier date as well as avoid requiring creditors to make two sets of systems and procedures changes focused on determining which loans trigger particular regulatory requirements (*e.g.,* one set of changes to implement amendments to the HOEPA triggers generally and another set of changes associated with any modifications related to the more inclusive finance charge). However, given that implementation of the disclosure-related elements of the 2012 TILA-RESPA Proposal will also require systems and procedures changes, there may be advantages to delaying any change in the definition of finance charge and related adjustments to regulatory triggers until those changes occur. The Bureau therefore seeks comment on the benefits and costs to both consumers and industry of both approaches.

Related commentary. Under Alternative 2, as discussed above, proposed comment 32(a)(1)(i)–1 clarifies the determination of the TCR for closed-end mortgage loans. For consistency within Regulation Z regarding the determination of the TCR, the proposal cross-references guidance proposed under § 226.45(a)(2)(i) in the 2011 Escrow Proposal, which would be renumbered as § 1026.35(a)(2)(i) for organizational purposes. Under Alternative 1, the Bureau notes that this proposed comment would be removed and proposed comments 32(a)(1)(i)–2 and –3 below would be renumbered as comments 32(a)(1)(i)–1 and –2.

Proposed comment 32(a)(1)(i)–2 clarifies the determination of the average prime offer rate for closed-end mortgage loans. For consistency within Regulation Z regarding the determination of the average prime offer rate for closed-end credit, the proposal cross-references the guidance in current comments 35(a)(2)–1 through –4, which would be renumbered as comments 35(a)(2)(ii)–1 through –4 for organizational purposes.

Proposed comment 32(a)(1)(i)–3 provides guidance on the determination of the average prime offer rate for open-end credit plans by clarifying that creditors use the average prime offer rate for the most closely comparable closed-end mortgage loan based on applicable loan characteristics and other loan pricing terms. The proposal also provides illustrative examples to facilitate compliance.

The Bureau believes this approach is consistent with TILA section 103(bb)(1)(A)(i), which requires a comparison of mortgage transactions' APRs to the average prime offer rate without distinguishing between closed-end and open-end credit. The APOR is currently calculated only for closed-end mortgage products, and the Bureau is unaware of any publicly-available surveys of pricing data for open-end credit plans on which to calculate a separate APOR for open-end credit.[31]

Home-equity lines of credit with a variable rate feature reference an index to determine the interest rate, such as the average prime rate from a consensus of certain lenders as published by the Wall Street Journal (the ''prime rate''). Based on historical data, the Bureau understands that the average prime offer rate for one-year adjustable rate mortgages and the prime rate generally have been comparable. The Bureau further understands that many lenders use the prime rate as a reference index. Therefore, the Bureau believes that reliance on the APOR for the most closely comparable closed-end mortgage loan will provide a reasonable benchmark and facilitate compliance, since the tables for average prime offer rates are readily available and any rate spread calculators developed for closed-end mortgages may be adapted to open-end transactions as well. However, the Bureau solicits data or comment on any aspect of determining the average prime offer rate for open-end credit plans. In particular, the Bureau solicits comment on whether an alternative reference rate would better meet the objectives of the APR trigger for open-end credit and would facilitate compliance.

As noted above, proposed § 1026.32(a)(1)(i)(B) provides that the annual percentage rate threshold trigger is 8.5 percentage points over average prime offer rate for first-lien mortgages if the dwelling is personal property and the total loan amount is less than $50,000. Proposed comment 32(a)(1)(i)–

[31] The methodology for deriving the APOR is based on Freddie Mac's Primary Mortgage Market Survey, which does not provide any data on open-end mortgage products, such as home-equity lines of credit. More detailed discussions of the determination of the APOR are provided in the Board's 2008 HOEPA Final Rule, *see* 73 FR at 44533–44536, and other publicly-available sources, *see, e.g., http://www.ffiec.gov/ratespread/default.aspx.*

4 clarifies that the guidance for total loan amount under proposed § 1026.32(a)(1)(i)(B) is consistent with the guidance addressing total loan amount that is provided in proposed § 1026.32(b)(6) and comment 32(b)(6)–1.

32(a)(1)(ii)

Existing TILA section 103(aa)(1)(B) provides that a mortgage is subject to the restrictions and requirements of HOEPA if the total points and fees payable by the consumer at or before loan closing exceed the greater of eight percent of the total loan amount or $400. *See* 15 U.S.C. 1602(aa)(1)(B); § 1026.32(a)(1)(ii). Prior to the transfer date under the Dodd-Frank Act, the Board adjusted the $400 figure annually for inflation since 1996. TILA section 103(aa)(3), 15 U.S.C. 1602(aa)(3). For 2012, the Board adjusted the $400 figure to $611 from $592, where it had been set for 2011. *See* 76 FR 35723, 35723–24 (June 20, 2011); comment 32(a)(1)(ii)–2.xvii.

Section 1431(a) of the Dodd-Frank Act amended TILA section 103(aa)(1)(B) to provide that a mortgage is a high-cost mortgage subject to HOEPA if the total points and fees payable in connection with the transaction exceed either five percent or eight percent of the total transaction amount, depending on the transaction. Specifically, under TILA section 103(bb)(1)(A)(ii)(I), a transaction with a total transaction amount of $20,000 or more is a high-cost mortgage if the total points and fees payable in connection with the transaction exceed five percent of the total transaction amount. Under TILA section 103(bb)(1)(A)(ii)(II), a transaction with a total transaction amount of less than $20,000 is a high-cost mortgage if the total points and fees payable in connection with the transaction exceed eight percent of the total transaction amount or $1,000, whichever is less. The proposal implements the Dodd-Frank Act's amendments to TILA's points and fees trigger for high-cost mortgages in proposed § 1026.32(a)(1)(ii)(A)–(B).

Payable in Connection With the Transaction

Section 1431(a) of the Dodd-Frank Act amended the high-cost mortgage points and fees trigger in TILA section 103(aa)(1)(B), 15 U.S.C. 1602(aa)(1)(B), by providing for the inclusion in points and fees of ''the total points and fees payable *in connection with the transaction,*'' as opposed to ''the total points and fees payable by the consumer *at or before closing''* (emphases added). The proposal implements this statutory change in proposed § 1026.32(a)(1)(ii). The Bureau notes that the practical result of this change is that any item listed in the points and fees definition under proposed § 1026.32(b)(1) and (3) must, unless otherwise specified, be counted toward the points and fees threshold for high-cost mortgages even if it is payable after consummation or account opening.[32] *See* the section-by-section analysis to proposed § 1026.32(b)(1) and (3), below, for further details concerning the definition of points and fees for high-cost mortgages.

Total Transaction Amount

Section 1431(a) of the Dodd-Frank Act amended TILA section 103(aa)(1)(B), 15 U.S.C. 1602(aa)(1)(B), to provide that a mortgage is a high-cost mortgage if its total points and fees exceed a certain percentage of the ''total transaction amount,'' rather than the ''total loan amount.'' TILA section 103(bb)(1)(A)(ii). The Dodd-Frank Act did not define the term ''total transaction amount.'' However, the Bureau believes that the phrase reflects the fact that HOEPA, as amended, applies to both closed- and open-end credit transactions secured by a consumer's principal dwelling.[33] Notwithstanding the statutory change, for consistency with existing Regulation Z terminology, proposed § 1026.32(a)(1)(ii) provides that a high-cost mortgage is one for which the total points and fees exceed a certain percentage of the ''total loan amount.'' For organizational purposes, the Bureau proposes to move the definition of ''total loan amount'' in existing comment 32(a)(1)(ii)–1 into proposed § 1026.32(b)(6) and comment 32(b)(6)(i)–1. As discussed below in the section-by-section analysis to proposed § 1026.32(b)(6), the Bureau also proposes to amend the definition of ''total loan amount'' for closed-end mortgage loans and to clarify the meaning of ''total loan amount'' for open-end credit plans.

Annual Adjustment of $1,000 Amount

The Bureau proposes to re-number existing comment 32(a)(1)(ii)–2 as proposed comment 32(a)(1)(ii)–1 for organizational purposes, as well as to revise it in several respects to reflect proposed revisions to § 1026.32(a)(1)(ii). First, proposed comment 32(a)(1)(ii)–1 replaces references to the pre-Dodd-Frank statutory figure of $400 with references to the new statutory figure of $1,000.[34] In addition, consistent with the Dodd-Frank Act's transfer of rulemaking authority for HOEPA from the Board to the Bureau, proposed comment 32(a)(1)(ii)–1 states that the Bureau will publish and incorporate into commentary the required annual adjustments to the $1,000 figure after the June figures become available each year. Finally, the proposal retains in proposed comment 32(a)(1)(ii)–2 the paragraphs in existing comment 32(a)(1)(ii)–2 enumerating the $400 figure as adjusted for inflation from 1996 through 2012. The Bureau believes that it is useful to retain the list of historical adjustments to the $400 figure for reference, notwithstanding that TILA section 103(bb)(1)(A)(ii)(II) increases the dollar figure from $400 to $1,000.

32(a)(1)(iii)

Existing TILA section 103(aa)(1), 15 U.S.C. 1602(aa)(1), provides that a mortgage is a high-cost mortgage if either its APR or its total points and fees exceed certain statutorily prescribed thresholds. Section 1431(a) of the Dodd-Frank Act amended TILA to add that a transaction is also a high-cost mortgage if the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing, or if such fees or penalties exceed, in the aggregate, more than two percent of the amount prepaid. TILA section 103(bb)(1)(A)(iii). Proposed § 1026.32(a)(1)(iii) implements TILA section 103(bb)(1)(A)(iii) with several minor clarifications.

First, proposed § 1026.32(a)(1)(iii) provides that the determination as to whether the creditor can charge the specified prepayment penalty is to be made under the ''terms of the loan contract or open-end credit agreement,'' rather than under the ''credit transaction documents.'' This phrasing is proposed to reflect the application of proposed § 1026.32(a)(1)(iii) to both closed- and

[32] The Bureau's proposed inclusion in points and fees for high-cost mortgages of ''the total points and fees payable in connection with the transaction'' is consistent with the proposed inclusion in points and fees for qualified mortgages of ''the total points and fees * * * payable in connection with the loan'' in the Board's 2011 ATR Proposal. *See* 76 FR 27390, 27456 (May 11, 2011) (implementing TILA section 129C(b)(2)(A)(vii)).

[33] In this regard, the Bureau notes that section 1412 of the Dodd-Frank Act retained the phrase ''total loan amount'' for purposes of determining whether a closed-end mortgage complies with the points and fees restrictions applicable to qualified mortgages. *See* TILA section 129C(b)(2)(A)(vii).

[34] The Dodd-Frank Act renumbered TILA section 103(aa)(1)(B)(i)–(ii) concerning points and fees for high-cost mortgages as 103(bb)(1)(A)(ii)(I)–(II). However, the Dodd-Frank Act did not amend TILA section 103(aa)(3) (the provision that directs the points and fees dollar figure to be adjusted annually for inflation) to reflect this new numbering. To give meaning to the statute as amended, the Bureau interprets the authority provided to it in amended TILA section 103(bb)(3) as authority to adjust annually for inflation the dollar figure prescribed in amended TILA section 103(bb)(1)(A)(ii)(II).

open-end transactions, and for consistency with Regulation Z. Proposed § 1026.32(a)(1)(iii) also cross-references the definition of prepayment penalty in proposed § 1026.32(b)(8). Finally, proposed § 1026.32(a)(1)(iii) clarifies that the creditor must include any prepayment penalty that is permitted to be charged more than 36 months ''after consummation or account opening,'' rather than after ''transaction closing.'' For consistency and clarity, the Bureau proposes using the terms ''consummation'' and ''account opening'' instead of ''transaction closing'' for closed- and open-end transactions, respectively.

Proposed comment 32(a)(1)(iii)–1 explains how the prepayment penalty trigger for high-cost mortgages in proposed § 1026.32(a)(1)(iii) interacts with the ban on prepayment penalties for high-cost mortgages in amended TILA section 129(c), 15 U.S.C. 1639(c), which the Bureau proposes to implement in § 1026.32(d)(6). Specifically, proposed comment 32(a)(1)(iii)–1 explains that § 1026.32 implicates prepayment penalties in two main ways. First, under proposed § 1026.32(a)(1)(iii), a closed- or open-end transaction is a high-cost mortgage if, under the terms of the loan contract or credit agreement, a creditor can charge either (i) a prepayment penalty more than 36 months after consummation or account opening, or (ii) total prepayment penalties that exceed two percent of any amount prepaid. Second, if a transaction is a high-cost mortgage by operation of any of the triggers in proposed § 1026.32(a)(1) (*i.e.,* the APR, points and fees, or prepayment penalty triggers), then under proposed § 1026.32(d)(6), the transaction may not include a prepayment penalty. Proposed comment 32(a)(1)(iii)–1 clarifies that proposed § 1026.32(a)(1)(iii) thus effectively establishes a maximum period during which a prepayment penalty may be imposed, and a maximum prepayment penalty amount that may be imposed, on a transaction that may be subject to HOEPA coverage (*i.e.,* a closed- or open-end transaction secured by a consumer's principal dwelling, other than a reverse mortgage transaction).

Proposed comment 32(a)(1)(iii)–1 also cross-references proposed § 1026.43(g) (proposed § 226.43(g) in the Board's 2011 ATR Proposal), which proposes to implement new TILA section 129C(c) by (1) prohibiting prepayment penalties for most closed-end mortgages unless the transaction is a fixed-rate, qualified mortgage with an annual percentage rate that meets certain statutorily prescribed thresholds, and (2) restricting prepayment penalties even for such qualified mortgages to three percent, two percent and one percent of the amount prepaid during the first, second, and third years following consummation, respectively. *See* 76 FR 27390, 27472–78 (May 11, 2011). As discussed further below in the section-by-section analysis to proposed § 1026.32(b)(8), the Bureau believes that the cumulative effect of the Dodd-Frank Act's amendments to TILA concerning prepayment penalties may be to limit the amount of prepayment penalties that may be charged in connection with most closed-end mortgage loans to amounts that would be unlikely to reach the high-cost mortgage prepayment penalty trigger.[35] The Bureau nonetheless requests comment on whether additional guidance concerning the calculation of prepayment penalties for purposes of proposed § 1026.32(b)(1)(iii) is needed.

Proposed comment 32(a)(1)(iii)–2 illustrates how to apply proposed § 1026.32(a)(1)(iii) in the case of an open-end credit plan. To begin, proposed comment 32(a)(1)(iii)–2 clarifies that, if the terms of an open-end credit agreement allow for a prepayment penalty that exceeds two percent of the initial credit limit for the plan, the agreement will be deemed to permit a creditor to charge a prepayment penalty that exceeds two percent of the ''amount prepaid'' within the meaning of proposed § 1026.32(a)(1)(iii). The comment provides three examples to illustrate the rule.

Proposed comment 32(a)(1)(iii)–2.i explains that a home-equity line of credit with an initial credit limit of $10,000 is a high-cost mortgage under proposed § 1026.32(a)(1)(iii) if the terms of the plan permit the creditor to charge the consumer a flat fee of $500 if the consumer terminates the plan sooner than three years after opening the account. The $500 flat fee is a prepayment penalty (*see* proposed § 1026.32(b)(8)(ii), below) that exceeds two percent of the total amount of the initial credit limit of $10,000, which is $200.

Proposed comment 32(a)(1)(iii)–3.ii sets forth a second example. This example assumes a home-equity line of credit with an initial credit limit of $10,000 and a ten-year term. The terms of the plan permit the creditor to charge the consumer a $200 fee if the consumer terminates the plan prior to the expiration of the ten-year term. Even though the $200 prepayment penalty is less than two percent of the initial $10,000 credit limit, the home-equity line of credit is a high-cost mortgage under proposed § 1026.32(a)(1)(iii) because the terms of the plan permit the creditor to charge the penalty longer than three years after the consumer opens the account.

Finally, proposed comment 32(a)(1)(iii)–3.iii assumes that the terms of an open-end credit plan with an initial credit limit of $150,000 permit the creditor to charge the consumer for any closing costs paid by the creditor if the consumer terminates the plan less than 36 months after account opening. In the example, the creditor pays $1,000 in closing costs. Of the $1,000, the creditor pays $800 to cover bona fide third-party charges and $200 to cover origination costs incurred by the creditor or its affiliates. Under proposed § 1026.32(b)(8)(ii), the ability to charge the consumer $800 upon early termination to cover bona fide third-party charges is not a prepayment penalty, but the ability to charge $200 for the creditor's or its affiliate's origination costs is a prepayment penalty. The total prepayment penalty of $200 is less than two percent of the plan's initial $150,000 credit limit, and under the terms of the plan the penalty does not apply if the consumer terminates the plan more than 36 months after account opening. Thus, the plan is not a high-cost mortgage under § 1026.32(a)(1)(iii).

32(a)(2) Determination of Transaction Coverage Rate or Annual Percentage Rate

TILA section 103(bb)(1)(B) specifies the interest rate used to determine the annual percentage rate for purposes of the APR threshold under TILA section 103(bb)(1)(A)(i). TILA section 103(bb)(1)(B) requires that: (1) In connection with a fixed-rate transaction, the annual percentage rate must be based on the interest rate in effect on the date of consummation; (2) in connection with a transaction with a rate that varies solely in accordance with an index, the annual percentage rate must be based on the interest rate determined by adding the maximum margin permitted at any time during the loan agreement to the index rate in effect on the date of consummation; and (3) in connection with any other transaction in which the

[35] The Dodd-Frank Act's amendments include adding a prepayment penalty trigger for high-cost mortgages and prohibiting prepayment penalties for such mortgages (TILA sections 103(bb)(1)(A)(iii) and 129(c)), restricting or prohibiting prepayment penalties for most closed-end mortgage loans (TILA section 129C(c)), and including prepayment penalties in the points and fees calculations for high-cost mortgages and qualified mortgages (TILA sections 103(bb)(4) and 129C(b)(2)(C), respectively). *See also* the section-by-section analysis to proposed § 1026.32(b)(1) and (3) and proposed § 1026.32(b)(8), below.

rate may vary at any time during the term of the loan for any reason, the annual percentage rate must be based on the maximum interest rate that may be charged during the term of the loan.

The Bureau proposes to implement these provisions in proposed § 1026.32(a)(2). Specifically, proposed § 1026.32(a)(2)(i) requires that for purposes of the APR trigger, the calculation of the transaction coverage rate or annual percentage rate, as applicable, for a fixed-rate transaction must be based on the interest rate in effect on the date of consummation or account opening. Proposed § 1026.32(a)(2)(ii) requires that for a variable-rate transaction in which the interest rate may vary during the term of the loan or plan in accordance with an index outside the creditor's control, the transaction coverage rate or annual percentage rate, as applicable, must be based on an interest rate that is determined by adding the maximum margin permitted at any time during the term of the loan or plan to the index rate in effect on the date of consummation or account opening. Proposed § 1026.32(a)(2)(iii) requires that for a loan in which the interest rate may vary during the term of the loan, other than a loan as described in § 1026.32(a)(2)(ii), the transaction coverage rate or annual percentage rate, as applicable, must be based on the maximum interest rate that may be imposed during the term of the loan.

As noted above, the Bureau proposes to reference in proposed § 1026.32(a)(2) the ''transaction coverage rate'' for consistency with Alternative 2 to proposed § 1026.32(a)(1)(i). The Bureau also notes that if the Bureau does not adopt Alternative 2, the references to ''transaction coverage rate'' in proposed § 1026.32(a)(2) would be removed accordingly. In addition, the Bureau proposes to incorporate references to ''account opening'' in proposed § 1026.32(a)(2) to clarify that the requirement is also applicable to open-end credit plans. Furthermore, the Bureau proposes to clarify in proposed § 1026.32(a)(2)(ii) that if an interest rate varies in accordance with an index, the index must be outside the creditor's control. The Bureau believes this clarification is necessary and appropriate to effectuate the statutory distinction in treatment between rates that vary with an index and those that ''may vary at any time during the term of the loan for any reason.'' Additionally, the Bureau is proposing to adopt this clarification pursuant to its authority under TILA 105(a) to prevent circumvention of coverage under HOEPA. The Bureau notes that if the index were in the creditor's control, such as the creditor's own prime lending rate, a creditor could set a low index rate for purposes of § 1026.32(a)(2)(ii), which would not trigger coverage as a high-cost mortgage. However, subsequent to consummation, the creditor could set a higher index rate, at any time, which would have triggered coverage as a high-cost mortgage under § 1026.32(a)(2)(ii). Accordingly, the Bureau notes that if the interest rate varies in accordance with an index that is under the creditor's control, the creditor would determine the annual percentage rate under § 1026.32(a)(2)(iii), not § 1026.32(a)(2)(ii).

Proposed comment 32(a)(2)–1 clarifies that, notwithstanding the existing guidance in comment 17(c)–1 regarding the calculation of the annual percentage rate for discounted and premium variable-rate loans, § 1026.32(a)(2) requires a different calculation of the transaction coverage rate or annual percentage rate, as applicable, for purposes of the high-cost mortgage APR threshold.

Proposed comment 32(a)(2)–2 clarifies that for purposes of § 1026.32(a)(2), the annual percentage rate for an open-end transaction must be determined in accordance with § 1026.32(a)(2), regardless of whether there is an advance of funds at account opening. Proposed comment 32(a)(2)–2 further clarifies that § 1026.32(a)(2) does not require the determination of the annual percentage rate for any extensions of credit subsequent to account opening. In other words, any draw on the credit line subsequent to account opening is not considered to be a separate open-end ''transaction'' for purposes of determining annual percentage rate threshold coverage.

Proposed comment 32(a)(2)–3 provides additional guidance on the application of § 1026.32(a)(2)(ii) and (iii) to mortgage transactions with interest rates that vary. Specifically, proposed comment 32(a)(2)–3.i provides that § 1026.32(a)(2)(ii) applies when the interest rate is determined by an index that is outside the creditor's control. In addition, proposed comment 32(a)(2)–3.i clarifies that even if the transaction has a fixed-rate discounted introductory or initial interest rate, § 1026.32(a)(2)(ii) requires adding the contractual maximum margin to the fully indexed interest rate, and not the introductory rate. Furthermore, for purposes of determining the maximum margin, proposed comment 32(a)(2)–3.i clarifies that margins that might apply if a preferred rate is terminated must be used, such as where a specified higher margin will apply if the borrower's employment with the creditor ends.

Proposed comment 32(a)(2)–3.ii clarifies that § 1026.32(a)(2)(iii) applies when the interest rates applicable to a transaction may vary, except as described in § 1026.32(a)(2)(ii). Proposed comment 32(a)(2)–3.ii thus specifies that § 1026.32(a)(2)(iii) applies, for example, to a closed-end mortgage loan when interest rate changes are at the creditor's discretion, or where multiple fixed rates apply to a transaction, such as a stepped-rate mortgage.

Proposed comment 32(a)(2)–4 clarifies the application of § 1026.32(a)(2) for home-equity plans that offer fixed-rate and term payment options. The Bureau understands that some variable-rate HELOC plans may permit borrowers to repay a portion or all of the balance at a fixed-rate and over a specified period of time. Proposed comment 32(a)(2)–4 thus provides that, if a HELOC has only a fixed rate during the draw period, a creditor must use that fixed rate to determine the plan's APR, as required by proposed § 1026.32(a)(2)(i). If during the draw period, however, a HELOC has a variable rate but also offers a fixed-rate and -term payment option, a creditor must use the terms applicable to the variable-rate feature to determine the plan's APR, as described in proposed § 1026.32(a)(2)(ii).

The Bureau seeks comment on its proposed rules for determining the APR for HOEPA coverage, including on whether any aspect of the proposal could result in unwarranted, over-inclusive HOEPA coverage of HELOCs. In particular, the Bureau notes that § 1026.40(f) and its commentary generally prohibit creditors from changing the APR on a HELOC unless the change is based on a publicly-available index outside the creditor's control or unless the rate change is specifically set forth in the agreement, such as stepped-rate plans, in which specified fixed rates are imposed for specified periods. Therefore, the Bureau understands that these HELOC restrictions effectively limit the application of proposed § 1026.32(a)(2)(iii) primarily to certain types of closed-end mortgage loans. The Bureau notes that applying proposed § 1026.32(a)(2)(iii) to determine the APR for a variable-rate HELOC could result in over-inclusive coverage of HELOCs under HOEPA because the maximum possible interest rate for many variable-rate HELOCs is pegged to the maximum interest rate permissible under State law. That interest rate, in turn, likely would cause the plan's APR to exceed HOEPA's APR threshold. Therefore, the

Bureau solicits comment on whether there are any circumstances pursuant to which the terms of a variable-rate HELOC might warrant application of proposed § 1026.32(a)(2)(iii) and, if so, whether additional clarification is necessary to avoid unwarranted coverage of HELOCs under HOEPA.

32(b) Definitions

32(b)(1)

Background

Existing TILA section 103(aa)(4), 15 U.S.C. 1602(aa)(4), defines the charges that must be included in points and fees for purposes of determining whether a transaction exceeds the HOEPA points and fees threshold. Section 1431(c)(1) of the Dodd-Frank Act revised and added certain items to this definition. *See* TILA section 103(bb)(4).[36] At the same time, as noted above in part I.E, section 1412 of the Dodd-Frank Act amended TILA to require creditors to consider consumers' ability to repay and to create a new type of closed-end mortgage—a ''qualified mortgage.'' Among other requirements, in order to be considered a qualified mortgage, points and fees payable in connection with the loan may not exceed 3 percent of the total loan amount.[37] In turn, ''points and fees'' for purposes of qualified mortgages means ''points and fees'' as defined by HOEPA in existing TILA section 103(aa)(4). *See* TILA section 129C(b)(2)(A)(vii) and (C)(i).[38]

As part of its 2011 ATR Proposal to implement new TILA section 129C(b)(2)(C)(i) defining points and fees for qualified mortgages, the Board also proposed to implement the Dodd-Frank Act's amendments to the definition of points and fees in existing TILA section 103(aa)(4). Specifically, the Board proposed to amend § 226.32(b)(1) and (2) and to revise and add corresponding commentary. *See* 76 FR 27390, 27398–06, 27481–82, 27487–27489 (May 11, 2011).[39]

The Board's 2011 ATR Proposal transferred to the Bureau on July 21, 2011 and its comment period closed on July 22, 2011. As noted above in part I.E, ''Other Rulemakings,'' the Bureau is in the process of finalizing the Board's 2011 ATR Proposal, including evaluating comments received concerning the Board's proposed amendments to § 226.32(b)(1) and (2). The Bureau believes that issuing multiple, concurrent proposals to implement the Dodd-Frank Act's amendments to existing TILA section 103(aa)(4) concerning the definition of points and fees for high-cost mortgages and qualified mortgages has the potential to cause confusion. In order to minimize such confusion and for ease of reference, the Bureau republishes in this proposal the Board's proposed amendments to § 226.32(b)(1) and (2) substantially as set forth in the Board's 2011 ATR Proposal, with adjustments only to reflect the application of the proposed provisions to high-cost mortgages, to coordinate this proposal with the other mortgage-related rulemakings currently underway at the Bureau, and to conform terminology to existing Regulation Z provisions. These adjustments are noted in the section-by-section analysis to proposed § 1026.32(b)(1) and (2), below. The Bureau is particularly interested in comments concerning newly-proposed language and the application of the definitions in proposed § 1026.32(b)(1) and (2) to the high-cost mortgage context.

Limitation to Closed-End Mortgage Loans

The proposal proposes to amend existing § 1026.32(b)(1) to clarify that the charges listed in proposed § 1026.32(b)(1)(i) through (vi) are the charges that must be included in the points and fees calculation for closed-end mortgage loans. Proposed § 1026.32(b)(3) sets forth a separate definition of points and fees for home equity lines of credit. *See* the section-by-section analysis to proposed § 1026.32(b)(3), below.

32(b)(1)(i)

Existing TILA section 103(aa)(4)(A), 15 U.S.C. 1602(aa)(4)(A), provides that points and fees include all items included in the finance charge, except interest or the time-price differential. Existing TILA section 103(aa)(4)(A) is implemented in § 1026.32(b)(1)(i). The Dodd-Frank Act did not amend TILA section 103(aa)(4)(A), but the Board nevertheless proposed certain clarifying revisions to § 226.32(b)(1)(i) in its 2011 ATR Proposal. *See* 76 FR 27390, 27400, 27481, 27487–88 (May 11, 2011). In addition, the Board proposed to implement in new § 226.32(b)(1)(i)(B) new TILA section 103(bb)(1)(C), which excludes from the calculation of points and fees certain types and amounts of third-party insurance premiums. *Id.* at 27400–02, 27481, 27487–88. The Bureau's proposed § 1026.32(b)(1)(i) and comments 32(b)(1)(i)–1 through –4 republish the Board's proposed revisions and additions, with the changes discussed below.

Changes To Accommodate the Bureau's Proposed Simpler, More Inclusive Finance Charge

As noted above in part I.E, ''Other Rulemakings,'' and the section-by-section analysis to proposed § 1026.32(a)(1)(i), the Bureau's 2012 TILA–RESPA Proposal proposes to adopt a simpler, more inclusive definition of the finance charge for closed-end transactions secured by real property or a dwelling, similar to what the Board proposed in its 2009 Closed-End Proposal. *See* 74 FR 43232, 43241–45 (Aug. 26, 2009). Under the Bureau's 2012 TILA–RESPA Proposal, the following fees that currently are specifically excluded from the finance charge would be included for closed-end credit transactions secured by real property or a dwelling: Closing agent charges, application fees charged to all applicants for credit (whether or not credit was extended), taxes or fees required by law and paid to public officials relating to security interests, premiums for insurance obtained in lieu of perfecting a security interest, taxes imposed as a condition of recording the instruments securing the evidence of indebtedness, and various real-estate related fees. Because the definition of

[36] The Dodd-Frank Act renumbered TILA section 103(aa)(1)(B) concerning points and fees for high-cost mortgages as 103(bb)(1)(A)(ii). However, the Dodd-Frank Act did not amend existing TILA section 103(aa)(4) (the provision that defines points and fees) to reflect this new numbering. Thus, as amended, TILA section 103(bb)(4) provides that ''[f]or purposes of paragraph (1)(B), points and fees shall include * * *'' Amended TILA section 103(bb)(1)(B), however, concerns the calculation of the annual percentage rate. To give meaning to the statute as amended, the Bureau interprets amended TILA section 103(bb)(4) as cross-referencing the points and fees trigger in amended TILA section 103(bb)(1)(A)(ii)(II).

[37] TILA section 129C(b)(2)(A)(vii).

[38] More specifically, TILA section 129C(b)(2)(C)(i) cross-references the definition of points and fees in 15 U.S.C. 1602(aa)(4), which the Dodd-Frank Act re-numbered as TILA section 103(bb)(4), 15 U.S.C. 1602(bb)(4).

[39] The Board noted that its proposed amendments to § 1026.32(b)(1) and (2) were limited to the definition of points and fees and that the 2011 ATR Proposal was not proposing to implement any of the other high-cost mortgage amendments in TILA. *See id.* at 27398. Thus, the Board noted that, if its ATR Proposal were finalized prior to the rule on high-cost mortgages, the calculation of the points and fees threshold for qualified mortgages and high-cost mortgages would be different, but the baseline definition of points and fees would be the same. *See id.* at 27399. For example, the Board's 2011 ATR Proposal did not propose to implement the statutory changes to the points and fees threshold for high-cost mortgages that exclude from the threshold calculation ''bona fide third-party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator'' and that permit creditors to exclude certain ''bona fide discount points,'' even though the Board proposed to implement identical provisions in the Dodd-Frank Act defining the points and fees threshold for qualified mortgages. *See* 76 FR 27390, 27398–99.

points and fees includes, as its starting point, all items included in the finance charge, a potential consequence of adopting the more inclusive test for determining the finance charge is that more loans might exceed HOEPA's points and fees threshold. *See* the Board's 2009 Closed-End Proposal, 74 FR 43232, 43241–45 (Aug. 26, 2009).[40]

In its 2010 Mortgage Proposal, 75 FR 58539 (Sept. 24, 2010), the Board analyzed the potential impact that a more inclusive definition of finance charge might have on, among other things, the number of loans meeting HOEPA's thresholds. After having reviewed comments received and other market data obtained following publication of the 2009 Closed-End Proposal, the Board in its 2010 Mortgage Proposal proposed to preserve existing HOEPA coverage, notwithstanding the proposed use of the more inclusive finance charge for disclosure purposes. *See id.* at 58637–38. For example, the Board proposed to retain the existing exclusion of certain reasonable third-party charges in the points and fees definition for purposes of determining HOEPA coverage, even though such fees would be included in the expanded finance charge for disclosure purposes. *See id.*

For the reasons set forth in the Board's 2010 Mortgage Proposal, the Bureau acknowledges that the more inclusive finance charge proposed in the Bureau's 2012 TILA–RESPA Proposal could expand the number of closed-end transactions subject to HOEPA because of points and fees. As noted above, very few HOEPA loans are made, in part because assignees of HOEPA loans are subject to all claims and defenses a consumer could bring against the original creditor. The Bureau therefore seeks comment on whether to amend § 1026.32(b)(1)(i) and comment 32(b)(1)(i)–1 as proposed to prevent expansion of the types of charges included within the definition of points and fees for HOEPA coverage in the event that the Bureau adopts the more inclusive finance charge.

Accordingly, as a starting point, proposed § 1026.32(b)(1)(i) includes in points and fees for closed-end mortgage loans all items included in the finance charge under § 1026.4(a) and (b). However, proposed § 1026.32(b)(1)(i) then expressly excludes from closed-end points and fees the charges that would be brought into points and fees solely by operation of the more inclusive finance charge. Specifically, proposed § 1026.32(b)(1)(i) expressly excludes from points and fees the items described in § 1026.4(c) through (e), except to the extent that other paragraphs of § 1026.32(b)(1) specifically require those items to be included in points and fees. Proposed § 1026.32(b)(1)(i)(A) and (B) retain the statutory exclusion from points and fees of interest or the time-price differential and premiums or other charges for certain mortgage insurance. Proposed comment 32(b)(1)(i)–1 clarifies that charges must be included in points and fees only if they are included in the finance charge under § 1026.4(a) and (b), without reference to any other provision of § 1026.4.

The Bureau does not believe that this proposed amendment to the definition of points and fees for closed-end mortgage loans constitutes an adjustment or exemption requiring the Bureau to invoke its statutory authority under TILA section 105(a). Rather, it is the more inclusive finance charge proposal itself that amounts to an adjustment to TILA. Preserving Regulation Z's existing treatment of points and fees for HOEPA coverage purposes would merely keep the regulation consistent with TILA in that regard, in spite of the adjustment to the finance charge that would be made for disclosure purposes. Indeed, the Bureau notes that the proposed amendment is consistent with the Dodd-Frank Act, which amended TILA section 103(aa)(1) to exclude ''bona fide third party charges'' from the points and fees calculation. The Bureau seeks comment on its proposed approach. The Bureau is considering and seeks comment on whether, if the proposed amendment were not adopted, the general exclusion of bona fide third-party charges from points and fees (*see* the section-by-section analysis to proposed § 1026.32(b)(5), below) would be sufficient to retain the current scope of points and fees coverage for high-cost mortgages notwithstanding the Bureau's proposed more inclusive finance charge.

Proposed Amendments for Clarity and Consistency

The Bureau proposes several additional changes to § 1026.32(b)(1)(i) and comments 32(b)(1)(i)–1 through –4 for clarity and consistency. Among other non-substantive changes, the Bureau replaces a reference to loan ''closing'' with a reference to ''consummation'' in proposed § 1026.32(b)(1)(i)(B)(*3*) for consistency with Regulation Z. In addition, proposed comment 32(b)(1)(i)–3.iii, which sets forth an example to clarify the types and amounts of upfront private mortgage insurance premiums that are excluded from points and fees under § 1026.32(b)(1)(i)(B), is amended to replace a reference to ''covered transaction'' proposed in the Board's 2011 ATR Proposal with a reference to ''closed-end mortgage loan.'' This change reflects the fact that the phrase ''covered transaction'' refers to those categories of closed-end transactions covered by the Board's 2011 ATR Proposal, and it is not a defined term for purposes of § 1026.32.[41]

32(b)(1)(ii)

Section 1431(c) of the Dodd-Frank Act amended TILA section 103(aa)(4)(B), 15 U.S.C. 1602(aa)(4)(B), to provide that points and fees includes ''all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction.'' This language replaced the phrase ''all compensation paid to mortgage brokers.'' The Board's 2011 ATR Proposal proposed to implement this statutory change by revising existing § 226.32(b)(1)(ii) and comment 32(b)(1)(ii)–1 and by adding new comments 32(b)(1)(ii)–2 and –3. *See* 76 FR 27390, 27402–04, 27481, 27488–89 (May 11, 2011). The Bureau republishes the Board's proposed revisions and additions substantially as proposed in the Board's 2011 ATR Proposal. However, the Bureau's proposed comment 32(b)(1)(ii)–2 replaces references to ''covered transaction(s)'' with references to ''closed-end mortgage loan(s)'' for the reasons discussed in the section-by-section analysis to proposed § 1026.32(b)(1)(i), above. The Bureau's proposal makes certain other, non-substantive edits for clarity and consistency.

32(b)(1)(iii)

TILA section 103(aa)(4)(C), 15 U.S.C. 1602(aa)(4)(C), provides that points and fees include certain real estate-related charges listed in TILA section 106(e), 15 U.S.C. 1605(e). TILA section 103(aa)(4)(C) is implemented in existing § 1026.32(b)(1)(iii). The Dodd-Frank Act did not amend TILA section 103(aa)(4)(C), but the Board nevertheless proposed certain clarifying revisions to

[40] Voluntary credit insurance premiums and voluntary debt cancellation charges or premiums are additional charges that are not currently included in the finance charge, but that would be included for closed-end credit transactions secured by real property or a dwelling under the more inclusive finance charge. Such premiums, however, are already expressly included in points and fees pursuant to § 1026.32(b)(1)(iv).

[41] As discussed in the section-by-section analysis to proposed § 1026.32(b)(3), below, the Bureau does not propose to incorporate the exclusion of mortgage insurance premiums into the definition of points and fees for open-end credit plans.

§ 226.32(b)(1)(iii) in its 2011 ATR Proposal. *See* 76 FR 27390, 27404, 27481, 27489 (May 11, 2011). The Bureau's proposed § 1026.32(b)(1)(iii) and comment 32(b)(1)(iii)–1 republish the Board's proposed revisions and make two other, minor changes. First, proposed § 1026.32(b)(1)(iii) replaces the term ''closing'' as proposed in the Board's 2011 ATR Proposal with the term ''consummation'' for consistency with Regulation Z. Second, proposed comment 32(b)(1)(iii)–1 clarifies that a fee paid by the consumer for an appraisal performed by the creditor must be included in points and fees, but removes the phrase ''even though the fee may be excludable from the finance charge if it is bona fide and reasonable in amount'' to conform with the Bureau's proposed simpler, more inclusive definition of the finance charge. A charge for an appraisal conducted by the creditor would be included in the simpler, more inclusive finance charge even if it is bona fide and reasonable in amount. *See* the section-by-section analysis to proposed § 1026.32(b)(1)(i), above.

32(b)(1)(iv)

Section 1431(c) of the Dodd-Frank Act amended TILA section 103(aa)(4), 15 U.S.C. 1602(aa)(4), to provide that points and fees include certain credit insurance and debt cancellation or suspension coverage premiums payable at or before closing. *See* TILA section 103(bb)(4)(D). In its 2011 ATR Proposal, the Board proposed to amend § 226.32(b)(1)(iv), which already requires certain such charges to be included in points and fees, to reflect the statutory changes under the Dodd-Frank Act. *See* 76 FR 27390, 27404–05, 27481, 27489 (May 11, 2011). The Bureau republishes the Board's proposed revisions and additions to § 226.32(b)(1)(iv) and comment 32(b)(1)(iv)–1, as well as the Board's new proposed comment 32(b)(1)(iv)–2, substantially as proposed in the Board's 2011 ATR Proposal.[42] The Bureau's proposed § 1026.32(b)(1)(iv) and proposed comment 32(b)(1)(iv)–1, however, replace the term ''closing'' with the term ''consummation'' for consistency with existing provisions of Regulation Z. In addition, proposed comment 32(b)(1)(iv)–1 clarifies that credit insurance premiums must be included in points and fees if they are paid at consummation, whether they are paid in cash or, if permitted by applicable law, financed. The Bureau believes the clarifying phrase ''if permitted by applicable law'' is necessary because section 1414 of the Dodd-Frank Act added to TILA new section 129C(d) prohibiting the financing of most types of credit insurance. *See also* the section-by-section analysis to proposed § 1026.32(b)(6), below.

32(b)(1)(v)

Section 1431(c) of the Dodd-Frank Act amended TILA section 103(aa)(4), 15 U.S.C. 1602(aa)(4), to require the inclusion in points and fees of the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction. *See* TILA section 103(bb)(4)(E). The Board's 2011 ATR Proposal proposed to implement this statutory change in new § 226.32(b)(1)(v). *See* 76 FR 27390, 27405, 27481 (May 11, 2011). The Bureau's proposed § 1026.32(b)(1)(v) republishes the Board's proposed § 226.32(b)(1)(v), except that it replaces a cross-reference to the Board's proposed definition of prepayment penalty for qualified mortgages (*i.e.,* the Board's proposed § 226.43(b)(10)) with a cross-reference to the definition of prepayment penalty for closed-end mortgage loans in proposed § 1026.32(b)(8)(i). *See* the section-by-section analysis to proposed § 1026.32(b)(8)(i), below.

32(b)(1)(vi)

Section 1431(c) of the Dodd-Frank Act amended TILA section 103(aa)(4), 15 U.S.C. 1602(aa)(4), to require the inclusion in points and fees of all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor. *See* TILA section 103(bb)(4)(F). The Board's 2011 ATR Proposal proposed to implement this statutory change in new § 226.32(b)(1)(vi). *See* 76 FR 27390, 27405, 27481 (May 11, 2011). The Bureau's proposed § 1026.32(b)(1)(vi) republishes the Board's proposed § 226.32(b)(1)(vi), except that it replaces a cross-reference to the Board's proposed definition of prepayment penalty for qualified mortgages (*i.e.,* the Board's proposed § 226.43(b)(10)) with a cross-reference to the definition of prepayment penalty for closed-end mortgage loans in proposed § 1026.32(b)(8)(i). *See* the section-by-section analysis for proposed § 1026.32(b)(8)(i), below.

32(b)(2)

As noted in the section-by-section analysis to proposed § 1026.32(b)(1)(ii), above, section 1431(c) of the Dodd-Frank Act amended TILA section 103(aa)(4)(B) to replace the term ''mortgage brokers'' with ''mortgage originators.'' *See* TILA section 103(bb)(4)(B). The Board's 2011 ATR Proposal proposed to implement this statutory change in proposed § 226.32(b)(1)(ii) utilizing the term ''loan originator,'' as defined in existing § 1026.36(a)(1), rather than the statutory term ''mortgage originator.'' *See* 76 FR 27390, 27402–04, 27481, 27488–89 (May 11, 2011). In turn, the Board proposed new § 226.32(b)(2) to exclude from points and fees compensation paid to certain categories of persons specifically excluded from the definition of ''mortgage originator'' in amended TILA section 103. *See id.* at 27405–06, 27481. The Bureau's proposed § 1026.32(b)(2) republishes the Board's proposed § 226.32(b)(2), except that the Bureau replaces a reference to ''covered transaction'' with a reference to ''closed-end mortgage loan'' for the reasons set forth in the section-by-section analysis to proposed § 1026.32(b)(1)(i), above.

32(b)(3)

Points and Fees; Open-End Credit Plans

As discussed above in the section-by-section analysis to proposed § 1026.32(a), section 1431(a) of the Dodd-Frank Act amended TILA to provide that a ''high-cost mortgage'' may include an open-end credit plan secured by a consumer's principal dwelling. *See* TILA section 103(bb)(1)(A). Section 1431(c) of the Dodd-Frank Act, in turn, amended TILA by adding new section 103(bb)(5), which specifies how to calculate points and fees for open-end credit plans. Unlike TILA's pre-existing points and fees definition for closed-end mortgage loans, which enumerates six specific categories of items that creditors must include in points and fees, the new open-end points and fees provision simply provides that points and fees for open-end credit plans are calculated by adding ''the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an

[42] In its 2011 ATR Proposal, the Board did not propose to implement in the definition of points and fees the provision in section 1431(c) of the Dodd-Frank Act that specifies that ''insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor.'' The Bureau proposes to implement this provision in proposed § 1026.34(a)(10) prohibiting the financing of points and fees for high-cost mortgages. *See* the section-by-section analysis to proposed § 1026.34(a)(10), below.

amount equal to the total credit line.'' Thus, apart from identifying (1) maximum prepayment penalties and (2) fees to draw down an amount equal to the total credit line, the Dodd-Frank Act did not enumerate the specific items that should be included in ''total points and fees'' for open-end credit plans. For clarity and to facilitate compliance, the Bureau proposes to implement TILA section 103(bb)(5) in § 1026.32(b)(3) by defining points and fees for open-end credit plans to include the following categories of charges: (1) Each item required to be included in points and fees for closed-end mortgages under § 1026.32(b)(1), to the extent applicable in the open-end credit context; (2) certain participation fees that the creditor may impose on a consumer in connection with an open-end credit plan; and (3) the minimum fee the creditor would require the consumer to pay to draw down an amount equal to the total credit line. Each of these items is discussed further below.

32(b)(3)(i)

Proposed § 1026.32(b)(3)(i) provides that all items included in the finance charge under § 1026.4(a) and (b), except interest or the time-price differential, must be included in points and fees for open-end credit plans, to the extent such items are payable at or before account opening. This provision generally mirrors proposed § 1026.32(b)(1)(i) by providing for the inclusion of such charges in points and fees for closed-end mortgage loans, with the following differences.

First, proposed § 1026.32(b)(3)(i) specifies that the items included in the finance charge under § 1026.4(a) and (b) must be included in points and fees only if they are payable at or before account opening. Proposed comment 32(b)(3)(i)–1 clarifies this provision, which is intended to address the potential confusion that could arise from the fact that certain charges included in the finance charge under § 1026.4(a) and (b) are transaction costs unique to open-end credit plans that often may not be known at account opening. Proposed comment 32(b)(3)(i)–1 thus explains that charges payable after the opening of an open-end credit plan, for example minimum monthly finance charges and service charges based either on account activity or inactivity, need not be included in points and fees for open-end credit plans, even if they are included in the finance charge under § 1026.4(a) and (b). Transaction fees generally are also not included in points and fees for open-end credit plans, except as provided in proposed § 1026.32(b)(3)(vi).

Second, in contrast to proposed § 1026.32(b)(1)(i) for closed-end mortgage loans, proposed § 1026.32(b)(3)(i) for open-end credit plans does not include any language to accommodate the simpler, more inclusive definition of the finance charge proposed in the Board's 2009 Closed-End Proposal. *See* the section-by-section analysis to proposed § 1026.32(b)(1)(i), above. Such language currently is unnecessary in the open-end credit context, because the Bureau's 2012 TILA–RESPA Proposal proposes the more inclusive finance charge only for closed-end mortgage loans.

Finally, the Bureau omits from proposed § 1026.32(b)(3)(i) as unnecessary the exclusion from points and fees set forth in amended TILA section 103(bb)(C) for premiums or guaranties for government-provided or certain private mortgage insurance. The statute provides that the specified charges shall be excluded from total points and fees ''under paragraph (4)'' (*i.e.,* TILA section 103(bb)(4), not TILA section 103(bb)(5) concerning open-end points and fees), and the Bureau understands that such insurance products, which are designed to protect creditors originating high loan-to-value ratio loans, are inapplicable in the context of open-end credit plans.

32(b)(3)(ii)

Proposed § 1026.32(b)(3)(ii) provides for the inclusion in points and fees for open-end credit plans of all items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes) payable at or before account opening. However, any such charge may be excluded from points and fees if it is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor. Proposed § 1026.32(b)(3)(ii) mirrors proposed § 1026.32(b)(1)(iii) concerning the inclusion of such charges in points and fees for closed-end mortgage loans. Proposed comment 32(b)(3)(ii)–1 cross-references proposed comment 32(b)(1)(iii)–1 for guidance concerning the inclusion in points and fees of items listed in § 1026.4(c)(7).

32(b)(3)(iii)

Proposed § 1026.32(b)(3)(iii) provides for the inclusion in points and fees for open-end credit plans of premiums or other charges payable at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract. Proposed § 1026.32(b)(3)(iii) mirrors proposed § 1026.32(b)(1)(iv) concerning the inclusion of such charges for closed-end mortgage loans. Proposed comment 32(b)(3)(iii)–1 cross-references proposed comments 32(b)(1)(iv)–1 and –2 for guidance concerning the inclusion in points and fees of premiums for credit insurance and debt cancellation or suspension coverage.

32(b)(3)(iv)

Proposed § 1026.32(b)(3)(iv) provides for the inclusion in points and fees for open-end credit plans of the maximum prepayment penalty that may be charged or collected under the terms of the plan. This provision mirrors proposed § 1026.32(b)(1)(v) concerning the inclusion of maximum prepayment penalties for closed-end mortgage loans, except that proposed § 1026.32(b)(3)(iv) cross-references the definition of prepayment penalty provided for open-end credit plans in proposed § 1026.32(b)(8)(ii).

32(b)(3)(v)

Proposed § 1026.32(b)(3)(v) provides for the inclusion in points and fees for open-end credit plans of ''any fees charged for participation in an open-end credit plan, as described in § 1026.4(c)(4), whether assessed on an annual or other periodic basis.'' The Bureau notes that the fees described in § 1026.4(c)(4) (*i.e.,* fees charged for participation in a credit plan) are excluded from the finance charge, and thus are not otherwise included in points and fees under proposed § 1026.32(b)(3)(i). The Bureau believes, however, that such fees should be included in points and fees for open-end credit plans because creditors extending open-end credit plans may commonly impose such fees on consumers as a pre-condition to maintaining access to their plans, and because creditors can calculate at account opening the amount of participation charges that the consumer will be required to pay to maintain access for the life of the plan.

Proposed comment 32(b)(3)(v)–1 thus clarifies that proposed § 1026.32(b)(3)(v) requires the inclusion in points and fees of annual fees or other periodic maintenance fees that the consumer must pay to retain access to the open-end credit plan. The comment clarifies that, for purposes of the points and fees test, a creditor should assume that any annual fee is charged each year for the original term of the plan. Thus, for example, if the terms of a home-equity line of credit with a ten-year term

require the consumer to pay an annual fee of $50, the creditor must include $500 in participation fees in its calculation of points and fees.

The Bureau requests comment on the inclusion of fees described in § 1026.4(c)(4) in points and fees for open-end credit plans, including on whether additional guidance is needed concerning how to calculate such fees for plans that do not have a definite plan length.

32(b)(3)(vi)

As noted above, new TILA section 103(bb)(5) specifies, in part, that the calculation of points and fees for open-end credit plans must include ''the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.'' The Bureau proposes to implement this requirement in § 1026.32(b)(3)(vi). Specifically, proposed § 1026.32(b)(3)(vi) provides for inclusion in the calculation of points and fees for open-end credit plans of any transaction fee, including any minimum fee or per-transaction fee, that will be charged for a draw on the credit line. Proposed § 1026.32(b)(3)(vi) clarifies that a transaction fee that is assessed when a consumer draws on the credit line must be included in points and fees whether or not the consumer draws the entire credit line. The Bureau believes that any transaction fee that would be charged for a draw on the credit line would include any transaction fee that would be charged to draw down an amount equal to the total credit line.

The Bureau interprets the requirement in amended TILA section 103(bb)(5) to include the ''minimum additional fees'' that will be imposed on the consumer to draw an amount of credit equal to the total credit line as requiring creditors to assume that a consumer will make at least one such draw during the term of the credit plan. The Bureau recognizes that creditors will not know at account opening how many times (if ever) a consumer will draw the entire amount of the credit line. For clarity and ease of compliance, the Bureau interprets the statute to require the creditor to assume one such draw. Proposed comment 32(b)(3)(vi)–1 clarifies this requirement by providing the following example: if the terms of the open-end credit plan permit the creditor to charge a $10 transaction fee each time the consumer draws on the credit line, the creditor must include one $10 charge in the points and fees calculation. The Bureau solicits comment on the requirement to include in points and fees the charge assessed for one draw of the total credit line and on whether additional guidance is needed in the case of an open-end credit plan that sets a maximum amount per draw.

Proposed comment 32(b)(3)(vi)–2 clarifies that, if the terms of the open-end credit plan permit a consumer to draw on the credit line using either a variable-rate feature or a fixed-rate feature, proposed § 1026.32(b)(3)(vi) requires the creditor to use the terms applicable to the variable-rate feature for determining the transaction fee that must be included in the points and fees calculation.

Compensation Paid to Originators of Open-End Credit Plans

The Bureau does not at this time propose to include in the calculation of points and fees for open-end credit plans compensation paid to originators of open-end plans.

As discussed above in the section-by-section analysis to proposed § 1026.32(b)(1)(ii), section 1431(c) of the Dodd-Frank Act amended TILA section 103(aa)(4)(B) to require mortgage originator compensation to be included in the existing calculation of points and fees. At the same time, however, section 1401 of the Dodd-Frank Act amended TILA section 103 to define a ''mortgage originator'' as a person who undertakes specified actions with respect to a ''residential mortgage loan application'' or in connection with a ''residential mortgage loan.'' Section 1401 further defined the term ''residential mortgage loan'' to exclude a consumer credit transaction under an open-end credit plan.

Given that the Dodd-Frank Act does not specify in amended TILA section 103(bb)(5) concerning open-end points and fees that compensation paid to originators of open-end credit plans be included in the calculation of points and fees, the Bureau believes that it is reasonable to conclude that Congress did not intend for such compensation to be included. Accordingly, the Bureau is not proposing at this time to include in the calculation of points and fees for open-end credit plans compensation paid to originators of open-end credit plans. The Bureau believes that any incentive to evade the closed-end, high-cost mortgage points and fees threshold by structuring a transaction as an open-end credit plan can be addressed through the prohibition in TILA against structuring a transaction as an open-end credit plan to evade HOEPA. *See* TILA section 129(r). *See also* the section-by-section analysis to proposed § 1026.34(b), below.

The Bureau notes that amended TILA section 103(bb)(4)(G) grants the Bureau authority to include in points and fees such other charges that it determines to be appropriate. The Bureau thus requests comment on the proposed definition of points and fees for open-end credit plans, including on whether any additional fees should be included in the definition. In particular, the Bureau requests comment on whether compensation paid to originators should be included in the calculation of points and fees from open-end credit plans. The Bureau recognizes that neither TILA nor Regulation Z currently addresses compensation paid to originators of open-end credit plans and accordingly requests comment on the operational issues that would be entailed in tracking such compensation for inclusion in the points and fees calculation. The Bureau also requests comment on whether the guidance and examples set forth in proposed § 1026.32(b)(1)(ii) and comments 32(b)(1)(ii)–1 and –2 concerning closed-end loan originator compensation would provide sufficient guidance to creditors in open-end credit plans, or whether additional or different guidance would be of assistance in the open-end context.

32(b)(4)

Proposed § 1026.32(b)(4) excludes from points and fees for open-end credit plans any charge that would otherwise be included if the creditor waives the charge at or before account opening, unless the creditor may assess the charge after account opening. Proposed comment 32(b)(4)–1 provides an example of the rule. The example explains that a creditor that waives a $300 processing fee at the opening of an open-end credit plan with a ten-year term must include the $300 fee in points and fees if the terms of the open-end credit plan provide that the consumer must repay the fee if the consumer terminates the plan, *e.g.,* within three years after account opening. The waived processing fee is a prepayment penalty as defined in proposed § 1026.32(b)(8)(ii), because it is a fee that the creditor may impose and retain if the consumer terminates the plan prior to the expiration of its term. Proposed § 1026.32(b)(4) thus provides that the creditor must include the waived processing fee in points and fees under § 1026.32(b)(3)(iv).

Proposed § 1026.32(b)(5)(i)–(ii) implements amended TILA section 103(bb)(1)(A)(ii) and (ee), which excludes two categories of charges from points and fees for purposes of determining whether a transaction is a high-cost mortgage. The charges, discussed in turn below, are: (1) any

bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, subject to the limitation that premiums for private mortgage insurance must sometimes be included in points and fees for closed-end mortgage loans pursuant to proposed § 1026.32(b)(1)(i)(B); and (2) up to one or two bona fide discount points paid by the consumer in connection with the transaction, but only if certain conditions are met. As noted below, the bona fide third-party charge and bona fide discount point exclusions from points and fees for high-cost mortgages under TILA section 103(bb)(1)(A)(ii) and (ee) are nearly identical to the exclusion of such charges from points and fees for qualified mortgages under TILA section 129C(b)(2)(C)(i) through (iv). For consistency and to ease compliance, proposed § 1026.32(b)(5)(i)–(ii) thus largely mirrors proposed § 226.43(e)(3)(ii)(A) through (C) concerning bona fide third-party charges and bona fide discount points as set forth in the Board's 2011 ATR Proposal. As discussed above in the section-by-section analysis to proposed § 1026.32(b)(1) and (2), the Bureau currently is reviewing comments received in connection with the Board's 2011 ATR Proposal. In response to such comments, the Bureau may revise and provide further guidance concerning certain aspects of the Board's proposed § 226.43(e)(3)(ii)(A) through (C).

32(b)(5)(i) Bona Fide Third-Party Charges

Proposed § 1026.32(b)(5)(i) excludes from the points and fees calculation any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is a premium for private mortgage insurance that is required to be included in points and fees for closed-end mortgage loans under proposed § 1026.32(b)(1)(i)(B). Proposed § 1026.32(b)(5)(i) implements TILA section 103(bb)(1)(A)(ii), which specifically excludes from the high-cost mortgage points and fees calculation any bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator. 15 U.S.C. 1602(bb)(1)(A)(ii).

For consistency and to facilitate compliance, proposed § 1026.32(b)(5)(i) mirrors, with one exception, proposed § 226.43(e)(3)(ii)(A) as set forth in the Board's 2011 ATR Proposal. The Board's proposed § 226.43(e)(3)(ii)(A) would implement TILA section 129C(b)(2)(C), which excludes the same categories of bona fide third party charges from points and fees for qualified mortgages that TILA section 103(bb)(1)(A)(ii) excludes from points and fees for high-cost mortgages. *See* 76 FR 27390, 27465 (May 11, 2011). *See also* 15 U.S.C. 1602(bb) and 15 U.S.C. 1639c(b)(2)(C) (providing for the exclusion of identical bona fide third-party charges from total points and fees in the high-cost mortgage and qualified mortgage contexts).

Proposed § 1026.32(b)(5)(i) differs from the Board's proposed § 226.43(e)(3)(ii)(A) in one minor respect to address the application of HOEPA to open-end credit plans. Specifically, amended TILA section 103(bb)(1)(A)(ii) excludes from points and fees for high-cost mortgages bona fide third-party charges ''not retained by the creditor, mortgage originator,'' or an affiliate of either. However, as discussed above in the section-by-section analysis to proposed § 1026.32(b)(3), originators of open-end credit plans are not ''mortgage originators'' as that term is defined in amended TILA section 103. Thus, TILA section 103(bb)(1)(A)(ii) does not by its terms exclude from points and fees bona fide third-party charges not retained by an originator of an open-end credit plan. The Bureau believes bona fide third-party charges not retained by a loan originator should be excluded from points and fees whether the originator is originating a closed-end mortgage or an open-end credit plan. Accordingly, proposed § 1026.32(b)(5)(i) states that, for purposes of § 1026.32(b)(5)(i), the term ''loan originator'' means a loan originator as that term is defined in § 1026.36(a)(1) (*i.e.,* in general, an originator of any consumer credit transaction) and notwithstanding § 1026.36(f), which otherwise limits the term ''loan originator'' to closed-end transactions.[43]

Proposed comment 32(b)(5)(i)–1 clarifies that § 1026.36(a)(1) and comment 36(a)–1 provide additional guidance concerning the meaning of the term ''loan originator'' for purposes of § 1026.32(b)(5)(i). Proposed comment 32(b)(5)(i)–2 provides an example for purposes of determining whether a charge may be excluded from points and fees as a bona fide third-party charge. Proposed comment 32(b)(5)(i)–2 assumes that, prior to loan consummation, a creditor pays $400 for an appraisal conducted by a third-party not affiliated with the creditor. At consummation, the creditor charges the consumer $400 and retains that amount as reimbursement for the fee that the creditor paid to the third-party appraiser. For purposes of determining whether the transaction is a high-cost mortgage, the creditor need not include in points and fees the $400 that it retains as reimbursement.

Private Mortgage Insurance Premiums

As discussed above in the section-by-section analysis to proposed § 1026.32(b)(1)(i)(B), the Dodd-Frank Act amended TILA to add section 103(bb)(1)(C)(ii), which excludes private mortgage insurance premiums that meet certain conditions from the closed-end points and fees calculation for high-cost mortgages. For consistency with TILA section 103(bb)(1)(C)(ii), as implemented by proposed § 1026.32(b)(1)(i)(B), the Bureau proposes to implement TILA's general exclusion of bona fide third-party charges from the points and fees calculation for high-cost mortgages in proposed § 1026.32(b)(5)(i) with the caveat that certain private mortgage insurance premiums must be included in points and fees for closed-end mortgage loans as set forth in proposed § 1026.32(b)(1)(i)(B). *See also* the Board's 2011 ATR Proposal, 76 FR 27390, 27465 (May 11, 2011) (proposing the same caveat to bona fide third-party charges for qualified mortgages).

Proposed comment 32(b)(5)(i)–3 addressing private mortgage insurance premiums mirrors proposed comment 43(e)(3)(ii)–2 in the Board's 2011 ATR Proposal, except that proposed comment 32(b)(5)(i)–3 states that it applies for purposes of determining whether a mortgage is a high-cost mortgage, rather than a qualified mortgage. Proposed comment 32(b)(5)(i)–3 also specifies that this approach to private mortgage insurance premiums is relevant only for closed-end transactions, for the reasons discussed in the section-by-section analysis to proposed § 1026.32(b)(1)(i)(B), above.

32(b)(5)(ii) Bona Fide Discount Points

Section 1431(d) of the Dodd-Frank Act added new section 103(dd) to TILA, which permits a creditor to exclude, under certain circumstances, up to two bona fide discount points from the calculation of points and fees for purposes of determining whether a transaction is a high-cost mortgage. Proposed § 1026.32(b)(5)(ii)(A) through (C) implement TILA section 103(dd), with certain clarifications discussed below. The Bureau notes that new TILA section 103(dd) is substantially similar to new TILA section 129C(b)(2)(C)(ii)–(iv), which provides for the exclusion of

[43] Like the Board's proposed § 1026.43(e)(3)(ii), 76 FR 27390, 27465, 27485 (May 11, 2011), the Bureau's proposed § 1026.32(b)(5)(i) uses the term ''loan originator'' rather than ''mortgage originator'' for consistency with Regulation Z.

certain bona fide discount points from points and fees for qualified mortgages, and which the Board's 2011 ATR Proposal proposed to implement in § 226.43(e)(3)(ii)(B) and (C) and § 226.43(e)(3)(iv). *See* 76 FR 27465–67, 27485. Generally, except for the differences noted below, proposed § 1026.32(b)(5)(ii)(A) and (B) concerning the exclusion of up to one or two discount points for high-cost mortgages are consistent with the Board's proposed § 226.43(e)(3)(ii)(B) and (C) for qualified mortgages. Likewise, proposed § 1026.32(b)(5)(ii)(C), which describes how to determine whether a discount point is ''bona fide,'' cross-references proposed § 1026.43(e)(3)(iv) (*i.e.,* the Board's proposed § 226.43(e)(3)(iv)), which describes the same term for qualified mortgages.

Exclusion of Up to Two Bona Fide Discount Points

Proposed § 1026.32(b)(5)(ii)(A)(*1*) and (*2*) implements TILA section 103(dd)(1), which permits a creditor to exclude from the high-cost mortgage points and fees calculation up to two bona fide discount points payable by the consumer in connection with the transaction.

Under proposed § 1026.32(b)(5)(ii)(A)(*1*), a creditor generally may exclude from points and fees up to two bona fide discount points payable by the consumer, provided that the interest rate for the mortgage loan or open-end credit plan without such discount points does not exceed by more than one percentage point the ''average prime offer rate,'' as defined in § 1026.35(a)(2)(ii). Proposed § 1026.32(b)(5)(ii)(A)(*1*) mirrors proposed § 226.43(e)(3)(ii)(B) for qualified mortgages as set forth in the Board's 2011 ATR Proposal. *See* 76 FR at 27465–66, 27485, 27504.

Under proposed § 1026.32(b)(5)(ii)(A)(*2*), a creditor extending a mortgage loan or open-end credit plan secured by personal property may exclude from points and fees up to two bona fide discount points payable by the consumer, provided that the interest rate for the mortgage loan or open-end credit plan without such discount points does not exceed by more than one percentage point the average rate on loans insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*). The Bureau requests comment on whether additional guidance is needed concerning the calculation of the average rate for loans insured under Title I of the National Housing Act.

Exclusion of Up to One Bona Fide Discount Point

Proposed § 1026.32(b)(5)(ii)(B) implements TILA section 103(dd)(2), which permits a creditor to exclude from the high-cost mortgage points and fees calculation up to one bona fide discount point payable by the consumer in connection with the transaction.

Under proposed § 1026.32(b)(5)(ii)(B)(*1*), a creditor generally may exclude from points and fees up to one bona fide discount point payable by the consumer, provided that interest rate for the mortgage loan or open-end credit plan without such discount points does not exceed by more than two percentage points the average prime offer rate, as defined in § 1026.35(a)(2)(ii). Proposed § 1026.32(b)(5)(ii)(B)(*1*) mirrors proposed § 226.43(e)(3)(ii)(C) for qualified mortgages as set forth in the Board's 2011 ATR Proposal. *See* 76 FR at 27465–66, 27485, 27504.

Under proposed § 1026.32(b)(5)(ii)(B)(*2*), a creditor extending a mortgage loan or open-end credit plan secured by personal property may exclude from points and fees up to one bona fide discount point payable by the consumer, provided that interest rate for the mortgage loan or open-end credit plan without such discount points does not exceed by more than two percentage points the average rate on loans insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*). As for proposed § 1026.32(b)(5)(ii)(A)(*2*), the Bureau requests comment on whether additional guidance is needed concerning the calculation of the average rate for loans insured under Title I of the National Housing Act.

Average Prime Offer Rate

Proposed comment 32(b)(5)(ii)–1 clarifies how to determine, for purposes of the bona fide discount point exclusion in proposed § 1026.32(b)(5)(ii)(A)(*1*) and (B)(*1*), whether a transaction's interest rate meets the requirement not to exceed the average prime offer rate by more than one or two percentage points, respectively. Specifically, proposed comment 32(b)(5)(ii)–1 provides that the average prime offer rate for proposed § 1026.32(b)(5)(ii)(A)(*1*) and (B)(*1*) is the average prime offer rate that applies to a comparable transaction as of the date the interest rate for the transaction is set. Proposed comment 32(b)(5)(ii)–1 cross-references proposed comments 32(a)(1)(i)–1 and –2 for closed- and open-end transactions, respectively, for guidance as to determining the applicable average prime offer rate. *See also* the section-by-section analysis to proposed § 1026.32(a)(1)(i), above.

''Bona Fide'' Discount Point

Proposed § 1026.32(b)(5)(ii)(C) cross-references proposed § 1026.43(e)(3)(iv) (proposed § 1026.43(e)(3)(iv) as set forth in the Board's 2011 ATR Proposal) for purposes of determining whether a discount point is ''bona fide'' and excludable from the high-cost mortgage points and fees calculation. *See* 76 FR 27390, 27485 (May 11, 2011). Amended TILA sections 103(dd)(3) and (4) and 129C(b)(2)(C)(iii) and (iv) provide the same methodology for high-cost mortgages and qualified mortgages, respectively, for determining whether a discount point is ''bona fide.'' Thus, under both the Board's proposed § 226.43(e)(3)(iv) for qualified mortgages and the Bureau's proposed § 1026.32(b)(5)(ii) for high-cost mortgages, a discount point is ''bona fide'' if it both (1) reduces the interest rate or time-price differential applicable to transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer and (2) accounts for the amount of compensation that the creditor can reasonably expect to receive from secondary market investors in return for the transaction. As noted above, the Bureau currently is developing a final rule to implement the Dodd-Frank Act's provisions concerning qualified mortgages, including the provisions relating to bona fide discount points. The Bureau expects to provide further clarification concerning the exclusion of bona fide discount points from points and fees for qualified mortgages when it finalizes the Board's 2011 ATR Proposal. The Bureau will coordinate any such clarification appropriately across the ATR (qualified mortgage) and high-cost mortgage rulemakings.

32(b)(6)

As noted above in the section-by-section analysis to proposed § 1026.32(a)(1)(ii), the Bureau proposes for organizational purposes (1) to move the existing definition of ''total loan amount'' for closed-end mortgage loans from comment 32(a)(1)(ii)–1 to proposed § 1026.32(b)(6)(i), and (2) to move the examples showing how to calculate the total loan amount for closed-end mortgage loans from existing comment 32(a)(1)(ii)–1 to proposed comment 32(b)(6)(i)–1. The Bureau also proposes certain changes to the total loan amount

definition and commentary for closed-end mortgage loans, below. Finally, the Bureau proposes to define ''total loan amount'' for open-end credit plans in proposed § 1026.32(b)(6)(ii).

32(b)(6)(i) Closed-End Mortgage Loans

The Bureau proposes to move existing comment 32(a)(1)(ii)–1 concerning calculation of the ''total loan amount'' to proposed § 1026.32(b)(6)(i) and comment 32(b)(6)(i)–1 and to specify that the calculation applies to closed-end mortgage loans. The Bureau also proposes to amend the definition of ''total loan amount'' so that the ''amount financed,'' as calculated pursuant to § 1026.18(b), is no longer the starting point for the total loan amount calculation. The Bureau believes this amendment both streamlines the total loan amount calculation to facilitate compliance and is sensible in light of the more inclusive definition of the finance charge proposed in the Bureau's 2012 TILA–RESPA Proposal. One effect of the proposed more inclusive finance charge generally could be to reduce the ''amount financed'' for many transactions. The Bureau thus proposes no longer to rely on the ''amount financed'' calculation as the starting point for the ''total loan amount'' in HOEPA. The Bureau instead proposes to define ''total loan amount'' as the amount of credit extended at consummation that the consumer is legally obligated to repay, as reflected in the loan contract, less any cost that is both included in points and fees under § 1026.32(b)(1) and financed by the creditor. Proposed comment 32(b)(6)(i)–1 provides an example of the Bureau's proposed ''total loan amount'' calculation.

The Bureau requests comment on the appropriateness of its revised definition of ''total loan amount,'' particularly on whether additional guidance is needed in light of the prohibition against financing of points and fees for high-cost mortgages. Specifically, the Bureau notes that, under this proposal, financed points are relevant for two purposes. First, financed points and fees must be excluded from the total loan amount for purposes of determining whether the closed-end mortgage loan is covered by HOEPA under the points and fees trigger. Second, if a mortgage loan is a high-cost mortgage through operation of any of the HOEPA triggers, the creditor is prohibited from financing points and fees by, for example, including points and fees in the note amount or financing them through a separate note. *See* the section-by-section analysis to proposed § 1026.34(a)(10), below.

Notwithstanding that the proposal bans the financing of points and fees for high-cost mortgages, the Bureau believes that, for purposes of determining HOEPA coverage (and thus whether the ban applies) creditors should be required to deduct from the amount of credit extended to the consumer any points and fees that the creditor would finance if the transaction were not subject to HOEPA.[44] In this way, the percent limit on points and fees for determining HOEPA coverage will be based on the amount of credit extended to the borrower without taking into account any points and fees that would (if permitted) be financed.

The following example illustrates how the provisions concerning financed points and fees in proposed §§ 1026.32(b)(6)(i) and 1026.34(a)(10) would work together. First, assume that, under the terms of the mortgage loan contract, the consumer is legally obligated to repay $50,000. A portion of that amount, $2,450, represents the total amount of points and fees (as defined under proposed § 1026.32(b)(1)) payable in connection with the transaction. If the $2,450 in financed points and fees were not excluded from the total loan amount, then the transaction would fall below the five percent points and fees threshold for high-cost mortgages ($2,450 divided by $50,000 equals 4.9 percent of the total loan amount) and none of HOEPA's protections, including the ban on financing of points and fees, would apply. In contrast, under the Bureau's proposal, the $2,450 in points and fees is deducted from the total amount of credit extended to the consumer to arrive at a total loan amount of $47,550, and the transaction is a high-cost mortgage pursuant to proposed § 1026.32(a)(1)(ii) ($2,450 divided by $47,550 equals 5.15 percent of the total loan amount). Pursuant to proposed § 1026.34(a)(10), then, the creditor would be prohibited from including the points and fees in the note amount, or financing them through a separate note. *See also* proposed comment 34(a)(10)–2.

32(b)(6)(ii) Open-End Credit Plans

Proposed § 1026.32(b)(6)(ii) provides that the ''total loan amount'' for an open-end credit plan is the credit limit for the plan when the account is opened. The Bureau requests comment as to whether additional guidance is needed concerning the ''total loan amount'' for open-end credit plans.

32(b)(7)

The proposal re-numbers existing § 1026.32(b)(2) defining the term ''affiliate'' as proposed § 1026.32(b)(7) for organizational purposes.

32(b)(8)

HOEPA's Current Approach to Prepayment Penalties

Section 1026.32 currently addresses prepayment penalties in § 1026.32(d)(6) and (7). Existing § 1026.32(d)(6) implements existing TILA section 129(c)(1) by defining the term ''prepayment penalty'' for high-cost mortgages as a penalty for paying all or part of the principal before the date on which the principal is due, including by computing a refund of unearned scheduled interest in a manner less favorable than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992. 15 U.S.C. 1639(c)(1). Existing § 1026.32(d)(7) implements TILA section 129(c)(2), 15 U.S.C. 1639(c)(2), by specifying when a creditor may impose a prepayment penalty in connection with a high-cost mortgage. Prior to the Dodd-Frank Act, the substantive limitations on prepayment penalties in TILA section 129(c)(1) and (2) were the only statutorily-prescribed limitations on prepayment penalties, other than certain disclosure requirements set forth in TILA section 128(a)(11) and (12).[45]

The Dodd-Frank Act's Amendments to TILA Relating to Prepayment Penalties

Sections 1431 and 1432 of the Dodd-Frank Act (relating to high-cost mortgages) and section 1414 of the Dodd-Frank Act (relating to qualified mortgages) amended TILA to further restrict and, in many cases, prohibit the imposition of prepayment penalties in dwelling-secured credit transactions. The Dodd-Frank Act restricted prepayment penalties in three main ways.

Qualified Mortgages. First, as the Board discussed in its 2011 ATR Proposal, the Dodd-Frank Act added new TILA section 129C(c)(1) relating to qualified mortgages, which generally provides that a covered transaction (*i.e.,* in general, a closed-end, dwelling-secured credit transaction) may include a prepayment penalty only if it: (1) Is a qualified mortgage (as the Board defined that term in its proposed § 226.43(e)(2) or (f)), (2) has an APR that cannot increase after consummation, and (3) is

[44] Calculating the total loan amount by deducting financed points and fees from the amount of credit extended to the consumer is consistent with the existing total loan amount calculation in current comment 32(a)(1)(ii)–1.

[45] Current § 1026.35(b)(2) restricts prepayment penalties for ''higher-priced'' mortgage loans in much the same way that current § 1026.32(d)(6) and (7) restricts such penalties for HOEPA loans.

not a higher-priced mortgage loan as defined in § 1026.35(a). The Board proposed to implement TILA section 129C(c)(1) in § 226.43(g)(1). *See* 76 FR 27390, 27486 (May 11, 2011). Under new TILA section 129C(c)(3), moreover, even loans that meet the statutorily prescribed criteria (*i.e.,* fixed-rate, non-higher-priced qualified mortgages) may not include prepayment penalties that exceed three percent, two percent, and one percent of the amount prepaid during the first, second, and third years following consummation, respectively (or any prepayment penalty after the third year following consummation). The Board proposed to implement TILA section 129C(c)(3) in § 226.43(g)(2). *See id.*

High-Cost Mortgage Prepayment Penalty Trigger and Prohibition. Second, as discussed above in the section-by-section analysis to proposed § 1026.32(a)(1)(iii), amended TILA section 103(bb)(1)(A)(iii) provides that any closed- or open-end consumer credit transaction secured by a consumer's principal dwelling (other than a reverse mortgage transaction) with a prepayment penalty in excess of two percent of the amount prepaid or payable more than 36 months after consummation or account opening is a high-cost mortgage subject to §§ 1026.32 and 1026.34. Under amended TILA section 129(c)(1), in turn, high-cost mortgages are prohibited from having a prepayment penalty.

Prepayment Penalty Inclusion in Points and Fees. Third, both qualified mortgages and most closed-end mortgage loans and open-end credit plans secured by a consumer's principal dwelling are subject to additional limitations on prepayment penalties through the inclusion of prepayment penalties in the definition of points and fees for qualified mortgages and high-cost mortgages. *See* the section-by-section analysis to proposed § 1026.32(b)(1)(v)–(vi) and (3)(iv) above. *See also* 76 FR 27390, 27474–75 (May 11, 2011) (discussing the inclusion of prepayment penalties in the points and fees calculation for qualified mortgages pursuant to TILA section 129C(b)(2)(A)(vii) and noting that most qualified mortgage transactions may not have total points and fees that exceed three percent of the total loan amount).

Taken together, the Dodd-Frank Act's amendments to TILA relating to prepayment penalties mean that most closed-end, dwelling-secured transactions (1) May provide for a prepayment penalty only if they are fixed-rate, qualified mortgages that are neither high-cost nor higher-priced under §§ 1026.32 and 1026.35; (2) may not, even if permitted to provide for a prepayment penalty, charge the penalty more than three years following consummation or in an amount that exceeds two percent of the amount prepaid;[46] and (3) may be required to limit any penalty even further to comply with the points and fees limitations for qualified mortgages, or to stay below the points and fees trigger for high-cost mortgages. In the open-end credit context, no open-end credit plan secured by a consumer's principal dwelling may provide for a prepayment penalty more than 3 years following account opening or in an amount that exceeds two percent of the initial credit limit under the plan.

The Board's Proposals Relating to Prepayment Penalties

In its 2009 Closed-End Proposal, the Board proposed to establish a new § 226.38(a)(5) for disclosure of prepayment penalties for closed-end mortgage transactions. *See* 74 FR 43232, 43334, 43413 (Aug. 26, 2009). In proposed comment 38(a)(5)–2, the Board stated that examples of prepayment penalties include charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such ''balance,'' a minimum finance charge in a simple-interest transaction, and charges that a creditor waives unless the consumer prepays the obligation. In addition, the Board's proposed comment 38(a)(5)–3 listed loan guarantee fees and fees imposed for preparing a payoff statement or other documents in connection with the prepayment as examples of charges that are not prepayment penalties. The Board's 2010 Mortgage Proposal included amendments to existing comment 18(k)(1)–1 and proposed comment 38(a)(5)–2 stating that prepayment penalties include ''interest'' charges after prepayment in full even if the charge results from interest accrual amortization used for other payments in the transaction. *See* 75 FR 58539, 58756, 58781 (Sept. 24, 2010).[47]

The Board's 2011 ATR Proposal proposed to implement the Dodd-Frank Act's prepayment penalty-related amendments to TILA for qualified mortgages by defining ''prepayment penalty'' for most closed-end, dwelling-secured transactions in new § 226.43(b)(10), and by cross-referencing proposed § 226.43(b)(10) in the proposed joint definition of points and fees for qualified and high-cost mortgages in § 226.32(b)(1)(v) and (vi). *See* 76 FR 27390, 27481–82 (May 11, 2011). The definition of prepayment penalty proposed in the Board's 2011 ATR Proposal differed from the Board's prior proposals and current guidance in the following respects: (1) Proposed § 226.43(b)(10) defined prepayment penalty with reference to a payment of ''all or part of'' the principal in a transaction covered by the provision, while § 1026.18(k) and associated commentary and the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal referred to payment ''in full,'' (2) the examples provided omitted reference to a minimum finance charge and loan guarantee fees,[48] and (3) proposed § 226.43(b)(10) did not incorporate, and the Board's 2011 ATR Proposal did not otherwise address, the language in § 1026.18(k)(2) and associated commentary regarding disclosure of a rebate of a precomputed finance charge, or the language in § 1026.32(b)(6) and associated commentary concerning prepayment penalties for high-cost mortgages.

[46] New TILA section 129C(c)(3) limits prepayment penalties for fixed-rate, non-higher-priced qualified mortgages to three percent, two percent, and one percent of the amount prepaid during the first, second, and third years following consummation, respectively. However, amended TILA sections 103(bb)(1)(A)(iii) and 129(c)(1) for high-cost mortgages effectively prohibit prepayment penalties in excess of two percent of the amount prepaid at any time following consummation for most credit transactions secured by a consumer's principal dwelling by providing that HOEPA protections (including a ban on prepayment penalties) apply to mortgage loans with prepayment penalties that exceed two percent of the amount prepaid. In order to comply with both the high-cost mortgage provisions and the qualified mortgage provisions, creditors originating most closed-end mortgage loans secured by a consumer's principal dwelling would need to limit the prepayment penalty on the transaction to (1) No more than two percent of the amount prepaid during the first and second years following consummation, (2) no more than one percent of the amount prepaid during the third year following consummation, and (3) zero thereafter.

[47] The preamble to the Board's 2010 Mortgage Proposal explained that the proposed revisions to current Regulation Z commentary and the proposed comment 38(a)(5) from the Board's 2009 Closed-End Proposal regarding interest accrual amortization were in response to concerns about the application of prepayment penalties to certain Federal Housing Administration (FHA) and other loans (*i.e.,* when a consumer prepays an FHA loan in full, the consumer must pay interest through the end of the month in which prepayment is made).

[48] The preamble to the Board's 2011 ATR Proposal addressed why the Board chose to omit these two items. The Board reasoned that a minimum finance charge need not be included as an example of a prepayment penalty because such a charge typically is imposed with open-end, rather than closed-end, transactions. The Board stated that loan guarantee fees are not prepayment penalties because they are not charges imposed for paying all or part of a loan's principal before the date on which the principal is due. *See* 76 FR 27390, 27416 (May 11, 2011).

The Bureau's Proposal

To provide guidance as to the meaning of ''prepayment penalty'' for § 1026.32 that is consistent with the definition proposed in the Bureau's 2012 TILA–RESPA Proposal (which itself draws from the definitions proposed in the Board's 2009 Closed-End Proposal, 2010 Mortgage Proposal, and 2011 ATR Proposal), as well as to provide guidance in the context of open-end credit plans, the Bureau proposes new § 1026.32(b)(8) to define the term ''prepayment penalty'' for purposes of § 1026.32.

32(b)(8)(i)

Prepayment Penalty; Closed-End Mortgage Loans

Consistent with TILA section 129(c)(1), existing § 1026.32(d)(6), and the Board's proposed § 226.43(b)(10) for qualified mortgages, proposed § 1026.32(b)(8)(i) provides that, for a closed-end mortgage loan, a ''prepayment penalty'' means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due.

Proposed comment 32(b)(8)–1.i through –1.iv gives the following examples of prepayment penalties: (1) A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such ''balance,'' even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract; (2) a fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan; (3) a minimum finance charge in a simple interest transaction; and (4) computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). Proposed comment 32(b)(8)–1.i further clarifies that ''interest accrual amortization'' refers to the method by which the amount of interest due for each period (*e.g.,* month) in a transaction's term is determined and notes, for example, that ''monthly interest accrual amortization'' treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). The proposed comment also provides an example where a prepayment penalty of $1,000 is imposed because a full month's interest of $3,000 is charged even though only $2,000 in interest was earned in the month during which the consumer prepaid.

Proposed comment 32(b)(8)–3.i through –3.ii clarifies that a prepayment penalty does not include: (1) Fees imposed for preparing and providing documents when a loan is paid in full, or when an open-end credit plan is terminated, if the fees apply whether or not the loan is prepaid or the plan is terminated prior to the expiration of its term, such as a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan; or (2) loan guarantee fees.

The definition of prepayment penalty in proposed § 1026.32(b)(8)(i) and comments 32(b)(8)–1 and 32(b)(8)–3.i and .ii substantially incorporates the definitions of and guidance on prepayment penalties from the Board's 2009 Closed-End Proposal, 2010 Mortgage Proposal, and 2011 ATR Proposal and, as necessary, reconciles their differences. For example, the Bureau is proposing to incorporate the language from the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal but omitted in the Board's 2011 ATR Proposal listing a minimum finance charge as an example of a prepayment penalty and stating that loan guarantee fees are not prepayment penalties, because similar language is found in longstanding Regulation Z commentary. Based on the differing approaches taken by the Board in its recent mortgage proposals, however, the Bureau seeks comment on whether a minimum finance charge should be listed as an example of a prepayment penalty and whether loan guarantee fees should be excluded from the definition of prepayment penalty.

The Bureau expects to coordinate the definition of prepayment penalty in proposed § 1026.32(b)(8)(i) with the definitions in the Bureau's other pending rulemakings mandated by the Dodd-Frank Act concerning ability-to-repay, TILA–RESPA mortgage disclosure integration, and mortgage servicing. To the extent consistent with consumer protection objectives, the Bureau believes that adopting a consistent definition of ''prepayment penalty'' across its various pending rulemakings affecting closed-end mortgages will facilitate compliance.

32(b)(8)(ii)

Prepayment Penalties; Open-End Credit Plans

Proposed § 1026.32(b)(8)(ii) defines the term ''prepayment penalty'' for open-end credit plans. Specifically, proposed § 1026.32(b)(8)(ii) provides that, in connection with an open-end credit plan, the term ''prepayment penalty'' means any fee that may be imposed by the creditor if the consumer terminates the plan prior to the expiration of its term.

Proposed comment 32(b)(8)–2 clarifies that, for an open-end credit plan, the term ''prepayment penalty'' includes any charge imposed if the consumer terminates the plan prior to the expiration of its term, including, for example, if the consumer terminates the plan in connection with obtaining a new loan or plan with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either. Proposed comment 32(b)(8)–2 further clarifies that the term ''prepayment penalty'' includes a waived closing cost that must be repaid if the consumer terminates the plan prior to the end of its term, except that the repayment of waived bona fide third-party charges if the consumer terminates the credit plan within 36 months after account opening is not considered a prepayment penalty. The Bureau's proposal provides for a threshold of 36 months to clarify that, if the terms of an open-end credit plan permit a creditor to charge a consumer for waived third-part closing costs when, for example, the consumer terminates the plan in year nine of a ten-year plan, such charges would be considered prepayment penalties and would cause the open-end credit plan to be classified as a high-cost mortgage. The Bureau believes that the 36-month time limit is consistent both with the prepayment penalty trigger and with industry practice in the open-end credit context.

The Bureau notes that the proposal distinguishes the inclusion of waived closing costs in the open- and closed-end credit contexts. In the open-end credit context, the Bureau's proposal provides that waived third-party closing costs that must be repaid if the consumer terminates the open-end credit plan sooner than three years after account opening are not considered prepayment penalties for purposes of triggering HOEPA coverage, whereas such charges would be considered prepayment penalties for closed-end mortgage loans. The Bureau believes that a different treatment of such charges is an appropriate use of its authority under TILA section 105(a) to prescribe regulations that contain such differentiations as are necessary to facilitate compliance with the regulation. Specifically, the Bureau understands that, unlike for closed-end mortgage loans, waived closing costs are

a common feature of open-end credit plans and, in addition, that such plans with waived closing costs are beneficial to consumers because they lower the cost of opening an account. The Bureau also understands that, in the case of an open-end credit plan, a waived third-party closing cost would only be recouped by the creditor if the consumer terminated the plan in its entirety within three years after account opening. This is in contrast to a closed-end mortgage loan, where a creditor potentially could provide that even a partial prepayment of the principal balance triggers a requirement to repay waived closing costs.

Proposed comment 32(b)(8)–3.iii specifies that, in the case of an open-end transaction, the term ''prepayment penalty'' does not include fees that the creditor may impose on the consumer to maintain the open-end credit plan, when an event has occurred that otherwise would permit the creditor to terminate and accelerate the plan. The exclusion from prepayment penalties of fees that a creditor in an open-end transaction may impose in lieu of terminating and accelerating a plan mirrors the exclusion of such fees as prepayment penalties required to be disclosed to the consumer as proposed in the Board's 2009 Open-End Proposal. *See* 74 FR 43428, 43481 (Aug. 26, 2009).

The Bureau requests comment on its proposed definition of ''prepayment penalty'' for open-end credit plans and on whether any additional charges should be included in or excluded from the definition.

32(c) Disclosures

TILA section 129(a) requires additional disclosures for high-cost mortgages, and these requirements are implemented in § 1026.32(c). The Bureau proposes to amend § 1026.32(c) to provide clarification and further guidance on the application of these disclosure requirements to open-end credit plans.

The Bureau proposes comment 32(c)(2)–1 to clarify how to disclose the annual percentage rate for an open-end high-cost mortgage. Specifically, proposed comment 32(c)(2)–1 clarifies that creditors must comply with § 1026.6(a)(1). In addition, the proposed comment states that if the transaction offers a fixed-rate for a period of time, such as a discounted initial interest rate, § 1026.32(c)(2) requires a creditor to disclose the annual percentage rate of the fixed-rate discounted initial interest rate, and the rate that would apply when the feature expires.

The Bureau proposes to clarify § 1026.32(c)(3), which requires disclosure of the regular payment and the amount of any balloon payment. Balloon payments generally are no longer permitted for high-cost mortgages, except in certain narrow circumstances, as discussed below. Proposed § 1026.32(c)(3)(i) incorporates the requirement in current § 1026.32(c)(3) for closed-end mortgage loans and clarifies that the balloon payment disclosure is required to the extent a balloon payment is specifically permitted under § 1026.32(d)(1).

For open-end credit plans, a creditor may not be able to provide a disclosure on the ''regular'' payment applicable to the plan because the regular monthly (or other periodic) payment will depend on factors that will not be known at the time the disclosure is required, such as the amount of the extension(s) of credit on the line and the rate applicable at the time of the draw or the time of the payment. In order to facilitate compliance and to provide consumers with meaningful disclosures, the Bureau proposes § 1026.32(c)(3)(ii) to require creditors to disclose an example of a minimum periodic payment for open-end high-cost mortgages. Accordingly, proposed § 1026.32(c)(3)(ii)(A) provides that for open-end credit plans, a creditor must disclose payment examples showing the first minimum periodic payment for the draw period, and if applicable, any repayment period and the balance outstanding at the beginning of any repayment period. Furthermore, this example must be must be based on the following assumptions: (1) The consumer borrows the full credit line, as disclosed in § 1026.32(c)(5)(B) at account opening and does not obtain any additional extensions of credit; (2) the consumer makes only minimum periodic payments during the draw period and any repayment period; and (3) the annual percentage rate used to calculate the sample payments will remain the same during the draw period and any repayment period. Proposed § 1026.32(c)(3)(ii)(A)(3) further requires that the creditor provide the minimum periodic payment example based on the annual percentage rate for the plan, as described in § 1026.32(c)(2), except that if an introductory annual percentage rate applies, the creditor must use the rate that would otherwise apply to the plan after the introductory rate expires.

As discussed in detail below, the Bureau is proposing § 1026.32(d)(1)(iii) to provide an exemption to the prohibition on balloon payments for certain open-end credit plans. Accordingly, to the extent permitted under § 1026.32(d)(1), proposed § 1026.32(c)(3)(ii)(B) requires disclosure of that fact and the amount of the balloon payment based on the assumptions described in § 1026.32(c)(3)(ii)(A).

To reduce potential consumer confusion, proposed § 1026.32(c)(3)(ii)(C) requires that a creditor provide a statement explaining the assumptions upon which the § 1026.32(c)(3)(ii)(A) payment examples are based. Furthermore, for the same reason, proposed § 1026.32(c)(3)(ii)(D) requires a statement that the examples are not the consumer's actual payments and that the consumer's actual periodic payments will depend on the amount the consumer has borrowed and interest rate applicable to that period. The Bureau believes that without such statements, consumers could misunderstand the minimum payment examples. However, the Bureau solicits comment on these proposed statements and whether other language would be appropriate and beneficial to consumer.

The Bureau proposes to revise comment 32(c)(3)–1 to reflect the expanded statutory restriction on balloon payments and to clarify that to the extent a balloon payment is permitted under § 1026.32(d)(1), the balloon payment must be disclosed under § 1026.32(c)(3)(i). In addition, the Bureau proposes to renumber current comment 32(c)(3)–1 as proposed comment 32(c)(3)(i)–1 for organizational purposes.

In order to provide additional guidance on the application of § 1026.32(c)(4) to open-end credit plans, the Bureau proposes to revise comment 32(c)(4)–1. For an open-end credit plan, proposed comment 32(c)(4)–1 provides that the disclosure of the maximum monthly payment, as required under § 1026.32(c)(4), must be based on the following assumptions: (1) The consumer borrows the full credit line at account opening with no additional extensions of credit; (2) the consumer makes only minimum periodic payments during the draw period and any repayment period; and (3) the maximum annual percentage rate that may apply under the payment plan, as required by § 1026.30, applies to the plan at account opening. Although actual payments on the plan may depend on various factors, such as the amount of the draw and the rate applicable at that time, the Bureau believes this approach is consistent with existing guidance to calculate the ''worst-case'' payment example.

The Bureau proposes to amend § 1026.32(c)(5) to clarify the disclosure requirements for open-end credit plans. The Bureau notes that the amount borrowed can be ascertained in a closed-end mortgage loan but typically is not

known at account opening for an open-end credit plan. Specifically, proposed § 1026.32(c)(5)(ii) provides that for open-end transactions, a creditor must disclose the credit limit applicable to the plan. Because HELOCs are open-end (revolving) lines of credit, the amount borrowed depends on the amount drawn on the plan at any time. Thus, the Bureau believes that disclosing the credit limit is a more appropriate and meaningful disclosure to the consumer than the total amount borrowed. The Bureau also proposes technical revisions to the existing requirements for closed-end mortgage loans under § 1026.32(c)(5) and to the guidance under comment 32(c)(5)–1.

32(d) Limitations

32(d)(1)

The Dodd-Frank Act amended the restrictions on balloon payments under TILA section 129(e). Specifically, amended TILA section 129(e) provides that no high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, except when the payment schedule is adjusted to the seasonal or irregular income of the consumer. The Bureau is proposing two alternatives in proposed § 1026.32(d)(1)(i) to implement the balloon payment restriction under amended TILA section 129(e). Under Alternative 1, proposed § 1026.32(d)(1)(i) incorporates the statutory language and defines balloon payment as a scheduled payment that is more than twice as large as the average of regular periodic payments. Under Alternative 2, the Bureau mirrors Regulation Z's existing definition of ''balloon payment'' in § 1026.18(s)(5)(i). Accordingly, proposed § 1026.32(d)(1)(i) provides that a balloon payment is ''a payment schedule that is more than two times a regular periodic payment.'' This definition is similar to the statutory definition under the Dodd-Frank Act, except that it uses as its benchmark any regular periodic payment, rather than the average of earlier scheduled payments.

Because the existing regulatory definition is narrower than the statutory definition, the Bureau believes that a payment that is twice any one regular periodic payment would be equal to or less than a payment that is twice the average of earlier scheduled payments. The Bureau notes that the range of scheduled payment amounts under Alternative 2 is more limited and defined. For example, if the regular periodic payment on a high-cost mortgage is $200, a payment of greater than $400 would constitute a balloon payment. Under Alternative 1, however, the balloon payment amount could be greater than $400 if, for example, the regular periodic payments were increased by $100 each year. Under Alternative 1, the amount constituting a balloon payment could increase with the incremental increase of the average of earlier scheduled payments.

The Bureau proposes Alternative 2 pursuant to its authority under TILA section 129(p)(1). The Bureau may exempt specific mortgage products or categories of mortgages from certain prohibitions under TILA section 129 if the Bureau finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen home ownership and equity protection. The Bureau believes that under Alternative 2, consumers would have a better understanding of the highest possible regular periodic payment in a repayment schedule and may experience less ''payment shock'' as a result. Therefore, the Bureau believes that Alternative 2 would better protect consumers and be in their interest. In addition, the Bureau believes that the definition of balloon payment under Alternative 2 would facilitate and simplify compliance by providing creditors with a single definition within Regulation Z and alleviating the need to average earlier scheduled payments. The Bureau notes that a similar adjustment is proposed in the 2012 TILA–RESPA Proposal.

The Bureau solicits comment on both alternatives. Under either alternative, a high-cost mortgage generally must provide for fully amortizing payments. Therefore, for similar reasons as stated in the Board's 2011 ATR Proposal, *see* 76 FR 27390, 27455–56 (May 11, 2011), the Bureau solicits comment on whether the difference in wording between the statutory definition and the existing regulatory definition, as a practical matter, would yield a significant difference in what constitutes a ''balloon payment'' in the high-cost mortgage context.

Proposed comment 32(d)(1)(i)–1 provides further guidance on the application of § 1026.32(d)(1)(i) under both proposed alternatives. Specifically, the Bureau proposes clarifying that for purposes of open-end transactions, the term ''regular periodic payment'' or ''periodic payment'' means the required minimum periodic payment.

The Bureau proposes to revise § 1026.32(d)(1)(ii) consistent with the statutory exception under amended TILA section 129(e). Accordingly, proposed § 1026.32(d)(1)(ii) provides an exception to the balloon payment restrictions under § 1026.32(d)(1)(i) if the payment schedule is adjusted to the seasonal or irregular income of the consumer.

The Bureau is proposing to exercise its authority pursuant to TILA section 129(p)(1) to provide an exception to the balloon payment restrictions for HELOCs with a repayment period. The Bureau understands that HELOC plans may have a draw period, or borrowing period, during which a consumer may obtain funds and a repayment period during which no further draws may be taken and the consumer is required to pay the balance on the account. Depending on the payment terms applicable to the draw period and the repayment period, an increase in scheduled payments that occurs as a result of the transition to the repayment period could be considered a balloon payment under a literal reading of TILA section 129(e). In most cases, the balloon payment restrictions would generally require that the payment schedule during the draw period be fully amortizing in order to avoid a balloon payment. However, the Bureau understands that some HELOC plans offer flexible payment features during the draw period. For example, some HELOC plans offer a payment plan where a consumer would only be required to pay interest during the draw period or offer a fixed-rate or -term feature. Therefore, pursuant to TILA section 129(p)(1), the Bureau believes that it is appropriate to provide creditors and consumers with flexibility during the draw period of a high-cost HELOC plan and that the continued availability of certain product features would be beneficial to consumers.

Accordingly, the Bureau is proposing § 1026.32(d)(1)(iii) to provide that if the terms of an open-end transaction provide for any repayment period during which no further draws may be taken, the balloon payment limitations in § 1026.32(d)(1)(i) apply only to the payment features within the repayment period. Proposed § 1026.32(d)(1)(iii) also provides that if the terms of an open-end transaction do not provide for any repayment period, the balloon payment limitations apply to the draw period. Proposed comment 32(d)(1)(i)–2 clarifies that if the terms of a high-cost HELOC plan do not provide for any repayment period, then the repayment schedule must fully amortize any outstanding principal balance in the draw period through regular periodic payments. However, the limitation on balloon payments in § 1026.32(d)(1)(i) does not preclude increases in regular periodic payments that result solely

from the initial or additional draws on the credit line during the draw period.

Under the Bureau's proposal, a creditor would have to fully amortize the outstanding balance during the draw period if there is no repayment period in order to satisfy the requirements of proposed § 1026.32(d)(1)(i). The Bureau believes that this restriction on a high-cost HELOC plan may curtail the flexibility or availability of products without a fully-amortizing repayment period. For example, a creditor may no longer be able to offer flexible payment features for a plan. The Bureau solicits comment on this aspect of the proposal.

32(d)(6) Prepayment Penalties

As discussed in the section-by-section analysis to proposed § 1026.32(b)(8), above, TILA currently permits prepayment penalties for high-cost mortgages in certain circumstances. In particular, under section TILA 129(c)(2), which is implemented in existing § 1026.32(d)(7), a high-cost mortgage may provide for a prepayment penalty so long as the penalty otherwise is permitted by law and, under the terms of the loan, the penalty does not apply: (1) To a prepayment made more than 24 months after consummation, (2) if the source of the prepayment is a refinancing of the current mortgage by the creditor or an affiliate of the creditor, (3) if the consumer's debt-to-income ratio exceeds fifty percent, or (4) if the amount of the periodic payment of principal or interest (or both) can change during the first four years after consummation of the loan.

Section 1432(a) of the Dodd-Frank Act repealed TILA section 129(c)(2). Thus, prepayment penalties are no longer permitted for high-cost mortgages. The proposal implements this change consistent with the statute by removing and reserving existing § 1026.32(d)(7) and comment 32(d)(7). The proposal also amends existing § 1026.32(d)(6) to clarify that prepayment penalties are a prohibited term for high-cost mortgages. As already discussed, the proposal retains in proposed § 1026.32(b)(8)(i) and proposed comment 32(b)(8)–1.iv the definition of prepayment penalty contained in existing § 1026.32(d)(6) and comment 32(d)(6)–1. *See* the section-by-section analysis to proposed § 1026.32(b)(8)(i), above.

32(d)(8) Acceleration of Debt

The Bureau is proposing a new § 1026.32(d)(8) to implement the prohibition in new section 129(l) of TILA added by section 1433(a) of the Dodd-Frank Act. New section 129(l) of TILA prohibits a high-cost mortgage from containing a provision which permits the creditor to accelerate the loan debt, except when repayment has been accelerated: (1) In response to a default in payment; (2) ''pursuant to a due-on-sale provision''; or (3) ''pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.''

Proposed § 1026.32(d)(8) replaces current § 1026.32(d)(8) which similarly prohibited due-on-demand clauses for high-cost mortgages except in cases of fraud or material misrepresentation in connection with the loan, a consumer's failure to meet the repayment terms of the loan agreement for any outstanding balance, or a consumer's action or inaction that adversely affects the creditor's security for the loan or any right of the creditor in such security.

Proposed § 1026.32(d)(8) prohibits an acceleration feature in the loan or open-end credit agreement for a high-cost mortgage unless there is a default in payment under the agreement; the acceleration is pursuant to a due-on-sale clause; or there is a material violation of a provision of the agreement unrelated to the payment schedule. Proposed comments 32(d)(8)(i) and (iii), are similar to the commentary for current § 1026.32(d)(8) and provide examples of when acceleration under proposed § 1026.32(d)(8) is permitted. For example, proposed comment 32(d)(8)(i) makes clear that a creditor can accelerate the debt for a default in payment only if the consumer actually fails to make payments that result in a default under the agreement, and not where the consumer fails to make payments in error, such as sending the payment to the wrong office of the creditor. Proposed comment 32(d)(8)(iii) provides examples where the creditor may accelerate the debt based on a material violation, by the consumer, of some other provision of the agreement unrelated to the payment schedule, for example where: (1) The consumer's action or inaction adversely affects the creditor's security for the loan or open-end credit plan, or any right of the creditor in the security; or (2) the consumer violates the agreement through fraud or material misrepresentation in connection with the loan or open-end credit plan. The Bureau seeks comment from the public on possible additional examples where a consumer's material violation of the loan or open-end credit agreement, unrelated to the payment schedule, may warrant acceleration of the debt, and examples of when a consumer's action or inaction does not warrant acceleration.

Section 1026.34 Prohibited Acts or Practices in Connection With High-Cost Mortgages

34(a) Prohibited Acts or Practices for High-Cost Mortgages

The Bureau generally proposes clarifying revisions in proposed § 1026.34(a)(1) through (3) and comment 34(a)(3)–2 for consistency and clarity.

34(a)(4) Repayment Ability for High-Cost Mortgages

TILA section 129(h) generally prohibits a creditor from engaging in a pattern or practice of extending credit to consumers under high-cost mortgages based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment. TILA section 129(h) is implemented in current § 1026.34(a)(4).

The Dodd-Frank Act did not amend TILA section 129(h); however, sections 1411, 1412, and 1414 of Dodd-Frank, among other things, established new ability-to-repay requirements for any residential mortgage loan under new TILA section 129C. Specifically, TILA section 129C expands coverage of the ability-to-repay requirements to any consumer credit transaction secured by a dwelling, except an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan. Residential mortgage loans that are high-cost mortgages, as defined in TILA section 103(bb), will be subject to the ability-to-repay requirements pursuant to TILA section 129C and the Bureau's forthcoming implementing regulations. Therefore, the existing requirements under § 1026.34(a)(4) will no longer be necessary for closed-end mortgage loans. For consistency with TILA section 129C, proposed § 1026.34(a)(4) requires that, in connection with a closed-end high-cost mortgage, a creditor must comply with the repayment ability requirements to be set forth in § 1026.43. The Bureau, however, solicits comment on this aspect of the proposal.

Because open-end credit plans are excluded from coverage of TILA section 129C, the existing ability-to-repay requirements of TILA section 129(h) would still apply to open-end credit plans that are high-cost mortgages. To facilitate compliance, the Bureau proposes to implement TILA section 129(h) as it applies to open-end credit plans in proposed § 1026.34(a)(4) by amending the existing mortgage repayment ability requirements in current § 1026.34(a)(4) to apply specifically to high-cost open-end credit

plans. The Bureau notes that in the 2008 Higher-Priced Mortgage Rule, 73 FR 44522 (July 30, 2008), the Board adopted a rule prohibiting individual HOEPA loans or higher-priced mortgage loans from being extended based on the collateral without regard to repayment ability, rather than simply prohibiting a pattern or practice of making extensions based on the collateral without regard to ability to repay. The existing requirements further create a presumption of compliance under certain conditions to provide creditors with more certainty about compliance and to mitigate potential increased litigation risk.

The Board concluded that this regulatory structure was warranted based on the comments the Board received and additional information. Specifically, the Board exercised its authority under TILA section 129(l)(2) (renumbered as TILA section 129(p)(2) by the Dodd-Frank Act) to revise HOEPA's restrictions on HOEPA loans based on a conclusion that the revisions were necessary to prevent unfair and deceptive acts or practices in connection with mortgage loans. *See* 73 FR 44545 (July 30, 2008). In particular, the Board concluded a prohibition on making individual loans without regard for repayment ability was necessary to ensure a remedy for consumers who are given unaffordable loans and to deter irresponsible lending, which injures individual borrowers. The Board determined that imposing the burden to prove ''pattern or practice'' on an individual borrower would leave many borrowers with a lesser remedy, such as those provided under some State laws, or without any remedy, for loans made without regard to repayment ability. The Board further determined that removing this burden would not only improve remedies for individual borrowers, it would also increase deterrence of irresponsible lending. The Board concluded that the structure of its rule would also have advantages for creditors over a ''pattern or practice'' standard, which can create substantial uncertainty and litigation risk. In contrast, the Board rule provided a presumption of compliance where creditors follow the specified requirements for individual loans.

For substantially the same reasons detailed in the 2008 Higher-Priced Mortgage Rule, the Bureau believes that it is necessary and proper to use its authority under TILA section 129(p)(2), as amended, to retain the existing § 1026.34(a)(4) repayment ability requirements with respect to individual open-end credit plans that are high-cost mortgages, with a presumption of compliance as specified in the regulation, rather than merely prohibiting a ''pattern or practice'' of engaging in such transactions without regard for consumers' ability to repay the loans. The Bureau believes that the concerns discussed in the 2008 Higher-Priced Mortgage Rule, such as preventing unfair practices, providing remedies for individual borrowers, and providing more certainty to creditors, are equally applicable to open-end transactions that are high-cost mortgages. Furthermore, in light of the Board's prior determination, the Bureau believes it would not be in creditors' and borrowers' interest if the proposal inserted the ''pattern or practice'' language or removed the presumption of compliance in existing § 1026.34(a)(4). Therefore, the Bureau believes that applying the existing repayment ability requirement in current § 1026.34(a)(4) to open-end high-cost mortgages is necessary to prevent unfair or deceptive acts or practices in connection with mortgage loans. *See* TILA section 129(p)(2).

Accordingly, the Bureau proposes to revise § 1026.34(a)(4) to provide that in connection with an open-end credit plan subject to § 1026.32, a creditor shall not open a plan for a consumer where credit is or will be extended based on the value of the consumer's collateral without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations. In addition, the Bureau generally proposes additional clarifying revisions in proposed § 1026.32(a)(4) and its associated commentary for consistency, clarity, or organizational purposes. The Bureau discusses specific proposed revisions below.

34(a)(4)(iii)(B)

The Bureau proposes to revise current § 1026.34(a)(4)(iii) to clarify the criteria that a creditor must satisfy in order to obtain a presumption of compliance with the repayment ability requirements for high-cost mortgages that are open-end credit plans. In particular, current § 1026.34(a)(4)(iii)(B) requires that a creditor determine the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations. The Bureau believes that it is appropriate to determine the consumer's repayment ability based on the largest periodic payment amount a consumer would be required to pay under the payment schedule. However, applying this requirement to open-end credit plans requires additional assumptions because a creditor may not know certain factors required to determine the largest required minimum periodic payment, such as the amount a consumer will borrow and the applicable annual percentage rate. Accordingly, the Bureau proposes revised § 1026.34(a)(4)(iii)(B) to require a creditor to determine the consumer's repayment ability taking into account current obligations and mortgage-related obligations as defined in § 1026.34(a)(4)(i), and using the largest required minimum periodic payment. Furthermore, proposed § 1026.34(a)(4)(iii)(B) requires a creditor to determine the largest required minimum periodic payment based on the following assumptions: (1) The consumer borrows the full credit line at account opening with no additional extensions of credit; (2) the consumer makes only required minimum periodic payments during the draw period and any repayment period; and (3) the maximum annual percentage rate that may apply under the payment plan, as required by § 1026.30, applies to the plan at account opening and will apply during the draw period and any repayment period.

The proposal generally incorporates guidance in current comment 34(a)(4), with revisions for clarity and consistency. In addition, the proposal provides revisions for clarification, as discussed in detail below.

Proposed comment 34(a)(4)–1 clarifies that the repayment ability requirement under § 1026.34(a)(4) applies to open-end credit plans subject to § 1026.32; however, the repayment ability provisions of § 1026.43 apply to closed-end credit transactions subject to § 1026.32. Proposed comment 34(a)(4)–3 clarifies the current commentary to conform with proposed revisions and removes the current example. Proposed comment 34(a)(4)(iii)(B)–1 removes the examples in current comment 34(a)(4)(iii)(B) as unnecessary or inapplicable.

34(a)(5) Pre-Loan Counseling

Section 1433(e) of the Dodd-Frank Act added new TILA section 129(u), which creates a counseling requirement for high-cost mortgages. Prior to extending a high-cost mortgage, TILA section 129(u)(1) requires that a creditor receive certification that a consumer has obtained counseling on the advisability of the mortgage from a HUD-approved counselor, or at the discretion of HUD's

Secretary, a State housing finance authority. TILA section 129(u)(3) specifically authorizes the Bureau to prescribe regulations that it determines are appropriate to implement the counseling requirement. In addition to the counseling requirement, TILA section 129(u)(2) requires that a counselor verify prior to certifying that a consumer has received counseling on the advisability of the high-cost mortgage that the consumer has received each statement required by TILA section 129 (implemented in § 1026.32(c)) or each statement required by RESPA with respect to the transaction.[49] The Bureau is exercising its authority under TILA section 129(u)(3) to implement the counseling requirement in a way that ensures that borrowers will receive meaningful counseling, and at the same time that the required counseling can be provided in a manner that minimizes operational challenges.

Background

HUD's housing counseling program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701w and 1701x) and the regulations for the program are found in 24 CFR part 214. This program provides counseling to consumers on a broad array of topics, including seeking, financing, maintaining, renting, and owning a home. According to HUD, the purpose of the program is to provide a broad range of housing counseling services to homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership. Counselors can also help borrowers evaluate whether interest rates may be unreasonably high or repayment terms unaffordable, and thus may help reduce the risk of defaults and foreclosures.

HUD historically has implemented its housing counseling program by approving nonprofit agencies and monitoring and funding government agencies that provide counseling services. HUD has required counseling agencies to meet various program requirements and comply with program policies and regulations to participate in HUD's housing counseling program.[50] While HUD' regulations establish training and experience requirements for the individual counselors employed by the counseling agency, to date, HUD has not approved individual counselors. Pursuant to amendments made to the housing counseling statute by section 1445 of the Dodd-Frank Act, HUD must provide for the certification of individual housing counselors. Section 106(e) of the housing counseling statute (12 U.S.C. 1701x(e)) provides that the standards and procedures for testing and certifying counselors must be established by regulation. The Bureau understands that HUD is undertaking a rulemaking to put these standards and procedures in place for individual counselors.

Pre-loan housing counseling is available generally to prospective borrowers planning to purchase or refinance a home, but Federal and State laws specifically require that it be provided prior to origination of certain types of loans. For example, Federal law requires homeowners to receive counseling before obtaining a reverse mortgage insured by the Federal Housing Administration (FHA), known as a Home Equity Conversion Mortgage (HECM).[51] HUD imposes various requirements related to HECM counseling, including, for example: requiring FHA-approved HECM mortgagees to provide prospective HECM borrowers with contact information for HUD-approved counseling agencies; delineating particular topics that need to be addressed through HECM counseling; and preventing HECM lenders from steering a prospective borrower to a particular counseling agency.[52] The Dodd-Frank Act added similar counseling requirements prior to origination of high-cost mortgages and loans involving negative amortization.

The Bureau's Proposal

The Bureau is proposing to implement the counseling requirement for high-cost mortgages contained in new TILA section 129(u) in proposed § 1026.34(a)(5). Specifically, proposed § 1026.34(a)(5)(i) requires certification of counseling, proposed § 1026.34(a)(5)(ii) addresses the timing of counseling, and proposed § 1026(a)(5)(iv) sets forth requirements for the content of certification. The Bureau's proposal also sets forth several provisions concerning potential conflicts of interest. Proposed § 1026(a)(5)(iii) prohibits the affiliation of the counselor with the creditor, proposed § 1026(a)(5)(v) addresses the payment of counseling fees, and proposed § 1026(a)(5)(vi) prohibits a creditor from steering a consumer to a particular counselor or counseling organization. Finally, proposed § 1026(a)(5)(vii) requires creditors to provide a list of counselors to consumers for whom counseling is required.

34(a)(5)(i) Certification of Counseling Required

The Bureau proposes to implement the requirement of new TILA section 129(u)(1) for certification of counseling in proposed § 1026.34(a)(5)(i). Specifically, proposed § 1026.34(a)(5)(i) provides that a creditor shall not extend a high-cost mortgage unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from a HUD-approved counselor, or a State housing finance authority, if permitted by HUD. The Bureau is proposing commentary related to proposed § 1026.34(a)(5)(i) to provide creditors additional compliance guidance.

State Housing Finance Authority

Proposed comment 34(a)(5)–1 clarifies that for the purposes of this section, a State housing finance authority has the same meaning as a ''State housing finance agency'' provided in 24 CFR 214.3 of HUD's regulations implementing the housing counseling program. The Bureau is aware that similar definitions of ''State housing finance authority'' are referenced in new section 128 of TILA and in section 1448 of the Dodd-Frank Act. The Bureau does not believe that the minor differences among these three definitions are substantive, but in order to provide clarity, the Bureau is proposing to use the definition contained in 24 CFR 214.3 because it specifically addresses the ability of State housing finance authorities to provide or fund counseling, either directly or through an affiliate. However, the Bureau requests comment on whether either of the other definitions of a State housing finance authority would be more appropriate in this context.

HUD-Approved Counselor

The Bureau understands that other than for its HECM counseling program,

[49] In addition to the housing counseling requirement for high-cost mortgages, the Dodd-Frank Act now requires housing counseling for first-time borrowers of negative amortization loans. Section 1414(a) of the Dodd-Frank Act requires creditors to receive documentation from a first-time borrower demonstrating that the borrower has received homeownership counseling prior to extending a mortgage to the borrower that may result in negative amortization. This requirement is further discussed in the section-by-section analysis for proposed § 1026.36(k) below.

[50] In addition to the regulations in 24 CFR part 214, HUD's Housing Counseling Program is governed by the provisions of the HUD Housing Counseling Program Handbook 7610.1 and applicable Mortgagee letters.

[51] 12 U.S.C. 1715z–20(d)(2)(B).

[52] *See* HUD Housing Counseling Handbook 7610.1 (05/2010), Chapter 4, *available at http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/7610.1/76101HSGH.pdf* (visited June 16, 2012) (HUD Handbook).

HUD currently approves housing counseling agencies and not individual housing counselors, but will be certifying housing counselors in the future to implement section 1445 of the Dodd-Frank Act. Proposed comment 34(a)(5)(i)–1 clarifies that counselors approved by the Secretary of HUD are homeownership counselors that are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)), or as otherwise determined by the Secretary of HUD. Although the Bureau believes that it is unclear whether any counselors currently would be considered as certified to provide counseling pursuant to section 106(e), the Bureau has alerted HUD to this requirement and continues to consult with HUD to address it. The proposed comment is intended to ensure that the Bureau's regulations do not impede HUD from determining which counselors qualify as HUD-approved and to account for future decisions of HUD with respect to the approval of counselors.[53]

Processing Applications

Proposed comment 34(a)(5)(i)–2 addresses when a creditor may begin to process an application that will result in the extension of a high-cost mortgage. The proposed comment states that prior to receiving certification of counseling, a creditor may not extend a high-cost mortgage, but may engage in other activities, such as processing an application that will result in the extension of a high-cost mortgage (by, for example, ordering an appraisal or title search). The Bureau notes that nothing in the statutory requirement restricts a creditor from processing an application that will result in the extension of a high-cost mortgage prior to obtaining certification of counseling. Moreover, the Bureau believes this interpretation is consistent with the HOEPA counseling requirements as a whole.[54] As discussed in greater detail below in the section-by section analysis addressing the timing of counseling, new TILA section 129(u)(2) requires a counselor to verify the consumer's receipt of *each* statement required by either TILA section 129 (which sets forth the requirement for additional disclosures for high-cost mortgages and is implemented in § 1026.32(c)) or by RESPA prior to issuing certification of counseling. The additional disclosures for high-cost mortgages required under § 1026.32(c) may be provided by the creditor up to three business days prior to consummation of the mortgage. RESPA requires lenders to provide borrowers several disclosures over the course of the mortgage transaction, such as the good faith estimate and the HUD–1. Currently, the HUD–1 may be provided by the creditor at settlement.[55] The Bureau believes that proposed comment 34(a)(5)(i)–2 is necessary to address both the ability of a creditor to provide the required disclosures to the consumer to permit certification of counseling, and to address the likelihood that a creditor may receive the required certification of counseling only days before the consummation of the loan, at the earliest.

The Bureau recognizes that some creditors may wish to receive an indication that a consumer has obtained counseling prior to taking certain steps to continue processing an application. As discussed in the section-by-section analysis for proposed § 1026.34(a)(5)(ii), the Bureau proposes that counseling on the advisability of the loan may occur separately from and prior to the verification of the required disclosures and issuance of the certification of counseling. The Bureau notes that nothing in the proposed regulation or commentary precludes a creditor from requesting evidence from a counselor or consumer that the consumer has received counseling on the advisability of the mortgage before the consumer receives the required high-cost mortgage disclosure or the disclosures required under RESPA and before the counselor has issued certification of the counseling, if the creditor prefers to receive such information prior to taking certain steps to process the high-cost mortgage.

Form of Certification

Proposed comment 34(a)(5)(i)–3 sets forth the methods whereby a certification form may be received by the creditor. The proposed comment clarifies that the written certification of counseling may be received by any method, such as mail, email, or facsimile, so long as the certification is in a retainable form. This would permit creditors to comply with the existing record retention requirements of § 1026.25.

34(a)(5)(ii) Timing of Counseling

Proposed § 1026.34(a)(5)(ii) provides that the required counseling must occur after the consumer receives either the good faith estimate required under RESPA, or the disclosures required under § 1026.40 for open-end credit. The Bureau believes that permitting counseling to occur as early as possible allows consumers more time to consider whether to proceed with a high-cost mortgage and to shop for different mortgage terms. However, the Bureau believes that it is also important that counseling on a high-cost mortgage address the specific loan terms being offered to a consumer. Therefore, requiring the receipt of either of these transaction-specific documents prior to the consumer's receipt of counseling on the advisability of the high-cost mortgage will best ensure that the counseling session can address the specific features of the high-cost mortgage, and that consumers will have an opportunity to ask questions about the loan terms offered. At the same time, given that these documents are provided to the consumer within a few days following application, the Bureau believes that the proposal permits counseling to occur early enough to give consumers sufficient time after counseling to consider whether to proceed with the high-cost mortgage transaction and to consider alternative options.[56]

Despite the verification requirement, the Bureau does not believe that it would make sense to wait until receipt of all disclosures referenced in the statute to permit counseling to occur. Accordingly, nothing in proposed § 1026.34(a)(5)(ii) requires a counselor to wait for the receipt of either the § 1026.32(c) or RESPA disclosures that must be verified prior to certification to provide counseling. As noted above, the § 1026.32(c) high-cost mortgage disclosure is generally required to be provided to the consumer no later than three business days prior to

[53] HUD has stated that it ''may require specialized training or certifications prior to approving certain housing counseling services, such as HECM counseling.'' HUD Handbook at 3–2.

[54] The HECM program requires counseling to occur before a HECM lender may ''process'' an application, meaning that the creditor may accept an application, but ''may not order an appraisal, title search, or an FHA case number or in any other way begin the process of originating a HECM loan'' before the consumer has received counseling. HUD Mortgagee Letter 2004–25 (June 23, 2004). However, the Bureau notes that HECM counselors are not required to verify the receipt of transaction-specific disclosures prior to issuing a certification of counseling.

[55] The Bureau notes that as part of its 2012 TILA–RESPA Proposal, the Bureau is proposing requiring that a settlement disclosure combining the HUD–1 and the final TILA disclosure be provided to a consumer prior to settlement. However, any such requirement likely would not take effect until after the effective date for the requirements for high-cost mortgages.

[56] The Bureau notes that as part of its 2012 TILA–RESPA Proposal, the Bureau is proposing that the good faith estimate required by RESPA be combined with the early TILA disclosure. Proposed § 1026.34(a)(5)(ii) is intended to permit both the current good faith estimate or a future combined disclosure to satisfy the requirement in order to trigger counseling.

consummation of the loan, and one of the disclosures required under RESPA, the HUD–1, currently may be provided to the consumer at settlement. As a practical matter, this means that certification would not happen until right before closing. The Bureau does not believe that delaying counseling pending receipt of all disclosure would benefit consumers, because consumers may not be able to walk away from the transaction or seek better loan terms so late in the process. Accordingly, the Bureau believes that the best approach is a two stage process in which counseling would occur prior to and separately from the receipt of the high-cost mortgage disclosures, after which the counselor would confirm receipt of the disclosures, answer any additional questions from the consumer, and issue the certification. Under these circumstances, a consumer obtaining a high-cost mortgage would have at least two separate contacts with his housing counselor, the first to receive counseling on the advisability of the high-cost mortgage, and the second to verify with the counselor that the consumer has received the applicable disclosure. The Bureau believes that a second contact may be beneficial to consumers because it gives consumers an opportunity to request that the counselor explain the disclosure, and to raise any additional questions or concerns they have, just prior to consummation. The Bureau solicits comment on this aspect of the proposal and whether a second contact helps facilitate compliance with the requirement for certification of counseling.

Proposed comment 34(a)(5)(ii)–1 clarifies that for open-end credit plans subject to § 1026.32, proposed § 1026.34(a)(5)(ii) permits receipt of either the good faith estimate required by RESPA or the disclosures required under § 1026.40 to allow counseling to occur, because 12 CFR 1024.7(h) permits the disclosures required by § 1026.40 to be provided in lieu of a good faith estimate, in the case of an open-end credit plan. The Bureau requests comment on whether it is appropriate to trigger the counseling period based on receipt of the disclosure under § 1026.40 for open-end credit plans.

Proposed comment 34(a)(5)(ii)–2 clarifies that counseling may occur after the consumer receives either an initial good faith estimate or a disclosure under § 1026.40, regardless of whether a revised disclosure is subsequently provided to the consumer.

34(a)(5)(iii) Affiliation Prohibited

Proposed § 1026.34(a)(5)(iii)(A) implements the general prohibition in new TILA section 129(u) that the counseling required for a high-cost mortgage shall not be provided by a counselor who is employed by or affiliated [57] with the creditor extending the high-cost mortgage.

Pursuant to the Bureau's authority under TILA 129(u)(3), proposed § 1026.34(a)(5)(iii)(B) creates an exception from this general prohibition for a State housing finance authority that both extends a high-cost mortgage and provides counseling to a consumer, either itself or through an affiliate, for the same high-cost mortgage transaction. The Bureau understands that State housing finance authorities may make mortgage funds directly available to consumers for purposes such as emergency home repairs through programs for which counseling is required, and that such loans could be classified as high-cost mortgages based on their fees. At the same time, State housing finance authorities may provide direct counseling services or distribute housing counseling funds to affiliated counseling agencies.[58] These programs can provide benefits to consumers, and the Bureau does not believe that allowing a State housing finance authority to both extend such mortgages and counsel the recipients of such mortgages, either itself or through an affiliate, should be prohibited. Accordingly, the Bureau is proposing to allow State housing finance authorities to continue lending activities including extending credit that may be classified as a high-cost mortgage without requiring consumers to obtain counseling from an unaffiliated counseling agency. The Bureau requests comment on the proposed general affiliation prohibition, and the exception provided for State housing finance authorities. The Bureau also requests comment on whether it should consider any other exceptions from the general affiliation prohibition, and specifically on whether nonprofit counseling agencies extend mortgages to consumers that could be classified as high-cost, either themselves or through nonprofit affiliates.

[57] ''Affiliate'' is defined in § 1026.32(b)(2) to mean ''any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).''

[58] State housing finance agencies ''may provide direct counseling services or subgrant housing counseling funds, or both, to affiliated housing counseling agencies within the SHFA's state.'' 24 CFR 214.3.

34(a)(5)(iv) Content of Certification

Proposed § 1026.34(a)(5)(iv) sets forth requirements for the certification form that is provided to the creditor. Specifically, proposed § 1026.34(a)(5)(iv) provides that the certification form must include the name(s) of the consumer(s) who obtained counseling; the date(s) of counseling; the name and address of the counselor; a statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms provided in either the good faith estimate or the disclosures required by § 1026.40; and a statement that the counselor has verified that the consumer(s) received the § 1026.32(c) disclosures or the disclosures required by RESPA with respect to the transaction.

In new comment 34(a)(5)(iv)–1, the Bureau proposes guidance addressing the meaning of the statement that a consumer has received counseling on the advisability of the high-cost mortgage. Specifically, the comment provides that a statement that a consumer has received counseling on the advisability of a high-cost mortgage means that the consumer has received counseling about key terms of the mortgage transaction, as set out in the disclosures provided to the consumer pursuant to RESPA or § 1026.40; the consumer's budget, including the consumer's income, assets, financial obligations, and expenses; and the affordability of the loan for the consumer. The comment further provides some examples of such key terms of the mortgage transaction that are included in the good faith estimate or the disclosures required under § 1026.40 are provided to the consumer. The Bureau believes that requiring counseling on the high-cost mortgage to address terms of the specific high-cost mortgage transaction is consistent with both the language and purpose of the statute. The Bureau also believes that a requirement that counseling address the consumer's budget and the affordability of the loan is appropriate, since these are factors that are relevant to the advisability of a mortgage transaction for the consumer. Moreover, HUD already requires counselors to analyze the financial situation of their clients and establish a household budget for their clients when providing housing counseling.[59]

New comment 34(a)(5)(iv)–1 further explains, however, that a statement that a consumer has received counseling on the advisability of the high-cost

[59] HUD Handbook at 3–5.

mortgage does not require the counselor to have made a judgment or determination as to the appropriateness of the loan for the consumer. The proposal provides that such a statement means the counseling has addressed the affordability of the high-cost mortgage for the consumer, not that the counselor is required to have determined whether a specific loan is appropriate for a consumer or whether a consumer is able to repay the loan.[60]

Proposed comment 34(a)(5)(iv)–2 clarifies that a counselor's verification of either the § 1026.32(c) disclosures or the disclosures required by RESPA means that a counselor has confirmed, orally, in writing, or by some other means, receipt of such disclosures with the consumer. The Bureau notes that a counselor's verification of receipt of the applicable disclosures would not indicate that the applicable disclosures provided to the consumer with respect to the transaction were complete, accurate, or properly provided by the creditor.

34(a)(5)(v) Counseling Fees

The Bureau notes that HUD generally permits housing counselors to charge reasonable fees to consumers for counseling services, if the fees do not create a financial hardship for the consumer.[61] For most of its counseling programs, HUD also permits creditors to pay for counseling services, either through a lump sum or on a per case basis, but imposes certain requirements on this funding to minimize potential conflicts of interest. For example, HUD requires that the payment be commensurate with the services provided and be reasonable and customary for the area, the payment not violate the requirements of RESPA, and the payment and the funding relationship be disclosed to the consumer.[62] In the HECM program, however, creditor funding of counseling is prohibited. Due to concerns that counselors may not be independent of creditors and may present biased information to consumers, section 255(d)(2)(B) of the National Housing Act, as amended by section 2122 of the Housing and Economic Recovery Act of 2008, prohibits mortgagees from paying for HECM counseling on behalf of mortgagors.

The Bureau believes that counselor impartiality is essential to ensuring that counseling affords meaningful consumer protection. Without counselor impartiality, the counseling a consumer receives on the advisability of a high-cost mortgage could be of limited value. However, the Bureau is also aware of concerns that housing counseling resources are limited, and that funding for counseling may not be adequate.[63] Prohibiting creditor funding of counseling may make it more difficult for counseling agencies to maintain their programs and provide services so that consumers may meet the legal requirement to receive counseling prior to obtaining a high-cost mortgage. It may also create financial hardships for borrowers of high-cost mortgages who would otherwise be obligated to pay the counseling fee upfront or finance the counseling fee.

Proposed § 1026.34(a)(5)(v) addresses the funding of counseling fees by permitting a creditor to pay the fees of a counselor or counseling organization for high-cost mortgage counseling. However, to address potential conflicts of interest, the Bureau is also proposing that a creditor may not condition the payment of these fees on the consummation of the high-cost mortgage. Moreover, the Bureau is proposing that if the consumer withdraws the application that would result in the extension of a high-cost mortgage after receiving counseling, a creditor may not condition payment of counseling fees on the receipt of certification from the counselor required by proposed § 1026.34(a)(5)(i). If a counseling agency's collection of fees were contingent upon the consummation of the mortgage, or receipt of a certification, a counselor might have an incentive to counsel a consumer to accept a loan that is not in the consumer's best interest. The Bureau recognizes, however, that a creditor may wish to confirm that a counselor has provided services to a consumer, prior to paying a counseling fee. Accordingly, proposed § 1026.34(a)(5)(v) also provides that a creditor may otherwise confirm that a counselor has provided counseling to a consumer prior to paying counseling fees. The Bureau believes that proposed § 1026.34(a)(5)(v) will help preserve the availability of counseling for high-cost mortgages, and at the same time help ensure counselor independence and prevent conflicts of interest that may otherwise arise from creditor funding of counseling.

Proposed comment 34(a)(5)(v)–1 addresses the financing of counseling fees. As noted above, the Bureau intends to preserve the availability of counseling for high-cost mortgages. The proposed comment clarifies that proposed § 1026.34(a)(5)(v) does not prohibit a creditor from financing the counseling fee as part of the mortgage transaction, provided that the fee is a bona fide third party charge as defined by proposed § 1026.32(b)(5)(i). The Bureau believes that the proposal would ensure that several options are available for the payment of any counseling fees, such as a consumer paying the fee directly to the counseling agency, the creditor paying the fee to the counseling agency, or the creditor financing the counseling fee for the consumer.

The Bureau requests comment on whether to adopt additional or alternative restrictions on the compensation of counselors or counseling organizations for high-cost mortgage counseling services.

34(a)(5)(vi) Steering Prohibited

Proposed § 1026.34(a)(5)(vi) provides that a creditor that extends a high-cost mortgage shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the required counseling. The proposal is intended to help preserve counselor independence and prevent conflicts of interest that may arise when creditors refer consumers to particular counselors or counseling organizations. The Bureau notes that under the HECM program, lenders providing HECMs are prohibited from steering consumers to any particular counselor or counseling agency.[64]

The Bureau is similarly proposing to prohibit a creditor that extends high-cost mortgages from steering or otherwise directing a consumer to choose a particular counselor or counseling organization for the required counseling on the high-cost mortgage. The Bureau believes that absent a steering prohibition, a creditor could direct the consumer to a counselor with whom the creditor has a tacit or express agreement to refer customers in exchange for favorable advice on the creditor's products in the counseling session.

Whether steering of this type has occurred is a case-by-case determination and may be difficult to discern. Accordingly, the Bureau is proposing comment 34(a)(5)(vi)–1 and 2, which provide an example of an action that

[60] This is consistent with HUD's guidance related to the certification of counseling provided for the HECM program, which indicates that the issuance of a HECM counseling certificate ''attests ONLY to the fact that the client attended and participated in the required counseling and that the statutorily required counseling for a HECM was provided'' and ''does NOT indicate whether the counseling agency recommends or does not recommend the client for a reverse mortgage.'' HUD Handbook at 4–18 (emphases in original).

[61] 24 CFR 214.313(a), (b).

[62] 24 CFR 214.313(e); 214.303.

[63] *See* 75 FR 58539, 58670 (Sept. 24, 2010).

[64] HUD Handbook at 4–11.

constitutes steering, as well as an example of an action that does not constitute steering. The comment indicates that a creditor is engaged in steering if the creditor repeatedly highlights or otherwise distinguishes the same counselor in the notices it provides to consumers pursuant to proposed § 1026.34(a)(5)(vii), discussed below. In contrast, the comment clarifies that the rule would not prohibit a creditor from providing a consumer with objective information about a counselor, such as fees charged by the counselor.

The Bureau solicits comment on the proposed approach to prevent steering of consumers to particular counselors or counseling organizations. The Bureau also requests comment on the usefulness of the illustrations in proposed comment 34(a)(5)(vi)–1 and 2, and on whether any additional examples of activities that would or would not constitute steering should be included.

34(a)(5)(vii) List of Counselors

In order to help consumers obtain information about resources for counseling, the Bureau is proposing to require creditors to provide consumers who will receive a high-cost mortgage with information about housing counseling resources. Proposed § 1026.34(a)(5)(vii)(A) requires a creditor to provide to a consumer for whom counseling is required, a notice containing the Web site addresses and telephone numbers of the Bureau and HUD for access to information about housing counseling, and a list of five counselors or counseling organizations approved by HUD to provide high-cost mortgage counseling. Proposed § 1026.34(a)(5)(vii)(A) also requires the notice to be provided to the consumer no later than the time when either the RESPA good faith estimate or the disclosure required by § 1026.40 in lieu of a good faith estimate, as applicable, must be provided.

As discussed in the section-by-section analysis of proposed § 1024.20 in Regulation X, the Bureau is proposing that creditors will be required to provide a list of homeownership counselors to mortgage loan applicants generally. In order to facilitate compliance with proposed § 1026.34(a)(5)(vii)(A), the Bureau is proposing a safe harbor in § 1026.34(a)(5)(vii)(B) that provides that a creditor will be deemed to have complied with the requirements of paragraph (a)(5)(vii)(A) if the creditor provides the list of homeownership counselors or organizations required by 12 CFR 1024.20 to a consumer for whom high-cost mortgage counseling is required.

Proposed comment 34(a)(5)(vii)–1 addresses the provision of the list of homeownership counselors in situations in which there may be multiple creditors or multiple consumers involved in a high-cost mortgage transaction by providing a cross-reference to §§ 1026.5(d) and 1026.17(d) and their related commentary, which provide guidance on the provision of disclosures for open- and closed-end credit in such situations.

The Bureau seeks comment on whether the requirement to provide Bureau, HUD, and counselor contact information is necessary or helpful. In addition, the Bureau solicits comment on whether requiring a list of five counseling organizations or counselors is appropriate. The Bureau is aware that several State laws that impose requirements on creditors to provide consumers lists of housing counselors specify a list of five as well.[65] The Bureau is concerned that requiring a list of too few counselors or organizations would provide inadequate options to consumers, and could increase the risk for steering by creditors. The Bureau is also concerned, however, that requiring a list of too many counselors or organizations could be overwhelming to consumers, and could also create compliance challenges in certain geographic regions where there may be fewer counseling organizations.

The Bureau also requests comment on whether the safe harbor proposed in § 1026.24(a)(5)(vii)(B) is appropriate. The Bureau believes that most creditors will comply with the requirement to provide a list of counselors by fulfilling their obligations under 12 CFR 1024.20. However, the Bureau seeks comment on whether some creditors are likely to comply with this requirement independent of their obligations under RESPA, and if so, whether additional guidance would be helpful.

34(a)(6) Recommended Default

The Bureau is proposing a new § 1026.34(a)(6) to implement the prohibition on a creditor recommending a consumer default in connection with a high cost mortgage in new section 129(j) of TILA, which was added by section 1433(a) of the Dodd-Frank Act. Specifically, section 129(j) of TILA prohibits creditors from recommending or encouraging a consumer to default on an ''existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan.'' The Bureau, however, is proposing to use its authority under section 129(p)(2) of TILA to extend this prohibition in proposed § 1026.34(a)(6) to mortgage brokers, in addition to creditors. Section 129(p)(2) provides that the ''Bureau by regulation * * * shall prohibit acts or practices in connection with—* * *(B) refinancing of mortgage loans the Bureau finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.''

Section 129(j) prohibits a practice—in connection with a refinancing—that is abusive or ''otherwise not in the interest of the borrower'' whereby a creditor advises a consumer to stop making payments on an existing loan with the creditor knowing that the consumer, by taking that advice, will default on that loan. Following the creditor's advice could therefore leave the consumer with no choice but to accept a high-cost mortgage originated by that creditor, with terms that are likely less favorable to the consumer, in order to refinance, and eliminate the default, on that existing loan. The Bureau believes that it is appropriate to extend the same prohibition against such creditor actions to mortgage brokers who often have significant interaction with consumers with regard to the refinancing of mortgage loans and could have similar incentives to encourage defaults that are not in the interest of the consumer. As stated by the Board in its final rule on higher-priced mortgage loans, 73 FR 44522, 44529 (July 30, 2008), ''[t]he authority granted to the Board under TILA [section 129(p)(2)] is broad * * *. [W]hile HOEPA's statutory restrictions apply only to creditors and only to loan terms or lending practices, [section 129(p)(2)] is not limited to creditors and only to loan terms or lending practices.'' Proposed § 1026.34(a)(6) therefore prohibits this practice for both creditors and mortgage brokers.[66]

[65] *See, e.g.,* NY Real Prop. Acts Law § 1304(2); Ariz. Rev. Stat. § 6–1703(A)(1).

[66] An additional statutory basis for extending this prohibition to mortgage brokers is the authority provided under Section 129(p)(2)(A) of TILA, which requires the Bureau to ''by regulation * * * prohibit acts or practices in connection with—(A) mortgage loans that the Bureau finds to be unfair, deceptive, or designed to evade the provisions of this section.'' Under the practice prohibited by Section 129(j), the borrower may be deceived into stopping payment on their existing loan due to a misrepresentation made by a mortgage broker that to do so will be of no consequence to the borrower—even though the nonpayment will result in a default by that borrower, in effect forcing the borrower to take the high-cost loan offered by the mortgage broker to eliminate that default. This scenario would likely meet the basic elements of a deceptive act or practice: (1) A representation, omission or practice that is likely to mislead the consumer; (2) the consumer acted reasonably in the

Continued

Proposed comment 34(a)(6) clarifies that whether a creditor or mortgage broker ''recommends or encourages'' a consumer to default on an existing loan depends on the relevant facts and circumstances, and provides examples. The Bureau solicits comment on the proposed examples and on additional possible examples where a creditor or mortgage broker may or may not be recommending or encouraging a consumer's default.

34(a)(7) Modification and Deferral Fees

The Bureau is proposing a new § 1026.34(a)(7) to implement the prohibition on modification and deferral fees for high-cost mortgages in new section 129(s) of TILA, as added by section 1433(b) of the Dodd-Frank Act. Specifically, section 129(s) of TILA prohibits a ''creditor, successor in interest, assignee, or any agent'' of these parties from charging a consumer ''any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.'' As proposed, § 1026.34(a)(7) closely follows the statutory language in its implementation of section 129(s).

The Bureau seeks comment on the applicability of the prohibition to a refinancing of a high-cost mortgage, including where the refinancing would place the consumer in a non-high-cost mortgage.

In order to ensure that the Bureau's final rule, within the scope of the Bureau's authorities, effectively protects and benefits consumers, the Bureau also seeks comment, in general, on the specific circumstances, including examples, under which the prohibition on modification and deferral fees is particularly needed to protect consumers. The Bureau further seeks information on the implications of the Bureau's proposal on practices for open-end credit, and specifically on the extent to which fees are charged for a consumer's renewal or extension of the draw period under such open-end credit plans.

34(a)(8) Late Fees

Section 1433(a) of the Dodd-Frank Act added to TILA a new section 129(k) establishing limitations on late fees on high-cost mortgages. The proposal implements these limitations, with minor modifications for clarity, in proposed § 1026.34(a)(8).

New TILA section 129(k)(1) generally provides that any late payment charge in connection with a high-cost mortgage must be specifically permitted by the terms of the loan contract or open-end credit agreement and must not exceed 4 percent of the ''amount of the payment past due.'' No such late payment charge may be imposed more than once with respect to a single late payment, or prior to the expiration of certain statutorily prescribed grace periods (*i.e.,* for transactions in which interest is paid in advance, no fee may be imposed until 30 days after the date the payment is due; for all other transactions, no fee may be imposed until 15 days after the date the payment is due). Proposed § 1026.34(a)(8)(i) and (ii) implements new TILA section 129(k)(1) consistent with the statute.

New TILA section 129(k)(1) does not define the phrase ''amount of the payment past due.'' Proposed comment 34(a)(8)(i)–1 explains that, for purposes of proposed § 1026.34(a)(8)(i), the ''payment past due'' in an open-end credit plan is the required minimum periodic payment, as provided under the terms of the plan. This comment is intended to clarify that, for open-end credit plans, where monthly payment amounts can vary depending on the consumer's use of the credit line, the ''payment past due'' is the required minimum periodic payment that was due immediately prior to the assessment of the late payment fee. The Bureau seeks comment on the appropriateness of this definition. The Bureau also seeks comment on whether additional guidance is needed concerning the meaning of the phrase ''amount of the payment past due'' in the context either of closed-end mortgages or in the case of partial mortgage payments.

34(a)(8)(iii) Multiple Late Charges Assessed on Payment Subsequently Paid

New TILA section 129(k)(2) prohibits the imposition of a late charge in connection with a high-cost mortgage payment, when the only delinquency is attributable to late charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid by its due date or within any applicable grace period. The Bureau proposes to implement this prohibition on late-fee pyramiding consistent with statutory language in § 1026.34(a)(8)(iii). The Bureau notes that proposed § 1026.34(a)(8)(iii) is consistent with § 1026.36(c)(1)(ii), which similarly prohibits late-fee pyramiding by servicers in connection with a consumer credit transaction secured by a consumer's principal dwelling.

Proposed comment 34(a)(8)(iii)–1 illustrates the rule for a high-cost mortgage with regular periodic payments of $500 due by the 1st of each month (or before the expiration of a 15-day grace period), where a consumer makes a $500 payment on August 25 and another $500 payment on September 1. Under proposed § 1026.34(h)(2), it is impermissible to allocate any portion of the payment made on September 1 to cover a $10 late charge assessed on the payment made on August 25, such that the September 1 payment, which otherwise complies with the terms of the loan contract, becomes delinquent. The Bureau requests comment as to whether additional guidance is needed concerning the application of proposed § 1026.34(a)(8)(iii) to open-end credit plans.

34(a)(8)(iv) Failure To Make Required Payment

New TILA section 129(k)(3) provides that, if a past due principal balance exists on a high-cost mortgage as a result of a consumer's failure to make one or more required payments, and if permitted by the terms of the loan contract or open-end credit agreement permit, subsequent payments may be applied first to the past due principal balance (without deduction due to late fees or related fees) until the default is cured. The Bureau generally proposes to implement new TILA section 129(k)(3) consistent with statutory language in § 1026.34(a)(8)(iv), with modifications to clarify the application of the provision to open-end credit plans.

Proposed comment 34(a)(8)(iv)–1 illustrates the rule for a high-cost mortgage with regular periodic payments of $500 due by the 1st of each month (or before the expiration of a 15-day grace period), where a creditor imposes a $10 late fee after a consumer fails to make a timely payment on August 1 (or within the applicable grace period). If the consumer makes no payment until September 1, at which time the consumer makes a $500 payment, then under proposed § 1026.34(a)(8)(iv) (and if permitted by the terms of the loan contract), the creditor may apply that payment to satisfy the missed $500 payment that was due on August 1. The creditor may also impose a $10 late fee for the payment that was due on September 1 (assuming that the consumer makes no other payment prior to the expiration of

circumstances; and (3) the representation, omission, or practice is ''material,'' *i.e.,* is likely to affect the consumer's conduct or decision with regard to a product or service (*i.e.,* the accepting of a high-cost mortgage). *See* Board's final rule on higher-priced mortgage loans, 73 FR 44522, 44528–29 (July 30, 2008), citing to a letter from James C. Miller III, Chairman, Federal Trade Commission to Hon. John D. Dingell, Chairman, H. Comm. on Energy and Commerce (Oct. 14, 1983), in explaining the Board's authority to prohibit unfair and deceptive practices under then Section 129(l)(2) of TILA.

any applicable grace period for the payment that was due on September 1). The Bureau requests comment on this example, including on whether additional guidance is needed concerning the application of proposed § 1026.34(a)(8)(iv) to open-end credit plans.

34(a)(9) Payoff Statements

The Bureau is proposing a new § 1026.34(a)(9) to implement new section 129(t) of TILA, added by section 1433(d) of the Dodd-Frank Act, which: (1) specifically prohibits, with certain exceptions, a creditor or servicer from charging a fee for ''informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage''; and (2) requires payoff balances for high-cost mortgages to be provided within five business days of a request by a consumer or a person authorized by the consumer to obtain such information.

Proposed § 1026.34(a)(9), in implementing section 129(t), prohibits a creditor or servicer from charging a fee to a consumer (or a person authorized by the consumer to receive such information) for providing a statement of an outstanding pay off balance due on a high-cost mortgage. It allows, however, as provided by section 129(t), the charging of a processing fee to cover the cost of providing a payoff statement by fax or courier, so long as such fees do not exceed an amount that is comparable to fees imposed for similar services provided in connection with a non-high-cost mortgage. The creditor or servicer is required to make the payoff statement available to a consumer by a method other than by fax or courier and without charge. Prior to charging a fax or courier processing fee, the creditor or servicer is required to disclose to the consumer (or a person authorized by the consumer to receive the consumer's payoff information) that payoff statements are otherwise available for free. The proposal allows a creditor or servicer who has provided payoff statements on a high-cost mortgage to a consumer without charge (other than a processing fee for faxes or courier services) for four times during a calendar year to charge a reasonable fee for providing payoff statements during the remainder of the calendar year. Finally, the proposal requires payoff statements to be provided by a creditor or servicer within five business days after receiving a request by a consumer for such a statement (or a person authorized by the consumer to obtain such information).[67]

The Bureau seeks public comment on what additional guidance may be needed with regard to the fee and timing requirements for the provision of payoff statements for high-cost mortgages under proposed § 1026.34(a)(9).

34(a)(10) Financing of Points and Fees

Section 1433 of the Dodd-Frank Act added to TILA a new section 129(m) prohibiting the direct or indirect financing of (1) any points and fees; and (2) any prepayment penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the holder of the note being refinanced. The Bureau implements new TILA section 129(m) in proposed § 1026.34(a)(10). Proposed § 1026.34(a)(10) implements all aspects of the statute, except that the Bureau omits from the proposal statutory language concerning the financing of prepayment penalties payable by the consumer in a refinancing transaction. The Bureau notes that such penalties are subsumed in the definition of points and fees for § 1026.32 in proposed § 1026.32(b)(1)(vi) and (3)(iv). Thus, the prohibition against financing of ''points and fees'' necessarily captures the prohibition against financing of prepayment penalties payable in a refinancing transaction if the creditor or an affiliate of the creditor is the holder of the note being refinanced. Consistent with amended TILA section 103(bb)(4)(D) concerning the financing of credit insurance premiums (which new TILA section 129C(d) generally bans), proposed § 1026.34(a)(10) specifies that credit insurance premiums are not considered financed when they are calculated and paid in full on a monthly basis.

Proposed comment 34(a)(10)–1 clarifies that ''points and fees'' for proposed § 1026.34(a)(10) means those items that are required to be included in the calculation of points and fees under proposed § 1026.32(b)(1) through (5). Proposed comment 34(a)(10)–1 specifies that, for example, in connection with the extension of credit under a high-cost mortgage, a creditor may finance a fee charged in connection with the consumer's receipt of pre-loan counseling under § 1026.34(a)(5), because such a fee would be excluded from points and fees as a bona fide third-party charge pursuant to proposed § 1026.32(b)(5)(i).

Proposed comment 34(a)(10)–2 provides examples of the prohibition on financing of points and fees. Proposed comment 34(a)(10)–2 explains that a creditor directly or indirectly finances points and fees in connection with a high-cost mortgage if, for example, such points or fees are added to the loan balance or financed through a separate note, if the note is payable to the creditor or to an affiliate of the creditor. In the case of an open-end credit plan, a creditor also finances points and fees if the creditor advances funds from the credit line to cover the fees.

The Bureau requests comment on its proposed implementation of new TILA section 129(m). In particular, the Bureau requests comment on whether § 1026.34(a)(10) should prohibit the financing of charges that are not included in the calculation of points and fees, such as bona-fide third party charges (including certain amounts of private mortgage insurance premiums).

34(b) Prohibited Acts or Practices for Dwelling-Secured Loans; Structuring Loans To Evade High-Cost Mortgage Requirements

The Bureau is proposing a new § 1026.34(b) to implement the prohibition on structuring a loan transaction ''for the purpose and with the intent'' to evade the requirements for high-cost mortgages in new section 129(r) of TILA, which was added by section 1433(b) of the Dodd-Frank Act. Section 129(r) of TILA specifically prohibits a creditor from taking ''any action in connection with a high-cost mortgage'' to: (1) ''structure a loan as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title'' which include the high-cost mortgage requirements; or (2) divide a loan into separate parts ''for the purpose and with the intent'' to evade the same provisions.

Prior to the Dodd-Frank Act, open-end credit plans were not within the

[67] *See* current § 1026.36(c)(1)(iii), which prohibits a servicer ''[i]n connection with a consumer credit transaction secured by a consumer's principal dwelling'' from failing ''to provide within a reasonable period of time after receiving a request from the consumer * * * an accurate statement of the total outstanding balance * * *.'' The commentary related to this section states that ''it would be reasonable under most circumstances to provide the statement within five business days of receipt of a consumer's request, and that ''[t]his time frame might be longer, for example, when the servicer is experiencing an unusually high volume of refinancing requests.'' *See also* new Section 129G of TILA added by section 1464 of the Dodd-Frank Act, which sets new timing requirements for the delivery of payoff statements for ''home loans'' but does not specifically address high-cost mortgages. It requires a ''creditor or servicer of a home loan'' to ''send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.'' The Bureau is implementing this provision in its rulemaking on mortgage servicing.

scope of HOEPA's coverage. Current § 1026.34(b) prohibits structuring a home-secured loan as an open-end plan to evade the requirements of HOEPA. The Dodd-Frank Act amended TILA, however, to include open-end credit plans within the scope of coverage of HOEPA (*see* Section 1431(a) of the Dodd-Frank Act amending section 103(aa) of TILA). Nevertheless, as noted, new section 129(r) prohibits the structuring of what would otherwise be a high-cost mortgage in the form of an open-end credit plan, or another loan form of loan, including dividing the loan into separate parts. Proposed § 1026.34(b) implements this new section by prohibiting the structuring of a transaction that is otherwise a high-cost mortgage as another form of loan, including dividing any loan transaction into separate parts, for the purpose and intent to evade the requirements of HOEPA.

New proposed comment 34(b)–1 provides examples of violations of proposed § 1026.34(b): (1) a loan that has been divided into two separate loans, thereby dividing the points and fees for each loan so that the HOEPA thresholds are not met, with the specific intent to evade the requirements of HOEPA; and (2) the structuring of a high-cost mortgage as an open-end home-equity line of credit that is in fact a closed-end home-equity loan in order to evade the requirement to include loan originator compensation in points and fees for closed-end mortgages under proposed § 1026.32(b)(1).

The proposal re-numbers existing comment 34(b)–1 as comment 34(b)–2 for organizational purposes. Notwithstanding the Dodd-Frank Act's expansion of coverage under HOEPA to include open-end credit plans, the Bureau believes that the guidance set forth in proposed comment 34(b)–2 remains useful for situations where it appears that a closed-end mortgage loan has been structured as an open-end credit plan to evade the closed-end HOEPA triggers. The Bureau proposes certain conforming amendments to proposed comment 34(b)–2, however, for consistency with the Bureau's proposed amendment to the definition of ''total loan amount'' for closed-end mortgage loans. *See* the section-by-section analysis to proposed § 1026.32(b)(6)(i), above.

Section 1026.36 Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling 36(k) Negative Amortization Counseling

Section 1414 of the Dodd-Frank Act added new TILA section 129C(f)(2), which creates a counseling requirement for certain mortgages that may result in negative amortization. TILA section 129C(f)(2) requires creditors to obtain documentation from a first-time borrower sufficient to demonstrate that the borrower has obtained homeownership counseling from a HUD-certified organization or counselor prior to extending credit to the borrower in connection with a closed-end transaction secured by a dwelling (other than a reverse mortgage subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)) that may result in negative amortization.

Background

The Dodd-Frank Act added two general requirements that creditors must fulfill prior to extending credit to a consumer secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that may result in negative amortization. The first, found in new TILA 129C(f)(1), requires creditors to provide consumers with a disclosure that, among other things, describes negative amortization and states that negative amortization increases the outstanding principal balance of the account and reduces a consumer's equity in the property. The Bureau is not implementing this requirement in the current proposal, but is planning to implement it as part of its 2012 TILA–RESPA proposal. The second provision, found in new TILA 129C(f)(2), requires creditors to obtain sufficient documentation demonstrating that a first-time borrower has received homeownership counseling from a HUD-certified organization or counselor, prior to extending credit in connection with a residential mortgage loan that may result in negative amortization.

Because of the similarity of the second provision to the counseling requirement for high-cost mortgages, the Bureau is including the implementation of this counseling provision as part of this proposal. General background regarding HUD's housing counseling program can be found in the section-by-section analysis addressing high-cost mortgage counseling above.

The Bureau's Proposal

The Bureau is proposing to implement the counseling requirement for mortgages that may result in negative amortization created by new TILA section 129C(f)(1) in proposed § 1026.36(k). The Bureau is proposing to implement the general counseling requirement for first-time borrowers of mortgages that may result in negative amortization consistent with the statutory language. In addition to the general counseling requirement, pursuant to its authority under TILA section 105(a), the Bureau is proposing to include two additional provisions, the first to address steering by creditors to particular counselors or counseling organizations and the second to require the provision of a list of counselors to consumers. Both of these provisions are consistent with the requirements proposed for high-cost mortgage counseling discussed above. The Bureau notes, however, that it is not including certain additional provisions that the Bureau is proposing for high-cost mortgage counseling, due to differences in statutory language between the two counseling requirements. In addition to seeking comments on the proposed provisions below, the Bureau is also requesting comment on whether it would minimize compliance burdens if the Bureau conformed the counseling requirements for mortgages that may result in negative amortization with the counseling requirements for high-cost mortgages, despite differences in the statutory language.

36(k)(1) Counseling Required

The proposal implements the counseling requirement for negative amortization loans from TILA section 129C(f)(2) through § 1026.36(k)(1). Specifically, proposed § 1026.36(k)(1) provides that a creditor shall not extend credit to a first-time borrower in connection with a residential transaction secured by a dwelling (with exceptions for reverse mortgages and mortgages related to timeshare plans) that may result in negative amortization, unless the creditor receives documentation that the consumer has obtained counseling from a HUD-certified or approved counselor or counseling organization.[68] The Bureau is omitting from the proposal the statutory language limiting the requirement for counseling to a residential mortgage loan that may result in negative amortization ''that is not a qualified mortgage.'' The Bureau believes this language is unnecessary because a qualified mortgage by definition does not permit a payment schedule that results in an increase of

[68] The Bureau proposes to exercise its authority under section 105(a) of TILA and section 1405(b) of the Dodd-Frank Act to allow the list to include, in addition to HUD-certified counselors or organizations required by section 1414(a) of the Dodd-Frank Act, HUD-approved counselors and organizations. The Bureau is proposing to exercise its authority to provide flexibility in order to facilitate the availability of competent housing counselors for placement on the list. *See supra* note 24.

the principal balance under new TILA 129C(b)(2)(A).

Proposed comment 36(k)(1)–1 provides that counseling organizations or counselors certified or approved by HUD to provide the counseling required by proposed § 1026.36(k)(1) include organizations and counselors that are certified or approved by HUD pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) or 24 CFR part 214, unless HUD determines otherwise. This provision would allow currently approved counseling organizations to provide the counseling required by proposed § 1026.36(k)(1), but would be broad enough to account for future changes in HUD policy concerning eligibility to provide the required counseling.

The next proposed comment, comment 36(k)(1)–2, addresses the content of counseling to ensure that the counseling is useful and meaningful to the consumer with regard to the negative amortization feature of the loan. Specifically, comment 36(k)(1)–2 states that the homeownership counseling required pursuant to proposed § 1026.36(k)(1) must include information regarding the risks and consequences of negative amortization. The Bureau believes that a requirement that the counseling address the negative amortization feature of a loan is consistent the purpose of the statute. Absent any discussion of negative amortization, the particular concern reflected in the requirement that first-time borrowers of a mortgage that may result in negative amortization receive homeownership counseling would not necessarily be addressed.

To help facilitate creditor compliance with proposed § 1026.36(k)(1), proposed comment 36(k)(1)–3 provides examples of documentation that demonstrate that a consumer has received the required counseling, such as a certificate, letter, or email from a HUD-certified or approved organization or counselor indicating the consumer has received counseling.

Proposed comment 36(k)(1)–4 addresses when a creditor may begin to process the application for a mortgage that may result in negative amortization. As with high-cost mortgage counseling, the Bureau proposes that prior to receiving documentation of counseling, a creditor may not extend a mortgage to a consumer that may result in negative amortization, but may engage in other activities, such as processing an application for such a mortgage.

The Bureau solicits comment on the proposed general requirement and proposed comments, including whether the proposed guidance is adequate, or whether any additional guidance is needed.

36(k)(2) Definitions

Proposed § 1026(k)(2) provides guidance on the meanings of two key terms used in proposed § 1026.36(k)(1), ''first-time borrower'' and ''negative amortization.'' Specifically, proposed § 1026.36(k)(2)(i) provides that a first-time borrower means a consumer who has not previously received a closed-end mortgage loan or open-end credit plan secured by a dwelling. Proposed § 1026.36(k)(2)(ii) provides that negative amortization means a payment schedule with regular periodic payments that cause the principal balance to increase. The Bureau solicits comment on both of these definitions, and whether any changes to these definitions would be appropriate.

36(k)(3) Steering Prohibited

Consistent with its proposal to prohibit steering for high-cost mortgage counseling, the Bureau is proposing in § 1026.36(k)(3) to prohibit a creditor that extends mortgage credit that may result in negative amortization from steering or otherwise directing a consumer to choose a particular counselor or counseling organization for the counseling required by proposed § 1026.36(k). Proposed comment 36(k)(3)–1 references the proposed comments in 34(a)(5)(vi)–1 and –2, which provide an example of an action that constitutes steering, as well as an example of an action that does not constitute steering. The Bureau again solicits comment on whether any additional examples of activities that do or do not constitute steering should be included in the proposed comment.

36(k)(4) List of Counselors

Also consistent with its proposal for high-cost mortgage counseling, the Bureau is proposing in § 1026.36(k)(4)(i) to require a creditor to provide to a consumer for whom counseling is required under proposed § 1026.36(k), a notice containing the Web site addresses and phone numbers of the Bureau and HUD for access to information about homeownership counseling, and a list of five counselors or counseling organizations certified or approved by HUD to provide the required counseling. Proposed § 1026.36(k)(4)(i) also requires the notice to be provided to the consumer no later than the time that the RESPA good faith estimate must be provided. Consistent with the safe harbor proposed for the provision of a list of counselors for consumers required to receive high-cost mortgage counseling, proposed § 1026.36(k)(4)(ii) creates a safe harbor for compliance with the requirement to provide a list of counselors or counseling organizations if creditors provide the list of homeownership counselors or organizations required by 12 CFR 1024.20 to consumers for whom counseling is required under § 1026.36(k).

Proposed comment 36(k)(4)–1 addresses the provision of the list of homeownership counselors in situations in which there may be multiple creditors or multiple consumers involved in a mortgage transaction that may result in negative amortization, consistent with the comment proposed for high-cost mortgage counseling.

The Bureau seeks comment on whether the requirement to provide Bureau, HUD, and counselor contact information is appropriate, and whether it is appropriate to require the list to contain contact information for five counselors or counseling organizations. The Bureau also requests comment on whether the safe harbor for complying with the similar notice obligation under RESPA is appropriate. As with the requirement related to high-cost mortgages, the Bureau believes that most creditors will comply with this requirement to provide a list of counselors by fulfilling their obligations under proposed 12 CFR 1024.20. However, the Bureau again seeks comment on whether some creditors are likely to comply with this requirement independent of their obligations under RESPA, and if so, whether additional guidance would be helpful.

VI. Section 1022(b)(2) Analysis

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators, the Federal Trade Commission, and HUD, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[69]

As discussed above, HOEPA currently addresses potentially harmful practices in refinancing and closed-end home-equity mortgage loans. Loans that meet HOEPA's triggers are subject to restrictions on loan terms as well as to

[69] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

special disclosure requirements intended to ensure that borrowers in high-cost mortgages understand the features and implications of such loans. Borrowers with HOEPA loans also have enhanced remedies for violations of the law. The Dodd-Frank Act expanded the types of loans potentially covered by HOEPA to include purchase money mortgage loans and home-equity lines of credit secured by a consumer's principal dwelling. The Dodd-Frank Act also expanded the protections associated with HOEPA loans, including by adding new restrictions on loan terms, extending the requirement that a creditor verify a consumer's ability to repay to a home equity line of credit, and adding a requirement that consumers receive homeownership counseling before high-cost mortgages may be extended.

In addition to the amendments related to high-cost mortgages, the Bureau is also proposing an amendment to Regulation Z and an amendment to Regulation X to implement amendments made by Sections 1414(a) and 1450 of the Dodd-Frank Act to TILA and to RESPA related to homeownership counseling for other types of mortgage loans, respectively.

A. Provisions To Be Analyzed

The discussion below considers the potential benefits, costs, and impacts to consumers and covered persons of key provisions of the proposed rule, as well as certain alternatives proposed, which include:

1. Expanding the types of loans potentially covered by HOEPA to include purchase money mortgage loans and HELOCs;
2. Revising the existing HOEPA APR and points-and-fees triggers to implement Dodd-Frank Act requirements, as well as modifying the APR and points-and-fees calculations to determine whether a closed-end mortgage loan is a HOEPA loan;
3. Adding a prepayment penalty trigger;
4. Adding and revising several restrictions and requirements on loan terms and origination practices for HOEPA loans; [70] and
5. Implementing two separate homeownership counseling-related provisions mandated by the Dodd-Frank Act, namely, requiring lenders to provide a list of homeownership counselors or counseling organizations to applicants for loans covered by RESPA, and requiring creditors to obtain documentation that a first-time borrower of a negatively amortizing loan has received homeownership counseling.

The analysis considers the benefits and costs of certain provisions together where there are substantially similar benefits and costs. For example, expanding the types of loans potentially subject to HOEPA coverage to include purchase money mortgage loans and HELOCs would likely expand the number of high-cost mortgages. The overall impact of this expansion of coverage is generally discussed in the aggregate. In other cases, the analysis considers the costs and benefits of each provision separately.

The analysis also addresses certain alternative provisions in the proposed rule. As discussed in the section-by-section analysis, the Bureau requests comment on these proposed alternatives. The Bureau also seeks comment on the benefits, costs, and impacts of these alternatives for purposes of this analysis.

The analysis relies on data that the Bureau has obtained. The analysis also draws on evidence of the impact of State anti-predatory lending statutes that often place additional or tighter restrictions on mortgage loans than those required by HOEPA prior to the Dodd-Frank Act amendments. However, the Bureau notes that, in some instances, there are limited data that are publicly available with which to quantify the potential costs, benefits, and impacts of the proposed rule. For example, data on the terms and features of HELOCs are more limited and less available than data on closed-end mortgage loans, and the Bureau is not aware of any systematic and representative data on the prevalence of prepayment penalties or on points and fees on either closed-end mortgage loans or HELOCs. Moreover, some potential costs and benefits, such as the value of homeownership counseling, or reduced odds of an unanticipated fee or change in payments, are difficult to quantify. Therefore, the analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule.

B. Baseline for Analysis

The HOEPA amendments are self-effectuating, and the Dodd-Frank Act does not require the Bureau to adopt a regulation to implement these amendments. Thus, many costs and benefits of the proposed rule considered below would arise largely or entirely from the statute, not from the proposed rule. The proposed rule would provide substantial benefits compared to allowing the HOEPA amendments to take effect alone by clarifying parts of the statute that are ambiguous, such as how to determine whether a HELOC is a high-cost mortgage. Greater clarity on these issues should reduce the compliance burdens on covered persons by reducing costs for attorneys and compliance officers as well as potential costs of over-compliance and unnecessary litigation. Moreover, the costs that the regulation would impose beyond those imposed by the statute itself are likely to be minimal.

Section 1022 of the Dodd-Frank Act permits the Bureau to consider the benefits and costs of the rule solely compared to the state of the world in which the statute takes effect without an implementing regulation. To provide the public better information about the benefits and costs of the statute, however, the Bureau has nonetheless chosen to consider the benefits, costs, and impacts of the major provisions of the proposed rule against a pre-statutory baseline (*i.e.,* the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act and the regulation combined).[71] There is one exception: the Bureau does not discuss below the benefits and costs of determining whether a loan is a high-cost mortgage, *e.g.,* the costs of computer systems and software, employee training, outside legal advice, and similar costs potentially necessary to determine whether a loan is defined as a high-cost mortgage.[72] The discussion does not consider these benefits and costs because these changes are required by the Dodd-Frank Act and the Bureau lacks discretion to waive these requirements. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

[70] These restrictions and requirements include requiring that a creditor receive certification that a HOEPA borrower has received pre-loan counseling from an approved homeownership counselor; prohibiting creditors and brokers from recommending default on a loan to be refinanced with a high-cost mortgage; prohibiting creditors, servicers, and assignees from charging a fee to modify, defer, renew, extend, or amend a high-cost mortgage; limiting the fees that can be charged for a payoff statement; banning prepayment penalties; substantially limiting balloon payments; and requiring that a creditor assess a borrower's ability to repay a home equity line of credit.

[71] The Bureau chose as a matter of discretion to consider costs and benefits of provisions that are required by the Dodd-Frank Act to better inform the rulemaking.

[72] Some states have anti-predatory lending statutes that provide additional restrictions on mortgage terms and features beyond those under HOEPA. *See* 74 FR 43232, 43244 (Aug. 26, 2009) (surveying State laws that are coextensive with HOEPA). In general, State statutes that overlap and/or extend beyond the proposed rule would be expected to reduce both the costs and benefits.

C. Coverage of the Proposal

HOEPA. The provisions of the proposed rule that relate to high-cost mortgages apply to any consumer credit transaction that meets one of the HOEPA thresholds and that is secured by the consumer's principal dwelling, including both closed-end mortgage loans (including purchase money mortgages) and open-end credit plans (*i.e.,* home-equity lines of credit, or HELOCs), but not reverse mortgages.

In general in this section, the term ''creditor'' is used to describe depository institutions, credit unions, and independent mortgage companies that extend mortgage loans, though in places the discussion distinguishes between these types of creditors. When appropriate, this section discusses covered persons other than creditors or lenders, such as mortgage brokers and servicers. For example, as required by the Dodd-Frank Act, the restrictions on loan modification or deferral fees and fees for payoff statements would apply to mortgage servicers. In addition, the Bureau is proposing to extend the prohibition on recommended default to mortgage brokers.

Additional Counseling Provisions. The proposed requirement that lenders provide mortgage applicants a list of homeownership counselors applies to applications for a loan covered by RESPA (*i.e.,* purchase money mortgages, subordinate mortgages, refinancings, closed-end home-equity mortgages, open-end credit plans and reverse mortgages) except for lenders who comply with the similar list requirement under the HECM program. The negative amortization counseling provision applies only to closed-end mortgage loans that are made to first-time borrowers, that may result in negative amortization, and that are secured by a dwelling (other than a reverse mortgage or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)).

D. Potential Benefits and Costs to Consumers and Covered Persons

1. Expanding the Types of Loans Potentially Subject to HOEPA Coverage

Expanding the types of loans potentially subject to HOEPA coverage to include purchase money mortgage loans and HELOCs would increase the number of loans potentially subject to HOEPA coverage and as a result, almost certainly, the number of closed-end mortgage loans and HELOCs classified as high-cost mortgages. Data collected under the Home Mortgage Disclosure Act (HMDA) offer a rough illustration of the scope of the expansion of loans potentially covered by HOEPA.[73] Home-improvement and refinance loans accounted for 68 percent of closed-end mortgage loans secured by a principal dwelling reported in the 2010 HMDA data. Put differently, the data suggest that about 32 percent of home-secured closed-end mortgage loans in 2010 were not potentially subject to HOEPA coverage because they were purchase money mortgage loans.[74] If one additionally considers HELOCs, it is likely that closer to 40 percent of closed-end mortgage loans and HELOCs in 2010 were not eligible for HOEPA coverage.[75] The proposed rule would expand the types of loans potentially subject to HOEPA coverage to essentially all closed-end mortgage loans and open-end credit plans secured by a principal dwelling, except reverse mortgage transactions.

The Bureau expects, however, that only a small fraction of loans under the proposed rule would qualify as HOEPA loans and that few lenders would make a large number of HOEPA loans. The Bureau's analysis of loans reported in HMDA suggests that the share of all closed-end mortgage loans for lenders that report in HMDA might increase from roughly 0.04 percent under the current triggers to about 0.3 percent of loans under the revised triggers. Based on analysis of data from HMDA and Call Reports and statistical extrapolation to non-reporting entities, the Bureau estimates that the number of depository institutions that make any closed-end HOEPA loans would increase from about 6–7 percent of depository institutions to approximately 10–11 percent.[76] Many of these creditors are predicted to make few HOEPA loans: The share of depository institutions that make ten or more HOEPA loans is estimated to increase from about 0.5 percent under the current triggers to about 1.5 percent under the proposed rule. Similarly, the share of non-depository creditors for which HOEPA loans comprise more than three percent of all closed-end originations is estimated to rise from under five percent to just over seven percent.[77] Finally, although it is difficult to precisely estimate the share of HELOCs that will meet the HOEPA triggers, the effect of the proposed rule on creditors' business is likely limited because open-end lending generally comprises a small fraction of creditors' lending portfolio. The Bureau's analysis of Call Report data suggest that HELOCs comprise more than half of all home-secured loans for only about 5–6 percent of depository institutions, and those meeting the HOEPA triggers would be a small fraction of those portfolios. Taken together, these estimates suggest that the effect of the proposed rule would be minor for the vast majority of lenders.

a. Benefits and Costs to Consumers

The Bureau believes that the benefits and costs of expanding the types of loans potentially subject to HOEPA coverage, and in turn the likely number of HOEPA loans, should be similar qualitatively to the benefits and costs of current HOEPA provisions.[78]

These benefits may include improving applicants' and borrowers' understanding of the terms and features of a given high-cost mortgage and, in turn, facilitating their ability to shop for mortgages. The rule would also restrict or prohibit loan terms such as prepayment penalties and balloon

[73] The Home Mortgage Disclosure Act (HMDA), enacted by Congress in 1975, as implemented by the Bureau's Regulation C requires lending institutions annually to report public loan-level data regarding mortgage originations. For more information, see *http://www.ffiec.gov/hmda.* The illustration is not exact because not all mortgage lenders report in HMDA. The HMDA data capture roughly 90–95 percent of lending by the Federal Housing Administration and 75–85 percent of other first-lien home loans. Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort & Glenn B. Canner, *The Mortgage Market in 2010: Highlights from the Data Reported under the Home Mortgage Disclosure Act,* 97 Fed. Res. Bull., December 2011, at 1, 1 n.2.

[74] The share of closed-end originations that were purchase money mortgages was lower in 2010 than in most preceding years. The share ranged between 42 percent and 47 percent of originations over the 2004–2008 period before it fell to 31 percent in 2009.

[75] Experian-Oliver Wyman's analysis of credit bureau data indicates that there were roughly 12 percent as many HELOC originations in 2010 as there were originations of closed-end mortgage or home equity loans. Specifically, Experian-Oliver Wyman estimated that there were roughly 7.6 million mortgages and 434,000 home equity loans originated in 2010 compared with about 948,000 HELOC originations. The estimate of 40 percent assumes that the fraction of closed-end originations that were purchase money mortgages among lenders that did not report in HMDA was comparable to the estimated 32 percent for HMDA reporters. More information about the Experian-Oliver Wyman quarterly Market Intelligence Report is available at *http://www.marketintelligencereports.com.*

[76] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Report data, for each quarter, as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. For more information, see *http://www2.fdic.gov/call_tfr_rpts/.*

[77] These estimates are based on the Bureau's analysis of mortgage lending by non-depository institutions based on HMDA data and data from the National Mortgage Licensing System.

[78] The Bureau is not aware of in-depth empirical analyses of the benefits or costs to consumers of the current HOEPA provisions specifically. In contrast, several studies have assessed the impacts of State anti-predatory lending laws, and, where relevant, findings of these studies are discussed below.

payments whose risks may be difficult for some borrowers to evaluate. Both of these factors could reduce the likelihood that a HOEPA borrower faces a sizable, unanticipated fee or increase in payments.

Improving borrowers' understanding of a given loan may increase borrowers' ability to shop, which could have additional benefits to consumers if, as a consequence, borrowers select a more favorable loan (which may be a loan that does not meet the HOEPA triggers) or if borrowers forgo taking out any mortgage, if none would likely be affordable. At least for some borrowers, obtaining information in the process of choosing a mortgage loan may be costly. These costs could include the time and effort of obtaining additional mortgage offers, trying to understand a large number of loan terms, and—particularly for an adjustable-rate loan—assessing the likelihood of various future contingencies.

A borrower who finds shopping for and understanding loan terms difficult or who needs to make a decision in a short timeframe, for example, may select a mortgage with less favorable loan terms than he or she could qualify for because the costs of shopping exceed the expected savings, reduced risk, or other benefits from another mortgage. The proposed rule would reduce the costs of understanding the loan terms. In doing so, the proposed rule would benefit not only applicants who opt, based on better information, not to take out a high-cost mortgage, but also high-cost mortgage borrowers, since these borrowers will have incurred lower costs in choosing a mortgage.

It appears that many consumers do not shop extensively when selecting a mortgage. Surveys of mortgage borrowers suggest that roughly 20–30 percent of borrowers contact one lender and a similar fraction consider only two lenders.[79] Given the estimated benefits to a consumer from shopping, this suggests that borrowers find the time and effort of additional shopping costly, they underestimate the potential value from shopping, or both.[80]

Some mortgage borrowers appear to have difficulty understanding or at least recalling details of their mortgage, particularly the terms and features of adjustable-rate mortgages.[81] Improved information about loan terms may be especially beneficial in the case of high-cost mortgages. At least along some dimensions, the types of borrowers who may be less certain about their mortgage terms are also the types of borrowers who are more likely to have taken out a subprime loan.[82] In addition, focus groups suggest that many subprime borrowers perceive their choice set as limited or experience a sense of desperation.[83] Borrowers with this perspective might be expected to focus on near-term features of the mortgage, rather than on the risk of, for example, a large payment increase due to a teaser rate expiring or to fluctuations in interest rates.

These benefits to consumers arise from making information less costly, but the potential benefits to consumers may be even greater if at least some borrowers make systematic errors in processing information. For example, consumers may not accurately gauge the probability of uncertain events.[84] Thus, it is possible that, in assessing the expected costs of a mortgage offer, some borrowers underestimate the likelihood of circumstances that lead, for example, to incurring a late-payment fee or the likelihood of moving or refinancing and thus of incurring a prepayment penalty.

The proposed rule could increase the cost of credit or curtail access to credit for a small share of HELOC borrowers and purchase money borrowers because, as detailed below, creditors may be reluctant to make HOEPA loans and may no longer offer loans that they currently make but that would meet the new HOEPA triggers. Studies of State anti-predatory mortgage lending laws, however, indicate these impacts of extending HOEPA coverage may be limited, as the State laws typically have only modest effects on the volume of subprime lending overall and on interest rates for loans that meet the State-law triggers.[85]

[79] *See, e.g.,* Jinkook Lee & Jeanne M. Hogarth, *Consumer Information Search for Home Mortgages: Who, What, How Much, and What Else?,* 9 Fin. Serv. Rev. 277 (2000) and James M. Lacko & Janis K. Pappalardo, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment* (Federal Trade Commission Bureau of Economics Staff report, February 2004), *http://www.ftc.gov/be/workshops/mortgage/articles/lackopappalardo2004.pdf.* This survey evidence is broadly consistent with information obtained from lenders through outreach.

[80] Susan E. Woodward & Robert E. Hall, *Diagnosing Consumer Confusion and Sub-Optimal Shopping Effort: Theory and Mortgage-Market Evidence* (Nat'l Bureau of Econ. Research, Working Paper No. 16007, 2010), *available at www.nber.org/papers/w16007.*

[81] *See* Brian Bucks & Karen Pence, *Do Borrowers Know Their Mortgage Terms?,* 64 J. Urb. Econ. 218 (2008) and James M. Lacko & Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* (Federal Trade Commission Bureau of Economics Staff Report, June 2007), *http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf.*

[82] *See* Brian Bucks & Karen Pence, *Do Borrowers Know Their Mortgage Terms?,* 64 J. Urb. Econ. 218 (2008).

[83] *See* James M. Lacko & Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* (Federal Trade Commission Bureau of Economics Staff Report, June 2007), *http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf* and Danna Moore, *Survey of Financial Literacy in Washington State: Knowledge, Behavior, Attitudes, and Experiences* (Washington State University, Social and Economic Sciences Research Center, Technical Report 03–39, 2003), *http://www.dfi.wa.gov/news/finlitsurvey.pdf.*

[84] *See, e.g.,* Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O'Donoghue, & Matthew Rabin, Regulation for Conservatives: Behavioral Economics and the Case for ''Asymmetric Paternalism,'' 151 U. Pa. L. Rev. 1211 (2003).

[85] These studies have generally found that State laws typically have only small effects on the volume of subprime lending overall. Similarly, more restrictive State laws are associated with higher interest rates, but the evidence suggests this is the case only for fixed-rate loans and that the effect is modest. Nevertheless, the stronger laws were associated with a clearer reduction on the amount of subprime lending, and prohibitions of specific loan features such as prepayment penalties appear to reduce the prevalence of the prohibited feature. *See* Raphael W. Bostic, Souphala Chomsisengphet, Kathleen C. Engel, Patricia A. McCoy, Anthony Pennington-Cross, & Susan M. Wachter, *Mortgage Product Substitution and State Anti-Predatory Lending Laws: Better Loans and Better Borrowers?* (U. Pa. Inst. L. Econ., Research Paper No. 09–27, 2009), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1460871;* Lei Ding, Roberto G. Quercia, Carolina K. Reid, and Alan M. White (2011), ''State Anti-Predatory Lending Laws and Neighborhood Foreclosure Rates,'' *Journal of Urban Affairs,* Volume 33, Number 4, pages 451–467.

The arguably muted response of origination volume to passage of State anti-predatory lending laws appears to reflect, in part, the fact that the market substituted other products that did not trigger restrictions or requirements of the statute, for example, loans with lower initial promotional interest rates and longer promotional-rate periods.[86] It is possible that some borrowers would receive a more favorable loan if creditors respond to the expansion of the types of loans potentially subject to HOEPA coverage by substituting mortgage products that would not trigger HOEPA coverage, but it is also possible that some borrowers would receive less favorable loans or no loan at all.

The Bureau is unaware of data that would allow for strong inferences regarding the extent to which such substitution in creditors' mortgage product offerings leads to borrowers taking out more favorable loans. Studies of State anti-predatory mortgage lending statutes, however, suggest that stronger State statutes are associated with lower neighborhood-level mortgage default rates.[87] On the one hand, this finding might be seen as consistent with the possibility that at least some borrowers receive more beneficial loans. On the other hand, it might also reflect that access to credit is more limited in States with comparatively strong anti-predatory statutes, *i.e.,* that borrowers that are more likely to default may be less likely to receive a mortgage in these states. This latter interpretation, however, is arguably more difficult to reconcile with the finding that strong State statutes are estimated to have only a limited effect on the volume of subprime lending.

b. Benefits and Costs to Covered Persons

Expanding the types of loans potentially subject to HOEPA coverage to include purchase money mortgage loans and HELOCs would likely require creditors to generate and to provide HOEPA disclosures to a greater number of borrowers than today. It is difficult to predict the extent to which lenders may avoid making newly eligible loans under the proposed rule. However, the Bureau's estimation methodology in analyzing the paperwork burden associated with the proposed rule implies that on the order of 24,000 loans might qualify as high-cost mortgages or high-cost HELOCs. Nevertheless, the Bureau expects that the share of borrowers that receive a high-cost mortgage would remain a small fraction of all mortgage borrowers (by the Bureau's estimates, likely about 0.3 percent of all closed-end and open-end originations). Creditors would likely also incur costs to comply with the proposed rule that a creditor obtain certification that a HOEPA borrower has received homeownership counseling.

A small number of creditors may also lose a small fraction of revenue as a greater number of loans are subject to HOEPA. Based on outreach, the Bureau understands that some lenders have a negative perception of HOEPA loans. This perception coupled with the restrictions and liability provisions associated with HOEPA loans may reduce creditors' ability or willingness to make high-cost purchase money mortgage loans and HELOCs. Creditors may also be reluctant to make high-cost purchase money mortgage loans that they previously would have extended because of the general inability to sell HOEPA loans in the current market, primarily due to assignee liability.

If creditors were indeed unwilling to make the likely small fraction of loans that meet the revised HOEPA triggers and did not substitute other loan products, they would lose the full revenue from any loans that they choose to no longer originate. A second possibility is that creditors restrict high-cost mortgage lending in part by substituting alternative products that do not meet the HOEPA triggers. Even if all potential HOEPA loans were modified in this way so that the number of originations was unaffected, the alternative loans would presumably be less profitable (or at most equally profitable), since a creditor could have offered the same loan contract prior to the expansion of HOEPA. Thus, even when creditors substitute alternative loan products, creditors likely would incur some revenue loss.

The Bureau believes that expanding the types of loans potentially subject to HOEPA coverage to include purchase money mortgage loans and HELOCs could benefit covered persons that currently provide effective disclosures by leveling the playing field with competitors that fail to do so. It is possible that some creditors that currently originate purchase money mortgage loans or HELOCs that would be covered by expanded HOEPA do not currently provide applicants with clear information regarding the terms and features of those loans. By extending HOEPA to cover such transactions, borrowers will receive additional disclosures and homeownership counseling that may improve their understanding of the loan offer. This could allow creditors that currently provide effective disclosures to compete on more equal footing.

c. Scale of Affected Consumers and Covered Persons

Despite expanding the types of loans potentially subject to HOEPA coverage, which likely would result in an increase in the number and share of loans that are classified as HOEPA loans, HOEPA loans are expected to continue to account for a small fraction of both closed-end mortgage loans and HELOCs. Thus, the proposed rule would be expected to have no direct impact on the vast majority of creditors, since, as noted above, at most about ten percent of creditors are predicted to make HOEPA loans under the proposed rule, and few creditors are expected to make significant numbers of HOEPA loans. Similarly, the proposed rule would not be expected to directly affect the vast majority of borrowers—those who do not apply for or obtain a high-cost mortgage. As noted above, the Bureau estimates that the share of all closed-end mortgage loans for lenders that report in HMDA might increase from roughly 0.04 percent under the current triggers to about 0.3 percent of loans under the revised triggers. The estimated proportion of purchase-money mortgage loans that would qualify as high-cost mortgages is a bit higher, 0.4 percent, but still a small fraction of all such loans.

2. Revised APR and Points-and-Fees Triggers and Potential Use of Transaction Coverage Rate

The statute, and therefore the proposed rule, revise the APR and points-and-fees triggers, which would likely result in an increase in the number of high-cost mortgages. The Bureau estimates, for example, that these changes in the triggers would increase the fraction of refinance and home improvement loans that are high-cost mortgages made by lenders that reported in the 2010 HMDA data from about 0.06 percent of loans to 0.24 percent of loans. The Dodd-Frank Act also expanded the definition of points

[86] *See* Raphael W. Bostic, Souphala Chomsisengphet, Kathleen C. Engel, Patricia A. McCoy, Anthony Pennington-Cross, & Susan M. Wachter, *Mortgage Product Substitution and State Anti-Predatory Lending Laws: Better Loans and Better Borrowers?* (U. Pa. Inst. L. Econ., Research Paper No. 09–27, 2009), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1460871.*

87 Lei Ding, Roberto G. Quercia, Carolina K. Reid, and Alan M. White (2011), ''State Anti-Predatory Lending Laws and Neighborhood Foreclosure Rates,'' *Journal of Urban Affairs,* Volume 33, Number 4, pages 451–467.

[87] Lei Ding, Roberto G. Quercia, Carolina K. Reid, and Alan M. White (2011), ''State Anti-Predatory Lending Laws and Neighborhood Foreclosure Rates,'' *Journal of Urban Affairs,* Volume 33, Number 4, pages 451–467.

and fees to include new charges, including some costs that may be payable after consummation or account opening. The expanded definition of points and fees is expected to reinforce the effect of the revised points-and-fees trigger and to result in a greater number of loans that meet the new points-and-fees threshold.

In addition, as noted in the section-by-section analysis above, the Bureau is proposing in its 2012 TILA–RESPA Proposal a simpler, more inclusive definition of the finance charge. Because the APR and the calculation of points and fees both depend in part on the finance charge, the broader definition of finance charge would likely increase the number of closed-end mortgage loans that would meet the two triggers. The Bureau is seeking comment on whether to adopt modifications to approximately offset this increase, and has proposed two such measures specifically. One would use a transaction coverage rate (TCR) instead of the APR to determine whether a closed-end mortgage loan is a high-cost mortgage. The other would exclude the additional fees that would be captured by the broader definition of finance charge from being counted toward the points and fees trigger for high-cost mortgages.

As discussed in the Bureau's 2012 TILA–RESPA Proposal, in the section-by-section analysis above for proposed § 1026.32(a)(1)(i) and (b)(1)(i), and below in part VII, the Bureau does not currently have sufficient data to model the impact of the more expansive definition of finance charge on HOEPA and other affected regulatory regimes or the impact of potential modifications that the Bureau could make to the triggers to more closely approximate existing coverage levels.[88] The Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment on the potential impacts of a broader finance charge definition and potential modifications to the triggers. The 2012 TILA–RESPA Proposal provides a qualitative assessment of the benefits and costs of expanding the finance charge definition, if the Bureau made no modifications to the triggers for HOEPA or other regimes. In order to facilitate rule-by-rule consideration of potential modifications, this notice provides a qualitative assessment of the impact of potential changes to the APR and points-and-fees calculations for HOEPA.

a. Benefits and Costs to Consumers

The Dodd-Frank Act revisions to the triggers may benefit consumers by increasing the number of loans classified as high-cost mortgages. As a result, the benefits and costs to consumers discussed above in the context of expanding HOEPA coverage are likely similar, at least qualitatively, to the benefits and costs of revising the triggers to capture a greater share of loans. As a result of the revised triggers, these benefits and costs would apply to a larger set of loans, although as noted above, the Bureau believes that high-cost loans would likely remain a small fraction of all loans. These benefits could include a better understanding of the risks associated with the loan which, in turn, may reduce the likelihood that a borrower takes out a mortgage he or she cannot afford; better loan terms due to increased shopping and an absence of loan features whose associated risks may be difficult for borrowers to understand.

Nonetheless, the proposed rule could impose costs on a small number of borrowers by raising the cost of credit or curtailing access to credit if creditors choose not to make loans that meet the revised triggers. As discussed above, however, available evidence based on State anti-predatory lending statutes suggests that tighter restrictions and more expansive definitions of high-cost mortgages typically have only a limited impact on the cost of credit and on originations.

With regard to the Bureau's separate proposal to expand the definition of finance charge, that change would also be expected to increase the number of loans classified as high-cost mortgages, as discussed in the 2012 TILA–RESPA Proposal. The Bureau is seeking comment in this proposal on whether to adopt specific measures that would approximately offset the impact on HOEPA coverage levels of an expanded definition of finance charge. Were the Bureau to adopt the proposed changes, the additional benefits and costs to consumers from further increasing the number of loans classified as high-cost mortgages would not occur. In addition, because the TCR excludes fees to non-affiliated third-parties, the TCR might result in some loans not being classified as high-cost mortgages that would qualify under an APR threshold using the current definition of finance charge.[89] The benefits and costs to consumers with such loans would be the inverse of those described above; the consumers would not receive the benefits of the additional disclosures, the limitations on certain terms and practices for high-cost mortgages, or enhanced remedies under HOEPA. However, consumers would also not face the potential increases in the cost of credit or potential restrictions on access to credit that may accompany expanded HOEPA coverage.

b. Benefits and Costs to Covered Persons

The benefits and costs to covered persons of revising the statutory HOEPA triggers would likely be expected to be similar, at least qualitatively, to those that would result from expanding the types of loans potentially subject to HOEPA coverage to purchase money mortgages and HELOCs. For example, creditors would likely incur costs associated with generating and providing HOEPA disclosures for additional loans that would be covered by the revised HOEPA triggers, as well as costs associated with obtaining certification that a HOEPA borrower has received homeownership counseling. As discussed above, a small number of creditors may also lose a very small fraction of revenue if they are reluctant to make high-cost mortgages and cannot offer alternatives that are as profitable as a HOEPA loan.

As discussed in connection with expanding the types of loans potentially subject to HOEPA coverage to include purchase money mortgages and HELOCs, revising the interest rate and points-and-fees triggers could benefit some covered persons by restricting practices of their competitors to obfuscate product costs. Some creditors may gain market share from competitors that do not currently provide complete

[88] In its 2009 Closed-End Proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contains data for hypothetical $200,000 loans in urban areas. Based on that data, the Board estimated that the share of first-lien refinance and home improvement loans that are subject to HOEPA would increase by .6 percent if the definition of finance charge was expanded. The Board also looked at the impact on two states and the District of Columbia because their anti-predatory lending laws had triggers below the level of the historical HOEPA APR threshold, which is benchmarked to U.S. Treasury securities. The Board concluded that the percentage of first-lien loans subject to those laws would increase by 2.5% in the District of Columbia and 4.0% in Illinois, but would not increase in Maryland. The Bureau is considering the 2010 version of the Bankrate.com survey, but as described in this notice the Bureau is also seeking additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals.

[89] As discussed above, the Bureau believes that the margin of differences between the TCR and current APR is significantly smaller than the margin between the current APR and the APR calculated using the expanded finance charge definition because relatively few third-party fees would be excluded by the TCR that are not already excluded under current rules. The Bureau is considering ways to supplement the data analysis described above to better assess this issue, and seeks comment and data regarding the potential impacts of the TCR relative to APR calculated using the current and proposed definitions of finance charge.

or clear information on loan terms if the HOEPA disclosures and counseling requirements, discussed below, allow applicants to better understand the costs and risks of their mortgages and thus allow creditors that successfully provide more effective disclosures to compete on more equal footing.

Again, as discussed in the 2012 TILA–RESPA Proposal, expanding the definition of finance charge would be expected to increase the number of loans classified as high-cost mortgages, with similar benefits and costs to covered persons as described above. The Bureau has proposed two modifications to approximately offset the impact of an expanded definition of finance charge. Were the Bureau to adopt the measures proposed in this rule, the benefits and costs of coverage under Federal regulatory regimes described above would likely not occur although there might still be effects on the coverage of various State mortgage laws and regulations. Using the TCR for the HOEPA APR test might also result in some loans not being classified as high-cost mortgages that would qualify under an APR threshold using the current definition of finance charge. The benefits and costs to providers of such loans would be the inverse of those described above; creditors would not incur the costs of compliance with the high-cost mortgage requirements or impact on revenue from offering alternative loans, or the potential benefits of restrictions on competitors that offer loans that would be excluded from HOEPA coverage using the TCR for the HOEPA APR test.

To adopt the proposed modifications, creditors might be required to update compliance systems to reflect changes to the finance charge calculation. These updates might involve one-time costs associated with software updates, legal expenses, and personnel training time. As discussed above, if the Bureau adopts the proposal, it expects to provide an implementation period that would coincide either with implementation of the disclosure modifications or with implementation of certain changes to coverage of HOEPA and other regulatory regimes that would be affected by the change in definition. Accordingly, the Bureau believes that software changes and other expenses would be incurred as part of the overall software and compliance system revisions required to comply with the other simultaneous changes, and therefore would not impose a substantial additional burden.

Using different metrics for purposes of disclosures and determining coverage of various regulatory regimes may also impose some ongoing complexity and compliance burden. As discussed above, the Bureau believes that any such effects with regard to transaction coverage rate would be mitigated by the fact that both TCR and APR would be easier to compute under the expanded definition of finance charge than the APR today using the current definition. In addition, the Bureau is seeking comment on whether use of the TCR or other trigger modifications should be optional, so that creditors could use the broader definition of finance charge to calculate APR and points and fees triggers if they would prefer.

The Bureau believes adoption of the proposed modifications would as a whole reduce the economic impacts on creditors of the more expansive definition of finance charge proposed in the 2012 TILA–RESPA Proposal.

3. New Prepayment-Penalty Trigger

The Dodd-Frank Act added a new HOEPA trigger for loans with a prepayment penalty. Under the Dodd-Frank Act, HOEPA protections would be triggered where the creditor may charge a prepayment penalty more than 36 months after consummation, or if the penalty is greater than 2 percent of the amount prepaid. High-cost mortgages, in turn, are prohibited from having prepayment penalties, so the prepayment penalty trigger effectively caps both the time period after consummation during which such a penalty may be charged and the amount of any such penalty.

a. Benefits and Costs to Consumers

The proposed rule would potentially benefit a small number of consumers by potentially making it easier to refinance a high-cost mortgage. Prepayment penalties can prevent consumers from refinancing in circumstances where it would be advantageous for the consumer to do so as would be true if, for example, interest rates fall or the borrowers' credit score improves. The prepayment penalty trigger coupled with the prohibition on prepayment penalties would remove this barrier to obtaining a more favorable loan.

The proposed rule may be particularly beneficial to borrowers that, in taking out a mortgage, under-estimate the likelihood that they will move or that more favorable terms might be available in the future so that refinancing would be advantageous. Likewise, eliminating prepayment penalties could benefit borrowers that select a loan based on terms that are immediately relevant or certain rather than costs and benefits of the loan terms that are uncertain or in the future.

Nevertheless, the proposed rules regarding prepayment penalties would potentially result in some borrowers taking out a mortgage that is less favorable than they would if the proposed rule were not implemented. For example, this would be true for a borrower who is unlikely to move or refinance and may be willing to accept a prepayment penalty in exchange for a lower interest rate if a lender offered mortgage products with such a trade-off.[90] The proposed rules regarding prepayment penalties could, more generally, reduce access to credit for some potential applicants if creditors that previously used such penalties to manage prepayment and interest-rate risk reduce lending or increase interest rates or fees as a result of the proposed rule.

At this time, the Bureau cannot quantify the extent to which lenders may restrict lending or increase fees or interest rates as a result of the proposed rule. To do so would require, among other information, comprehensive data on the terms and features—including details of any prepayment penalties—of mortgage contracts that creditors offer. The Bureau does not currently have such data. Similarly, the Bureau cannot quantify the share of borrowers or the costs to borrowers who may receive a less-favorable mortgage than if the proposed rule did not restrict prepayment penalties. Estimating these quantities would require not only data on the alternative mortgage contracts that borrowers might be offered but also information on how consumers value each of the alternative contracts.

The Bureau believes that the potential benefits and costs to consumers of the high-cost mortgage prepayment penalty trigger, however, could be muted by other Dodd-Frank Act provisions related to ability-to-repay requirements that separately restrict such penalties for closed-end mortgage loans that are not qualified mortgages.[91] For example, under the Dodd-Frank Act, most closed-end, dwelling-secured mortgage loans will generally be prohibited from having a prepayment penalty unless they are fixed-rate, non-higher-priced, qualified mortgages. Moreover, under the Dodd-Frank Act, even such qualifying closed-end mortgage loans may not have a prepayment penalty that exceeds three percent, two percent, or one percent of the amount prepaid during the first, second, and third years following

[90] At least for subprime loans, loans with a prepayment penalty tend to have lower interest rates. *See, e.g.,* Oren Bar-Gill, *The Law, Economics and Psychology of Subprime Mortgage Contracts,* 94 Cornell L. Rev. 1073–1152 (2009).

[91] *See* 15 U.S.C. 1639c.

consummation, respectively (and no prepayment penalty thereafter). Finally, under the Dodd-Frank Act, prepayment penalties are included in the points and fees calculation for qualified mortgages. For qualified mortgages, points and fees are capped at three percent of the total loan amount, so unless a creditor originating a qualified mortgage can forgo some or all of the other charges that are included in the definition of points and fees, it necessarily will need to limit the amount of prepayment penalties that may be charged in connection with the loan.

b. Costs to Covered Persons

The proposed rule could increase the risk and, in turn, the costs that the likely small number of creditors that would make high-cost mortgages would assume in making such a loan. Prepayment penalties are one tool that creditors can use to manage prepayment and interest rate risk and to increase the likelihood that creditors recoup the costs of making the loan. The proposed rule would limit creditors' ability to manage prepayment and interest rate risk in this way, although creditors might be expected to adjust the contracts that they offer to at least partially offset any associated revenue loss. The Bureau notes that the costs to creditors associated with this component of the proposed rule could be muted by the effect of the other provisions of the Dodd-Frank Act that limit prepayment penalties, as discussed above.

4. New and Revised Restrictions and Requirements for High-Cost Mortgages

The proposed rule also tightens existing restrictions for high-cost mortgages, including on balloon payments, acceleration clauses, and loan structuring to evade HOEPA and, as discussed above, bans prepayment penalties for high-cost mortgages. Further, the proposed rule adds new restrictions including limiting fees for late payments and fees for transmission of payoff statements; prohibiting fees for loan modification, payment deferral, renewal, or extension; prohibiting financing of prepayment penalties in a refinancing or of points and fees; and prohibiting recommended default. Finally, the rule provides for an expansion of the existing ability-to-repay requirement to open-end credit plans and adds a requirement that a creditor receive certification that a borrower with a high-cost mortgage has received pre-loan homeownership counseling.

a. Benefits and Costs to Consumers

Taken together, the proposed rules' requirements and restrictions would potentially have a variety of benefits to the likely small number of borrowers with a high-cost mortgage. These potential benefits include reducing the likelihood that a borrower would face unexpected payment increases, increasing the likelihood a borrower can refinance, and improving a borrower's ability to obtain a mortgage that is affordable and otherwise meets their needs.

The restrictions on acceleration clauses, late fees, and fees for loan modification, payment deferral, renewal, or similar actions each reduce the likelihood of unanticipated payment increases. Steady, predictable payments may simplify consumers' budgeting and may particularly benefit borrowers with high-cost mortgages if, as might be expected, these borrowers tend to have fewer resources to draw upon to meet unanticipated payment increases. Although scheduled balloon payments may be more predictable than, say, a late fee, balloon payments may typically be much larger. The proposed rule's limits on balloon payments may reduce the likelihood that a borrower with insufficient financial assets to make the balloon payment feels pressure to refinance the loan, potentially at a higher interest rate or with new fees.

Several of the requirements and restrictions may help borrowers to select the mortgage that best suits their needs. First, the requirement that the creditor assess the repayment ability of an applicant for a high-cost HELOC may help to ensure that the HELOC is affordable for the borrower. Second, the provision that prohibits a creditor from recommending that a consumer default on an existing loan in connection with closing a high-cost mortgage that refinances the existing loan would make it less likely that, because of a pending default, a borrower is pressured or constrained to consummate a mortgage, particularly one whose terms had changed unfavorably after the initial application. Third, by prohibiting financing of points and fees or a prepayment penalty as part of a refinance, the proposed rule could improve borrowers' ability to assess the costs of a given mortgage. In particular, the costs of points and fees or of a prepayment penalty may be less salient to borrowers if they are financed, because the cost is spread out over many years. When points and fees are instead paid up front, the costs may be more transparent for some borrowers, and consequently the borrower may more readily recognize a relatively high fee. Fourth, pre-loan counseling would potentially improve applicants' mortgage decision-making by improving applicants' understanding of loan terms. This benefit is qualitatively similar to the benefits of the HOEPA disclosure. Moreover, counseling may benefit a borrower by, for example, improving the borrower's assessment of his or her ability to meet the scheduled loan payments and by making the borrower aware of other alternatives (such as purchasing a different home or a different mortgage product). Finally, some applicants may find information on loan terms and features to be more useful or effective when delivered in a counseling setting rather than in paper form. Counseling could also complement the HOEPA disclosure by providing applicants an opportunity to resolve questions regarding information on the disclosure itself. In addition, in weighing the feasibility or merits of a loan, applicants may focus on the loan features that are most easily understood, most immediately relevant, or most certain; homeownership counseling could mitigate any bias in an applicant's decision-making by focusing either on less understood or less immediate, but still important, provisions.

It is possible, however, that creditors would respond to the tighter restrictions on high-cost mortgages by increasing the cost of credit or even no longer extending loans to these borrowers. As noted above, however, to date the evidence suggests that restricting high-cost lending may have only modest effects on the cost of credit and on the supply of credit, at least as measured by mortgage originations. Further, the pre-loan counseling requirement could impose costs on borrowers. Not only might the borrower have to pay for counseling, but the need to obtain counseling could conceivably delay the closing process, and such delay may be costly for some borrowers.

b. Benefits and Costs to Covered Persons

Creditors that already assess a HELOC-borrower's ability to repay may benefit from the proposed rule's requirement that all creditors do so if creditors that currently do so gain market share as their competitors incur costs to meet this requirement. The requirement that a creditor receive certification that a borrower with a high-cost mortgage has received pre-loan homeownership counseling may benefit creditors by reducing the time that a creditor would need to spend to help a borrower select a mortgage or to answer a borrower's questions.

In light of the tighter restrictions and requirements on high-cost mortgages, lenders may be less willing to make HOEPA loans. If so, then some creditors' revenues may decline by a likely small proportion either because they do not extend any credit to a borrower to whom they would have previously made a high-cost loan, or because they extend an alternative loan that does not qualify as a high-cost loan but that results in lower revenue.

The Bureau seeks comment on the two proposed alternative definitions of balloon payments. Information provided by interested parties may inform the analysis of the impacts of this provision under the finalized rule.

In some instances the potential impacts of these restrictions may extend beyond creditors. The proposed rule would extend the prohibition on recommended default to brokers as well as creditors, for example. This prohibition is expected to have little impact on covered persons because the Bureau believes that few, if any, creditors or brokers have a business model premised on recommending default on a loan to be refinanced as a HOEPA loan. The limits on various fees, detailed above, apply to servicers as well as creditors. Both of these sets of covered persons could incur revenue losses or greater costs if such fees are important risk management tools.

The Bureau believes creditors would incur recordkeeping and data retention costs due to the proposed requirement that a creditor receive certification that a borrower received pre-loan counseling. Based on the estimation methodology for analyzing the paperwork burden associated with the proposed rule, the Bureau estimates that these costs to be roughly $600 in total for all creditors that make any high-cost mortgages. These costs may be small relative to the quantity of other information that must be retained and that, under the proposed 2012 TILA–RESPA rule, would generally be required to be retained in machine-readable format.

5. Counseling-Related Provisions for RESPA-Covered Loans and Negative-Amortization Loans

The proposed rule would include two additional provisions required by the Dodd-Frank Act related to homeownership counseling that apply to loans with negative amortization and loans covered by RESPA. First, the proposed rule would require lenders to provide a list of HUD-certified or -approved homeownership counselors or counseling organizations to applicants for all mortgages covered by RESPA, except where the lender has provided a list under HUD's HECM program. HECMs are currently subject to counseling and counselor-list requirements, so to avoid duplication and potential borrower confusion, the proposed rule's counselor-list requirement would not be applied to these mortgages.

The proposed rule would also require that both HOEPA borrowers as well as first-time borrowers of loans that may result in negative amortization similarly receive a counselor list. However, HOEPA loans and negative-amortization loans are a subset of loans covered by RESPA, and the proposed counselor-list requirement for these types of loans would be satisfied by complying with the RESPA requirement. Therefore, there are no additional costs and benefits from the counselor-list requirements for either HOEPA loans or negative-amortization loans for first-time borrowers.

With respect to first-time borrowers with a loan that could have negative amortization, the proposed rule would require that a creditor receive documentation that the borrower received homeownership counseling. The proposed rule would not specify any particular elements that must be included in the documentation.

a. Benefits and Costs to Consumers

The two non-HOEPA homeownership counseling provisions included in the proposed rule would generally have benefits to consumers that are similar in nature to those of requiring that creditors receive certification that a borrower with a high-cost mortgage has received homeownership counseling. In particular, as discussed above, homeownership counseling may improve borrowers' understanding of their mortgages, it may complement the information provided in disclosures, and it could counteract any tendency among borrowers to consider only loan features that are most easily understood, most immediately relevant, or most certain.

The proposed rule would not mandate counseling for potential borrowers of mortgages covered by RESPA, but requiring lenders to provide the list of homeownership counselors or counseling organizations may prompt some borrowers who were unaware of these resources (or of their geographic proximity) to seek homeownership counseling. This may especially be the case for borrowers who feel confused or overwhelmed by the information and disclosures provided by the lender.

In contrast, the proposed rule would require that a creditor receive documentation that a first-time borrower that has applied for a loan that could have negative amortization has received homeownership counseling. First-time borrowers may particularly benefit from homeownership counseling if they have greater difficulty, relative to other borrowers, in understanding or assessing loan terms and features because they do not have experience with obtaining or paying on a mortgage.

The Bureau believes that requiring applicants of loans covered by RESPA to receive a list of HUD-certified or -approved homeownership counselors or counseling organizations should not result in costs to consumers beyond those passed on by creditors. More specifically, the information contained on the list should be readily understandable, the time required of the borrower to receive the disclosure should be minimal, and borrowers may choose to not follow up on this information.

First-time borrowers with a loan that may have negative amortization will likely have to pay for the counseling, either upfront or by financing the fee. In addition, counseling may be costly, at least in terms of time, for borrowers who do not find it helpful. In addition, the counseling requirement may impose delays on loan closing, which could be costly, for example, for a borrower who is contractually obligated to close on a home by a certain date.

b. Benefits and Costs to Covered Persons

The Bureau believes that covered persons would incur costs from providing potential borrowers of loans covered by RESPA with a list of HUD-certified or approved homeownership counselors or counseling organizations but that these costs are likely less than one dollar per application. The Bureau expects that the list would be a single page and that it would be provided with other materials that the lender is required to provide. In addition, the Bureau expects to create a Web site portal to make it easy for lenders and consumers to obtain lists of homeownership counselors in their areas, and the Bureau solicits comments on alternative measures that the Bureau could take to minimize the compliance burden associated with producing and providing the counselor list.

The Bureau also believes that the costs of obtaining documentation that a first-time borrower with a negative-amortization loan has obtained counseling are likely small because such loans should be quite rare. Not only are loans with negative-amortization features uncommon, but also the provision would apply only to first-time

borrowers for such loans.[92] Further, the creditor would only be required to receive the documentation of counseling. For these reasons, the Bureau believes that the burden to creditors would be minimal.

As discussed in the section-by-section analysis above, the proposed counseling requirements for high-cost mortgage borrowers differ from the counseling requirements for mortgages that may result in negative amortization. For creditors that extend both high-cost mortgages and loans that may negatively amortize, the Bureau recognizes that creditors may incur costs from having to ensure compliance with differing counseling requirements. These costs may include requiring additional staff training. The Bureau solicits comment on whether conforming the counseling requirements for mortgages that may result in negative amortization with the counseling requirements for high-cost mortgages would help ease compliance burdens on creditors.

Creditors may benefit from these two counseling-related provisions by gaining market share relative to creditors that do not provide clear and complete information to borrowers regarding loan terms. This could occur if, as a result of counseling, applicants to such a creditor obtained a better understanding of the loan offer and were less likely to accept it.

E. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in Section 1026

The Bureau does not expect the proposed rule to have a unique impact on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026. As noted above, although not all creditors report in HMDA, those data suggest that the vast majority of creditors do not make any HOEPA loans. The Bureau expects this would be the case under the proposed rule as well, so few institutions would likely be directly impacted by the proposed rule. As might be expected given the fact that most depository institutions that make mortgage loans (almost 99 percent of the universe of depository institutions that make any closed-end mortgage loans or HELOCs) are estimated to have less than $10 billion in total assets, the estimated share of these lenders that currently make any closed-end HOEPA loans of 6–7 percent is essentially identical to the estimate for all depository institutions. Likewise, about 9–10 percent of depository institutions and credit unions with $10 billion or less in total assets are predicted to make any HOEPA loans under the proposed rule, a fraction just a bit below the estimated 10–11 percent for all depository institutions and credit unions. The impact of the proposed rule on depository institutions and credit unions may vary based on the types of loans that an institution makes currently including, for example, the share of mortgage lending comprised of purchase money mortgages and HELOCs relative to closed-end refinance and home-improvement loans.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

The impact of the proposed rule on consumers in rural areas may differ from those for consumers located in urban areas for several reasons. First, rural borrowers may have fewer creditors that they readily comparison shop among. A potential reduction in lending for newly classified HOEPA loans may therefore have a greater impact in rural areas, and a rural borrower that is offered a high-cost mortgage may be less able to obtain a non-HOEPA loan from a different lender. Moreover, mobile homes are more common in rural areas; nearly 16 percent of housing units in rural areas are mobile homes compared to less than four percent of housing units in urban areas.[93] From outreach, the Bureau understands that loans for manufactured housing typically have higher interest rates and therefore may be more likely than other mortgages to exceed the revised interest rate trigger. HMDA data suggest this is likely to be the case, since the share of home improvement or refinance loans (those types of loans currently covered by HOEPA) that are identified as HOEPA loans in those data is about 2–3 percent for loans secured by a manufactured home compared with about 0.05 percent of loans secured by other types of 1–4 family homes, for example. In addition, the HMDA data do not include lenders that do not have a branch in a metropolitan statistical area. These data, which inform the analysis of the proposed rule, are therefore unlikely to be representative of rural mortgage transactions. For these reasons, the Bureau requests that interested parties provide data or information on the impact of the proposed rule on consumers in rural areas.

F. Additional Analysis Being Considered and Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposed provisions and additional proposed modifications before finalizing the proposal. As noted above, there are a number of areas where additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis. The most significant of these include information or data addressing:

- Measures to account for potential adoption of a broader definition of finance charge, as separately proposed in the Bureau's 2012 TILA–RESPA Proposal;
- The two proposed alternative definitions of a balloon payment;
- Whether conforming the counseling requirements for negative-amortization loans with those for high-cost mortgages would reduce compliance burdens;
- Whether data speak to the distribution of loan terms and features of HELOCs as well as information or data on how provisions in the proposed rule may affect the share of HELOCs that meet the post-Dodd-Frank Act triggers compared to the share of closed-end mortgage loans that meet these triggers;
- Whether certain types of compensation paid to originators of open-end credit plans should be included in the definition of points and fees for open-end credit plans; and
- Whether the homeownership counselor list for loans covered by Regulation X should be required to be given to applicants for all federally related mortgage loans, *i.e.,* including refinances and home-equity lines of credit, in addition to applicants for purchase money mortgages.

Information provided by interested parties regarding these and other aspects of the proposed rule may be considered in the analysis of the costs and benefits of the final rule.

To supplement the information discussed in in this preamble and any

[92] Data from the 2007 Survey of Consumer Finances (SCF), the most recent survey year available at the time this analysis was conducted, indicate that only 0.3 percent of mortgages in 2007 reportedly had negative-amortization features. This estimate is only suggestive because it is an estimate of the stock, rather than the flow, of mortgages with such features. That said, given changes in the mortgage market since 2007, the Bureau believes it is likely the case that mortgages that may potentially negatively amortize likely have become even rarer since 2007. The 2007 estimate is lower than estimates from the prior six waves of the SCF, which ranged from 1.3 to 2.3 percent.

[93] Estimates are five-year estimates from the 2006–2010 American Community Surveys (*http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_GCT2501.US26&prodType=table*).

information that the Bureau may receive from commenters, the Bureau is currently working to gather additional data that may be relevant to this and other mortgage related rulemakings. These data may include additional data from the National Mortgage License System (NMLS) and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. The Bureau expects that each of these datasets will be confidential. This section now describes each dataset in turn.

First, as the sole system supporting licensure/registration of mortgage companies for 53 agencies for states and territories and mortgage loan originators under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), NMLS contains basic identifying information for non-depository mortgage loan origination companies. Firms that hold a State license or State registration through NMLS are required to complete either a standard or expanded Mortgage Call Report (MCR). The Standard MCR includes data on each firm's residential mortgage loan activity including applications, closed loans, individual mortgage loan originator activity, line of credit and other data repurchase information by state. It also includes financial information at the company level. The expanded report collects more detailed information in each of these areas for those firms that sell to Fannie Mae or Freddie Mac.[94] To date, the Bureau has received basic data on the firms in the NMLS and de-identified data and tabulations of data from the Mortgage Call Report. These data were used, along with data from HMDA, to help estimate the number and characteristics of non-depository institutions active in various mortgage activities. In the near future, the Bureau may receive additional data on loan activity and financial information from the NMLS including loan activity and financial information for identified lenders. The Bureau anticipates that these data will provide additional information about the number, size, type, and level of activity for non-depository lenders engaging in various mortgage origination and servicing activities. As such, it supplements the Bureau's current data for non-depository institutions reported in HMDA and the data already received from NMLS. For example, these new data will include information about the number and size of closed-end first and second loans originated, fees earned from origination activity, levels of servicing, revenue estimates for each firm and other information. The Bureau may compile some simple counts and tabulations and conduct some basic statistical modeling to better model the levels of various activities at various types of firms. In particular, the information from the NMLS and the MCR may help the Bureau refine its estimates of benefits, costs, and impacts for each of the revisions to the GFE and HUD–1 disclosure forms, changes to the HOEPA thresholds, changes to requirements for appraisals, updates to loan originator compensation rules, proposed new servicing requirements and the new ability to pay standards.

Second, the Bureau is working to obtain a random selection of loan-level data from a handful of lenders. The Bureau intends to request loan file data from lenders of various sizes and geographic locations to construct a representative dataset. In particular, the Bureau will request a random sample of ''GFEs'' and ''HUD–1'' forms from loan files for closed-end mortgage loans. These forms include data on some or all loan characteristics including settlement charges, origination charges, appraisal fees, flood certifications, mortgage insurance premiums, homeowner's insurance, title charges, balloon payment, prepayment penalties, origination charges, and credit charges or points. Through conversations with industry, the Bureau believes that such loan files exist in standard electronic formats allowing for the creation of a representative sample for analysis. The Bureau may use these data to further measure the impacts of certain proposed changes. Calculations of various categories of settlement and origination charges may help the Bureau calculate the various impacts of proposed changes to the definitions of finance charges and other aspects of the proposal, including proposed changes in the number and characteristics of loans that exceed the HOEPA thresholds, loans that would meet the high rate or high risk definitions mandating additional consumer protections, and loans that meet the points and fees thresholds contained in the ability-to-repay provisions of the Dodd-Frank Act.

Third, the Bureau may also use data from the pilot phases of the National Mortgage Database (NMDB) to refine its proposals and/or its assessments of the benefits costs and impacts of these proposals. The NMDB is a comprehensive database, currently under development, of loan-level information on first lien single-family mortgages. It is designed to be a nationally representative sample (1 percent) and contains data derived from credit reporting agency data and other administrative sources along with data from surveys of mortgage borrowers. The first two pilot phases, conducted over the past two years, vetted the data development process, successfully pretested the survey component and produced a prototype dataset. The initial pilot phases validated that credit repository data are both accurate and comprehensive and that the survey component yields a representative sample and a sufficient response rate. A third pilot is currently being conducted with the survey being mailed to holders of five thousand newly originated mortgages sampled from the prototype NMDB. Based on the 2011 pilot, a response rate of fifty percent or higher is expected. These survey data will be combined with the credit repository information of non-respondents, and then deidentified. Credit repository data will be used to minimize non-response bias, and attempts will be made to impute missing values. The data from the third pilot will not be made public. However, to the extent possible, the data may be analyzed to assist the CFPB in its regulatory activities and these analyses will be made publically available.

The survey data from the pilots may be used by the Bureau to analyze consumers shopping behavior regarding mortgages. For instance, the Bureau may calculate the number of consumers who use brokers, the number of lenders contacted by borrowers, how often and with what patterns potential borrowers switch lenders, and other behaviors. Questions may also assess borrowers understanding of their loan terms and the various charges involved with origination. Tabulations of the survey data for various populations and simple regression techniques may be used to help the Bureau with its analysis.

In addition to the comment solicited elsewhere in this proposed rule, the Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. The Bureau also requests comment on the use of the data described above. Further, the Bureau seeks information or data on the proposed rule's potential impact on consumers in rural areas as compared to consumers in urban areas. The Bureau also seeks information or data on the potential impact of the proposed rule on depository institutions and credit

[94] More information about the Mortgage Call Report can be found at *http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx.*

unions with total assets of $10 billion or less as described in Dodd-Frank Act section 1026 as compared to depository institutions and credit unions with assets that exceed this threshold and their affiliates.

VII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) 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.[95] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[96]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

A. Overview of Analysis and Data

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.[97] It considers effects of the revised APR and points-and-fees triggers and of the extension of HOEPA coverage to purchase money mortgages and HELOCs. In addition, the analysis considers the impact of the two non-HOEPA counseling-related provisions which would be implemented as part of the proposed rule. The analysis does not consider the interaction between State anti-predatory lending laws and HOEPA. The Bureau notes that State statutes that place tighter restrictions on high-cost mortgages than either current or amended HOPEA may reduce the economic impact of the proposed rule.[98]

The analysis below uses a pre-statute baseline—except for one of the aspects of the rule over which the Bureau lacks discretion.[99] The Bureau does not have discretion over whether to extend HOEPA to purchase money mortgage loans and HELOCs. Lenders today generally have processes and often software systems to determine whether a loan is a HOEPA loan. Lenders will have to update these processes and systems to determine whether a purchase money mortgage loan or HELOC is a HOEPA loan. The cost of determining whether a loan is a HOEPA loan is therefore unavoidable under the statute.

The analysis considers the impact of the proposed rule's revisions to HOEPA on closed-end lending by depository institutions (DIs), closed-end lending by non-depositories (non-DIs), and home equity lines of credit separately because these components of the analysis necessarily rely on different data sources. The starting point for much of the analysis of closed-end lending is loan-level data reported under the Home Mortgage Disclosure Act (HMDA).[100] The HMDA data include information on high-cost mortgage lending under the current HOEPA triggers, but some creditors are exempt from reporting to HMDA.[101] For exempt DIs, the Bureau estimates the extent of creditors' high-cost, closed-end lending under the current and post-Dodd Frank Act triggers based on Call Report data (which are available for all DIs). For exempt non-DIs, the Bureau supplements data on non-depositories that report in HMDA with data from the Nationwide Mortgage Licensing System and Registry Mortgage Call Report (NMLS/MCR).[102] The Bureau does not have comprehensive loan-level data for HELOCs comparable to the HMDA data for closed-end mortgage loans, and this portion of the analysis draws on Call Report data as well as data from the 2007 Survey of Consumer Finances (SCF).[103] Finally, in all cases the Bureau notes that it is not aware of representative quantitative data on prepayment penalties, but available evidence suggests that this new trigger would have little impact on HOPEA coverage.[104]

As a measure of the potential impact of the proposed rule, the analysis considers the potential share of revenue a creditor may forgo if it were to make no high-cost mortgages.[105] The Bureau believes that this approach very likely provides a conservative upper bound on the effects on creditors' revenues, since some of the new loans potentially subject to HOEPA coverage might still be made (either as high-cost mortgages or with alternative terms to avoid the HOEPA triggers). The Bureau notes that

[95] 5 U.S.C. 601 *et seq.*

[96] 5 U.S.C. 609.

[97] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (''NAICS'') classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[98] In its analysis of a proposed change to the definition of finance charge, the Board noted that, at least as of 2009, only Illinois, Maryland, and Washington, DC had APR triggers below the then-existing HOEPA APR trigger for first-lien mortgage loans. 74 FR 43232, 43244 (Aug. 26, 2009).

[99] The Bureau notes that the HOEPA amendments of the Dodd-Frank Act are self-effectuating and that the Dodd-Frank Act does not require the Bureau to promulgate a regulation. Viewed from this perspective, the proposal reduces burdens by clarifying statutory ambiguities that may impose costs such as increased costs for attorneys and compliance officers, over-compliance, and unnecessary litigation.

[100] The Home Mortgage Disclosure Act (HMDA), enacted by Congress in 1975, as implemented by the Bureau's Regulation C requires lending institutions annually to report public loan-level data regarding mortgage originations. For more information, see *http://www.ffiec.gov/hmda.*

[101] Depository institutions with assets less than $39 million (in 2010), for example, and those with branches exclusively in non-metropolitan areas and those that make no purchase money mortgage loans are not required to report to HMDA. Reporting requirements for non-depository institutions depend on several factors, including whether the company made fewer than 100 purchase money or refinance loans, the dollar volume of mortgage lending as share of total lending, and whether the institution had at least five applications, originations, or purchased loans from metropolitan areas.

[102] The Nationwide Mortgage Licensing System is a national registry of non-depository financial institutions including mortgage loan originators. Portions of the registration information are public. The Mortgage Call Report data are reported at the institution level and include information on the number and dollar amount of loans originated, the number and dollar amount of loans brokered, and on HOEPA originations. The analysis in this part draws on HMDA and NMLS/MCR data by classifying non-depository institutions with similar reported amounts of originations and of HOEPA lending in the two data sets.

[103] The Bureau assumes that few, if any, non-DIs originate HELOCs due to lack of funding for lines of credit and lack of access to the payment system. Data from the 2010 SCF will be available for analysis in connection with the final rule.

[104] Trends and aggregate statistics suggest that loans originated in recent years are very unlikely to have prepayment penalties for two reasons. First, prepayment penalties were most common on subprime and near-prime loans, a market that has disappeared. Second, by one estimate, nearly 90 percent of 2010 originations were purchased by Fannie Mae or Freddie Mac or were FHA or VA loans (Tamara Keith, ''What's Next for Fannie, Freddie? Hard to Say,'' February 10, 2011, available at *http://www.npr.org/2011/02/10/133636987/whats-next-for-fannie-freddie-hard-to-say*). Fannie Mae and Freddie Mac purchase very few loans with prepayment penalties—in a random sample of loans from the FHFA's Historical Loan Performance data, a very small percentage of loans originated between 1997 and 2011 had a prepayment penalty. Finally, the Bureau believes that prepayment penalties that would trigger HOEPA coverage would be rare, because other Dodd-Frank Act provisions concerning ability to repay requirements and ''qualified mortgages'' will separately restrict such penalties.

[105] Revenue has been used in other analyses of economic impacts under the RFA. For purposes of this analysis, the Bureau uses revenue as a measure of economic impact. In the future, the Bureau will consider whether a feasible alternative numerical measure would be more appropriate for financial firms.

at least some creditors currently extend HOEPA loans. Further, creditors may still make some loans that might otherwise meet the new HOEPA triggers by changing the loan terms to avoid being a high-cost mortgage (though perhaps with a partial revenue loss).[106] Moreover, this approach is consistent with the possibility that some creditors may be less willing to make high-cost mortgages in the future due to new and revised restrictions on HOEPA loans, but the Bureau believes that any such effect on creditors' willingness to extend HOEPA loans likely is small.[107]

B. Overview of Market for High-Cost Mortgages

HOEPA loans comprise a small share of total mortgage loans. HMDA data indicate that less than one percent of loans meet the current HOEPA triggers and that this share has generally declined over time.[108] Between 2004 and 2010, HOEPA loans typically comprised about 0.2 percent of originations of home-secured refinance or home-improvement loans made by creditors that report in HMDA. This fraction peaked at 0.44 percent in 2005 and fell to 0.06 percent by 2010.[109] Similarly, few creditors originate HOEPA loans. The number of creditors extending HOEPA loans ranged between about 1,000 and 2,300 over the 2004 and 2009 period, or between 12 and 27 percent of creditors. However, only about 650 creditors in HMDA, or roughly eight percent of creditors in HMDA, reported any HOEPA loans in 2010.[110]

C. Number and Classes of Affected Entities

Around half of commercial banks and thrifts meet the Small Business Administration's definition of small entities, and the large majority of these institutions originate mortgages (Table 1). By comparison, almost 90 percent of credit unions are small entities, but about 40 percent of credit unions have no closed-end mortgage originations. About 90 percent of non-DI mortgage originators have revenues below the relevant Small Business Administration threshold.[111]

TABLE 1—ESTIMATED NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES BY NAICS CODE

	NAICS	Small entity threshold	Total entities	Small entities	Entities that originate closed-end mortgages	
					Total	Small
Depository institutions						
Commercial banks	522110	$175M assets	6,596	3,764	6,362	3,597
Savings institutions [a]	522120	$175M assets	1,145	491	1138	487
Credit unions [b]	522130	$175M assets	7,491	6,569	4,359	3,441
Non-depository institutions						
Mortgage companies [c]	522292	$7M revenues	2,515	2,282	2,515	2,282

[a] Asset size obtained from December 2010 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of creditors originating any closed-end mortgages based on 2010 HMDA data and, for entities that do not report to HMDA, loan counts are projected based on Call Report data.

[b] Asset size and engagement in closed-end mortgage loans obtained from December 2010 National Credit Union Administration Call Report. Count of credit unions engaged in closed-end mortgage transactions may include some institutions that make only first-lien open-end loans.

[c] Estimates are based on the NMLS/MCR data for Q2 and Q3 of 2011. Entities that report to MCR are considered to originate mortgages if they report either: (1) Originating at least one closed-end mortgage; or (2) a positive dollar value of originated loans. To estimate the number of small entities, revenue for entities that did not report revenue is estimated based on the dollar value and number of loans originated and the dollar value and number of loans brokered. Revenue is not reported for 78 percent of mortgage companies in the MCR data, so the estimated number of small entities may contain substantial estimation uncertainty and may be more sensitive to model specification than if revenue were available for a larger fraction of entities.

D. Impact of Revised Triggers on Depository Institutions

1. Closed-End HOEPA Lending by Small Depository Institutions

To assess the proposed rule's impacts, the analysis aims to estimate the counterfactual set of loans that would have met the definition of a HOEPA loan if the revised triggers had been in effect in 2010.[112] One can readily

[106] By the same token, the analysis also implicitly assumes that creditors that do not currently make HOEPA loans will not rethink their policies and make HOEPA loans in the future. Although it seems the less likely concern, the Bureau notes that creditors could change their policies if a large share of creditors' originations would now meet the HOEPA thresholds.

[107] The Bureau has proposed separately in the 2012 TILA–RESPA Proposal to expand the definition of the finance charge. If that change is adopted, it would be expected to increase the number of loans classified as high-cost mortgages under HOEPA's APR and points-and-fees tests separate and independent from the statutory changes to the APR triggers. The Bureau notes that it has accounted for the impacts of this potential change in the 2012 TILA–RESPA Proposal, including in that Proposal's Initial Regulatory Flexibility Analysis and Small Business Review Panel Process. In connection with the proposed definition change, the Bureau seeks comment in this proposal on whether to modify the triggers, including by using the TCR in place of the APR, to approximately offset the impact of a broader definition of finance charge on HOEPA coverage levels. As discussed in the Dodd-Frank Act section 1022 analysis, adoption of those adjustments might impose some one-time implementation costs and compliance complexity, but the Bureau believes adoption of the proposed modifications would as a whole reduce the economic impacts on creditors of the more expansive definition of finance charge proposed in the 2012 TILA–RESPA Proposal.

[108] The information on whether a loan was a HOEPA loan has been collected in HMDA since 2004.

[109] These percentages correspond to nearly 36,000 loans in 2005 and roughly 3,400 loans in 2010.

[110] The statistics for 2004–2009 are drawn from Federal Reserve *Bulletin* articles that summarize the HMDA data each year. In contrast, the 2010 numbers are based on the analysis of 2010 HMDA data and may differ slightly from those presented in the *Bulletin* article that summarizes the 2010 HMDA data due to subsequent data revisions and small differences in definitions (*e.g.,* not counting a loan as a HOEPA loan even if it is flagged as a HOEPA loan if it appears ineligible to be a HOEPA loan because the property is not owner-occupied.)

[111] The Bureau expects that the economic impact of the proposed rule on mortgage brokers that are small entities (for example, from prohibiting brokers from recommending default) would not be significant.

[112] The HMDA data contain a flag which indicates whether a loan was classified as a HOEPA loan as well as a variable that reports the spread between the loan's APR and the APOR for higher-priced mortgage loans. Higher-priced mortgage loans are first-liens for which this spread is at least 1.5 percentage points and subordinate liens with a

Continued

identify 2010 HMDA loans that would have met the revised APR triggers based on information in the HMDA data. In contrast, the Bureau is not aware of an approach to directly determine whether a loan in the 2010 HMDA data would meet the revised points-and-fees trigger and, hence, whether the loan would have been flagged as a HOEPA loan. To overcome this data limitation, the Bureau modeled the probability that a loan would have been flagged as a HOEPA loan in HMDA as a function of: (i) the loan amount and (ii) the difference between the loan's APR and the APR trigger.[113]

The changes to the APR and points-and-fees triggers are estimated to increase the share of loans made by HMDA-reporters and potentially subject to HOEPA that are classified as high-cost mortgages from 0.06 percent of loans to 0.3 percent.[114] Under the current HOEPA regulations, fewer than five percent of small depository institutions are estimated to make *any* HOEPA loans, and only about 0.2 percent of small DIs are estimated to have made at least 10 HOEPA loans in 2010 (Table 2). As expected, the estimates imply that the shares of lenders would have been larger if the revised triggers had been in place. Nevertheless, by these estimates, HOEPA loans would have remained a small fraction of closed-end originations by small DIs, and the vast majority of small DIs would have made no HOEPA loans under the revised triggers.

TABLE 2—ESTIMATED NUMBER OF SMALL DIS THAT ORIGINATE ANY HOEPA LOANS OR 10 OR MORE HOEPA LOANS UNDER THE CURRENT AND REVISED HOEPA TRIGGERS

	Pre-Dodd-Frank Act	Post-Dodd-Frank Act
Estimated number that make any HOEPA loans	505	655
Percent of small depository institutions	4.7%	6.1%
Estimated number that make 10 or more HOEPA loans	24	50
Percent of small depository institutions	0.2%	0.5%

2. Costs to Small Depository Institutions From Changes in Closed-End Originations

To gauge the potential effect of the Dodd-Frank Act amendments to HOEPA related to high-cost, closed-end mortgage loans, the Bureau approximates the potential revenue loss to DIs that report in HMDA based on the estimated share, from HMDA, of home-secured loan originations that would be high-cost mortgage loans and the share of total income (for banks and thrifts) or total outstanding balances (for credit unions) accounted for by mortgage loans based on Call Report data.[115]

The Bureau estimates that high-cost closed-end mortgage loans account for just a fraction of revenue for most small DIs under both the current and revised triggers (Table 3). The Bureau estimates that, post-Dodd-Frank Act, four percent of small DIs might lose more than one percent of revenue, compared with 1.5 percent of small DIs under the current triggers. At most, about one percent of small DIs would have revenue losses greater than three percent if these creditors chose to make no high-cost, closed-end mortgage loans.

TABLE 3—ESTIMATED REVENUE SHARES ATTRIBUTABLE TO HIGH-COST, CLOSED-END MORTGAGE LENDING FOR SMALL DIS PRE- AND POST-DODD-FRANK ACT

	Pre-Dodd-Frank Act	Post-Dodd-Frank Act
Number with HOEPA revenue share >1% [a]	162	429
Percent of small depositories	1.5%	4.0%
Number with HOEPA revenue share >3% [a]	36	102

spread of 3.5 percentage points or greater. Importantly, the ''higher-priced'' mortgage loan thresholds are well below the APR triggers for HOEPA. The spread is calculated as of the date the loan's rate was set. Based on these variables, the analysis defines as a high-cost mortgage any HMDA loan that is either flagged as a HOEPA loan or that has an estimated APR spread that exceeds the relevant HOEPA trigger. The current HOEPA APR trigger is relative to a comparable Treasury security, but the reported spread in HMDA is relative to APOR, so it is not possible to determine with certainty whether a HMDA loan meets the current APR trigger, and not all loans that are estimated to be above the APR trigger are flagged as HOEPA loans. The Bureau also considered a narrower definition of a high-cost mortgage, namely, any loan that was identified as a HOEPA loan in the HMDA data. Conclusions based on this alternative definition are qualitatively similar to those under the primary, more conservative definition described above.

[113] The statistical model also includes creditor-specific fixed effects, which are intended to capture systematic unobserved differences across creditors that affect the share of a creditor's total loans that are HOEPA loans. The model captures the effect of the changes in the APR triggers through the fact that the gap between the triggers and APR would generally narrow, which increases the estimated probability that a loan would have been flagged as a high-cost loan. Modeling the probability as a function of loan size indirectly approximates the effect of the Dodd-Frank Act revisions to the points-and-fees triggers. More specifically, the points-and-fees trigger is defined, in part, based on points and fees as a percentage of the loan amount, so that, given two loans with identical points and fees, the loan with a smaller loan amount should be more likely to be flagged as a HOEPA loan. Indeed, HOEPA loans are more prevalent for loans with smaller loan amounts in HMDA. Thus, this appears to provide a reasonable approach to capturing variation in the likelihood that a loan is a HOEPA loan. Nonetheless, the Bureau solicits information or data (including data on points and fees or on prepayment penalties) from interested parties that could be used to refine or evaluate this approximation.

[114] Loans potentially subject to HOEPA coverage in this context are loans for non-business purposes secured by a lien on an owner-occupied 1–4 family property, including manufactured homes. In addition, the estimate of the share of loans subject to HOEPA coverage currently excludes purchase money mortgages, which are included in the estimate of this share under the proposed rule.

[115] Data on interest and fee income are not available in the credit union Call Report data. This calculation assumes that interest and fee income for HOEPA and non-HOEPA loans are comparable at banks and thrifts and assumes that the share of outstanding balances accounted for by mortgages is a reasonable proxy for the share of mortgage revenue for a given credit union.

TABLE 3—ESTIMATED REVENUE SHARES ATTRIBUTABLE TO HIGH-COST, CLOSED-END MORTGAGE LENDING FOR SMALL DIS PRE- AND POST-DODD-FRANK ACT—Continued

	Pre-Dodd-Frank Act	Post-Dodd-Frank Act
Percent of small depositories	0.3%	0.9%

[a] Revenue shares for commercial banks and savings institutions are based on interest and fee income from loans secured by 1–4 family homes (including home equity lines of credit, which cannot be distinguished) as a share of total interest and non-interest income. NCUA Call Report data for credit unions do not contain direct measures of income from mortgages and other sources, so the mortgage revenue share is assumed to be proportional to the dollar value of closed- and open-end real-estate loans and lines of credit as a share of total outstanding balances on loans and leases.

3. Open-End HOEPA Lending by Small Depository Institutions

Call Report data for banks and thrifts indicate that nearly all banks and thrifts that make home-equity lines of credit also make closed-end mortgage loans, so the estimated numbers of affected entities are essentially identical to those shown in the first two rows of Table 1.[116] Based on the credit union Call Report data, the Bureau estimates that 268 credit unions—all of which were small entities—originated HELOCs but no closed-end mortgage loans in 2010. Thus, the Bureau estimates that 4,627 credit unions and 3,709 small credit unions would potentially be affected by either the changes to closed-end triggers or the extension of HOEPA to home equity lines of credit. With regard to non-DIs, the Bureau estimates that few, if any, non-DIs that are small entities make HELOCs because non-DIs generally are less likely to be able to fund lines of credit and to have access to the payment system.

4. Effect of the Dodd-Frank Act on Open-End HOEPA Lending

HELOCs account for more than ten percent of the value of outstanding loans and leases for about 12–13 percent of small DIs, and they comprise more than one-quarter of outstanding balances on loans and leases for only about 2–3 percent of small DIs (Table 4).

TABLE 4—HELOCS REPRESENT A MODEST PORTION OF MOST SMALL DEPOSITORIES' LENDING

	Percent of DIs [a]	Number of DIs [a]
HELOCs > 10% of all loans/leases	11.9–13.4	1,286–1,451
HELOCs > 25% of all loans/leases	2.3–2.9	251–319

[a] First-lien HELOCs cannot be distinguished from other first liens in the credit union Call Report data. The ranges reflect alternative assumptions on the value of credit union's HELOC receivables: the lower bound assumes that no first liens are HELOCs, and the upper bound assumes that all adjustable-rate first liens with an adjustment period of one year or less are HELOCs.

5. Direct Costs Associated With the Dodd-Frank Act for Open-End HOEPA Loans

Data from SCF indicate that an estimated 1.2 percent of outstanding HELOCs would potentially meet the proposed APR triggers. The analysis of closed-end mortgage loans for HMDA reporters imply that roughly half of loans that meet any HOEPA trigger meet the APR trigger. Thus, combining these estimates suggests that about 2.4 percent of HELOCs might meet the HOEPA triggers.[117]

The SCF is the only source of nationally representative data on interest rates on consummated HELOCs that the Bureau is aware of, but the Bureau acknowledges that the SCF provides a small sample of HELOCs.[118] Thus, in addition to the approximation error in extrapolating from closed-end mortgage loans to HELOCs due to data limitations, the SCF-based estimate of 1.2 percent is likely imprecisely estimated but reflects the best available estimate given existing data. Given these caveats, the analysis considers how the conclusions would differ if one assumed that a greater fraction of HELOCs would meet the HOEPA triggers. For context, as noted above, the Bureau estimates that roughly 0.3 percent of closed-end mortgage loans would be high-cost mortgages, a percentage one-eighth the estimate for HELOCs, which might suggest that the HELOC estimate is conservative.

The Bureau estimates that, if the rough estimate of 2.4 percent described above were accurate, fewer than 100 small DIs (less than one percent of small DIs) would experience a revenue loss that exceeds one percent (Table 5). If the actual proportion of high-cost HELOCs were a bit more than twice as high as the Bureau estimates, *i.e.,* at five percent, then the estimated share of small depositories that might experience a one percent revenue loss increases to not quite five percent, and about 0.1 percent of small DIs might experience a loss greater than three percent of revenue by these estimates. Under the relatively conservative assumption that ten percent of HELOCs are high-cost mortgages (*i.e.,* over four times the SCF-based estimate), about 13 percent of small DIs might be expected to lose greater than one percent of revenue, and less than two percent of DIs would have estimated losses that exceed three percent of revenue.

[116] Nine of the 5,512 commercial banks and savings institutions with outstanding revolving mortgage receivables reported no outstanding closed-end receivables and are estimated to have made no closed-end loans. Five of these were small depositories.

[117] The share of high-cost, HELOCs that meet the APR trigger arguably might be greater or less than the share for high-cost, closed-end mortgage loans. On the one hand, HELOCs tend to be for smaller amounts, so points and fees may tend to be a larger percent of loan size. On the other hand, based on outreach, the Bureau believes that points and fees may be less prevalent for HELOCs than for closed-end mortgage loans.

[118] The Bureau solicits information or data from interested parties on interest rates on home-equity lines of credit, particularly information on interest rates for HELOC originations.

TABLE 5—ESTIMATED SHARES OF REVENUE FROM POST-DODD-FRANK ACT HIGH-COST HELOCS FOR SMALL DEPOSITORY INSTITUTIONS

	Assumed share of post-DFA high-cost HELOCS		
	2.4 percent	5 percent	10 percent
Number with HOEPA revenue share >1%[a]	80	507	1,390
Percent of small depository institutions	0.7%	4.7%	12.8%
Number with HOEPA revenue share >3%[a]	0	15	200
Percent of small depository institutions	0%	0.1%	1.8%

[a] First-lien HELOCs cannot be distinguished from other first liens in the credit union Call Report data. The estimated revenue shares assume all adjustable-rate first liens with an adjustment period of one year or less are HELOCs (corresponding to the upper bound estimates in Table 4).

For depository institutions, the potential loss in revenue due to the Dodd-Frank Act revisions to HOEPA comprises the losses from both closed- and open-end lending. To assess the potential revenues losses for DIs from both sources, the Bureau first estimates the combined loss based on the assumption that ten percent of HELOCs would be HOEPA loans.[119] Under this conservative assumption, the Bureau estimates that roughly 17 percent of small DIs would lose more than one percent of revenue if these creditors made neither closed-end nor open-end HOEPA loans, and about three percent of small DIs would lose three percent of revenue under this scenario. If instead five percent of HELOCs were HOEPA loans—a proportion more than twice the estimate based on the SCF and therefore still conservative—the Bureau estimates approximately ten percent of small DIs would have combined losses that exceed one percent of revenue, and about one percent of small DIs would lose more than three percent of revenue.[120]

E. Impact of Revised Triggers on Non-Depository Institutions

Closed-End HOEPA Lending by Small Non-Depository Institutions

The Bureau estimates based on the NMLS/MCR data that 2,282 out of 2,515 total non-depository mortgage originators are small entities (Table 1). According to the NMLS/MCR data, many non-DI creditors originate just a few loans. Just less than one-quarter of nonbank creditors are estimated to have originated ten or fewer loans, for example, and about 40 percent of non-DIs made at most 25 loans. These fractions are similar for small non-DIs as well.[121]

The Bureau estimates that the number of HOEPA loans originated by non-DIs that report in HMDA would increase from fewer than 100 loans under the current triggers to over 7,000 under the post-Dodd-Frank Act triggers.[122] The Bureau notes that this is a substantial increase. However, even with this large estimated increase in the absolute number of HOEPA loans, the Bureau estimates that less than 0.4 percent of all closed-end mortgage loans originated by non-DIs that report in HMDA would be HOEPA loans. Moreover, over three-quarters of the estimated increase is driven by two creditors that made no loans in 2010 that were flagged as HOEPA loans in HMDA but that account for the majority of the new HOEPA loans. Two additional creditors account for another roughly nine percent of the new HOEPA loans. The vast majority of originations by these four creditors were mortgages on manufactured homes, particularly purchase money mortgage loans. Based on the number of originations and revenue, the Bureau believes that the largest creditors for manufactured homes are not small entities. The increase in the number of loans covered therefore very likely overstates the impact on small entities.

In estimating the effects of the Dodd-Frank Act revisions to HOEPA on non-DIs' revenues, the Bureau assumes that the share of revenue from HOEPA lending is the same as the share of HOEPA originations for a given creditor. Thus, to examine the impact of the proposed rule on revenue for non-DIs, the Bureau estimates the probability that HOEPA loans comprise more than one percent or three percent of all originations for non-DIs that report in the 2010 HMDA data and extrapolates these estimates for non-DIs that do not report in HMDA.[123]

Under this assumption, the NMLS/MCR data indicate that HOEPA loans accounted for more than one percent of revenue for about five percent of small non-DIs in 2010 (Table 6) and for more than three percent of revenue for a slightly smaller fraction.[124] Less than ten percent of small non-DIs are estimated to have more than one percent of revenue from HOEPA loans under the new APR and points-and-fees triggers, and roughly seven percent of small non-DIs are estimated to have more than three percent of revenue from HOEPA loans.[125]

[119] This calculation is based on combining the estimated revenue loss on closed-end mortgage loans for HMDA-reporters and the estimated loss on HELOCs, which is available for all DIs (since it draws only on the Call Report data). The Bureau then estimates the probability that a DI that does not report in HMDA would have a combined revenue loss of more than one percent based on the institution type, assets, and estimated percentage revenue loss on HELOCs.

[120] The corresponding estimates for all DIs are comparable.

[121] Over half of non-DI originators also broker loans. Revenue from brokering or other sources may mitigate the potential revenue losses of the Dodd-Frank Act amendments on those creditors.

[122] Unlike the Call Report data for DIs, however, the Bureau cannot currently match the NMLS/MCR data to HMDA to project HOEPA lending under the post-Dodd-Frank Act triggers by non-DIs that do not report in HMDA.

[123] The extrapolation is done based on the number of originations and whether HOEPA loans accounted for more than one or three percent of 2010 originations under the current HOEPA triggers.

[124] These estimates are based in part on modeling revenue, and therefore the likelihood that a non-DI is a small entity, because data on revenue are missing for the majority of originators in NMLS/MCR.

[125] The extrapolation from non-DIs that report in HMDA to non-DIs that do not report in HMDA assumes that patterns of lending among non-reporters are similar to patterns at reporters that have comparable originations and similar pre-Dodd-Frank Act HOEPA shares. This extrapolation for creditors that specialize in manufactured-housing mortgages is subject to two caveats. First, as noted, the post-Dodd-Frank Act revisions to HOEPA may particularly increase the share of HOEPA loans among creditors that specialize in loans on manufactured homes, particularly for home purchase. Second, the NMLS/MCR data do not include information on the extent of manufactured-home lending, so the Bureau cannot directly estimate how many non-DI manufactured-housing specialists do not report in HMDA.

TABLE 6—ESTIMATED SHARES OF HOEPA LOAN ORIGINATIONS FOR SMALL NON-DIS PRE- AND POST-DODD-FRANK ACT [a]

	Pre-DFA		Post-DFA	
	Number	Percent	Number	Percent
HOEPA loans > 1% of all loans	121	5.3	207	9.1
HOEPA loans > 3% of all loans	113	5.0	170	7.4

[a] Number and percent of post-Dodd-Frank Act HOEPA originations are projected based on estimated post-Dodd-Frank Act originations of HOEPA loans by HMDA-reporting non-DIs, conditional on total originations in 2010 and on pre-Dodd-Frank Act HOEPA loans as a share of 2010 originations. In particular, in projecting the probability that a creditor made more than one (three) percent HOEPA loans post-Dodd-Frank Act, the Bureau controls for whether pre-Dodd-Frank Act HOEPA loans comprised more than one (three) percent of originations. To estimate the number of small entities, revenue for entities that did not report revenue is estimated based on the dollar value and number of loans originated and the dollar value and number of loans brokered. The estimated probability that a non-DI that reports to HMDA is a small entity is projected from the MCR data based on the number of originations.

F. TILA and RESPA Counseling-Related Provisions

The proposed rule would also implement two Dodd-Frank Act provisions related to homeownership counseling. The Bureau expects that neither of these provisions would result in a sizable revenue loss for small creditors. The first requires that a creditor obtain sufficient documentation to demonstrate that a borrower received homeownership counseling before extending a negative-amortization mortgage to a first-time borrower. This requirement will likely apply to only a small fraction of mortgages: only 0.3 percent of mortgages in the 2007 SCF reportedly had negative-amortization features, and by definition this is an upper bound on the share of negative-amortization mortgages held by first-time borrowers.[126] Moreover, the provision only requires a creditor to obtain documentation, which the Bureau expects to be a comparatively low burden. For these reasons, the Bureau believes that the burden to creditors would be minimal, as noted in parts VI and VIII.

The second provision is a new requirement that lenders provide loan applicants a list of HUD-certified or -approved homeownership counselors or counseling agencies located in the area of the lender. Under the proposed rule, this requirement would apply to all applicants for a federally related mortgage loan (except for HECM applicants where the lender complies with the similar HECM list requirement) and so would apply to a large number of applications—under the Bureau's estimation methodology in analyzing the paper work burden, nearly 16 million applications for mortgages and HELOCs. Nevertheless, the Bureau believes the burden is likely to be minimal—less than 1 dollar per application—because it should be straightforward to obtain and to provide the geographically specific information on certified or approved homeownership counselors or counseling organizations. Further, the list will likely be provided with other documents that the applicant must receive from the lender.

G. Conclusion

The Bureau estimates that, under the proposed rule, only a small fraction of depository institutions would be expected to lose more than three or even more than one percent of revenue even under the conservative assumption that lenders forgo making any HOEPA loans. For example, under the assumption that five percent of HELOCs fell within the HOEPA triggers—a proportion more than twice the estimate based on the SCF and therefore still conservative—the Bureau estimates that about ten percent of small DIs would have combined losses that exceed one percent of revenue, and roughly one percent of small DIs would lose more than three percent of revenue. In all cases, the TILA and RESPA counseling provisions noted above would have little impact on these impact estimates.

For non-depository institutions, less than ten percent of small non-DIs are estimated to have more than one percent of revenue from HOEPA loans under the new APR and points-and-fees triggers, and about seven percent of small non-DIs are estimated to have more than three percent of revenue from HOEPA loans.[127] In all cases, the TILA and RESPA counseling provisions noted above would have little impact on these impact estimates.

Certification

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Bureau requests comment on the analysis above and requests any relevant data.

VIII. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking, and identified as such, has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, this information collection unless the information collection displays a currently valid control number.

This proposed rule would amend 12 CFR part 1024 (Regulation X) and 12 CFR part 1026 (Regulation Z). Both Regulations X and Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation X is 3170–0016 and for Regulation Z is 3170–0015.

As described below, the proposed rule would amend the collections of information currently in Regulation X and Regulation Z. RESPA and Regulation X are intended to provide consumers with greater and more timely information on the nature and costs of the residential real estate settlement process. As previously discussed, the proposed rule would amend the information collections currently required by Regulation X by requiring that lenders distribute to prospective borrowers of virtually all federally related mortgage loans a list of federally certified or approved homeownership counselors or counseling organizations located in the area of the lender. *See* the section-by-section analysis to proposed § 1024.20, above. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. As previously discussed, the proposed rule would amend the information collections currently required by Regulation Z by

[126] For context, the comparable shares of loans that allowed for negative amortization in the 1989–2004 SCFs varied between 1.3–2.3 percent of loans. These percentages are based on the share of mortgage borrowers who said their payment did not change when the interest rate on their adjustable-rate mortgage changed.

[127] See Table 6, supra.

(1) Expanding the categories of loans for which a special HOEPA disclosure is required, (2) requiring that creditors distribute a list of federally approved housing counselors to prospective borrowers of high-cost mortgages and (in the case of first-time borrowers) negatively amortizing mortgage loans, and (3) requiring creditors to receive and review confirmation that prospective borrowers of high-cost mortgages and (in the case of first-time borrowers) negatively amortizing mortgage loans have received required pre-loan counseling. *See generally* the section-by-section analysis to proposed § 1026.32(a)(1) and (c), § 1026.34(a)(5), and § 1026.36(k), above.

The information collection in the proposed rule is required to provide benefits for consumers and would be mandatory. *See* 15 U.S.C. 1601 *et seq.;* 12 U.S.C. 2601 *et seq.* Because the Bureau does not collect any information under the proposed rule, no issue of confidentiality arises. The likely respondents would be depository institutions (*i.e.,* commercial banks/savings institutions and credit unions) and non-depository institutions (*i.e.,* mortgage companies or other non-bank lenders) subject to Regulation X or the high-cost mortgage requirements or negative amortization loan counseling requirements of Regulation Z.[128]

Under the proposed rule, the Bureau would account for the entire paperwork burden for respondents under Regulation X. The Bureau generally would also account for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository lenders. The Bureau and the FTC generally both have enforcement authority over non-depository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to non-depository institutions. Other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

Using the Bureau's burden estimation methodology, the total estimated burden under the proposed changes to Regulation X for all of the nearly 15,000 institutions subject to the proposed rule, would be approximately 16,400 hours for one-time changes and 260,000 hours annually. Using the Bureau's burden estimation methodology, the total estimated burden under the proposed changes to Regulation Z for the roughly 5,200 institutions, including Bureau respondents,[129] that are estimated to make high-cost mortgages subject to the proposed rule would be approximately 38,300 hours of one-time costs and about 1,600 hours annually.

The aggregate estimates of total burdens presented in this part VIII are based on estimated costs that are weighted averages across respondents. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

A. Information Collection Requirements

The Bureau believes the following aspects of the proposed rule would be information collection requirements under the PRA.

1. Provision of List of Federally Approved Housing Counselors

The Bureau estimates one-time and ongoing costs to respondents of complying with the housing counselor disclosure requirements in proposed §§ 1024.20, 1026.34(a)(5)(vii), 1026.36(k)(4) as follows. First, the Bureau assumes that lenders who are required to comply with proposed § 1026.34(a)(5)(vii) and § 1026.36(k)(4) would comply with those provisions by satisfying the disclosure obligation in proposed § 1024.20, as permitted by the proposed rule. Thus, the Bureau does not aggregate the burden to respondents of providing the counselor list disclosures in proposed § 1026.34(a)(5)(vii) (high-cost mortgages) and § 1026.36(k)(4) (negative amortization loans to first-time borrowers). However, the Bureau does aggregate burden for reviewing the relevant portions of the regulations and training relevant employees.

One-time costs. The Bureau estimates that covered persons would incur one-time costs associated with reviewing the regulation and training relevant employees. Specifically, the Bureau estimates that, for each covered person, one attorney and one compliance officer would each take 7.5 minutes (15 minutes in total) to read and review the sections of the proposed regulation that describe the housing counseling disclosures, based on the length of the sections. The Bureau also estimates that each loan officer or other loan originator will need to receive 7.5 minutes of training concerning the disclosures.[130] The Bureau estimates the total one-time costs across all relevant providers of reviewing the relevant portions of the proposed regulation and conducting training to be about 16,400 hours and roughly $869,000, or about $174,000 per year if annualized over five years. Table 1, below, shows the Bureau's estimate of the total one-time paperwork burden to all respondents to comply with the housing counselor disclosure requirements in proposed §§ 1024.20, 1026.34(a)(5)(vii), and § 1026.36(k)(4).

Ongoing costs. On an ongoing basis, the Bureau estimates that producing and providing the required housing counselor disclosures to an applicant will take approximately one minute and that the cost of producing the required disclosures will be $0.10 per disclosure. The estimated ongoing paperwork burden to all Bureau respondents taken together is approximately 258,700 burden hours and about $13.4 million annually, or less than 1 dollar per loan application. Table 2, below, shows the Bureau's estimates of the total ongoing annual paperwork burden to all Bureau respondents to comply with the requirement to provide mortgage loan applicants with a list of federally approved housing counselors.

2. Receipt of Certification of Counseling for High-Cost Mortgages

The Bureau estimates one-time and ongoing costs to respondents of complying with the requirement to receive the high-cost mortgage counseling certification, as required by proposed § 1026.34(a)(5)(i) and (v), as

[128] For purposes of this PRA analysis, references to ''creditors'' or ''lenders'' shall be deemed to refer collectively to commercial banks, savings institutions, credit unions, and mortgage companies (*i.e.,* non-depository lenders), unless otherwise stated. Moreover, reference to ''respondents'' shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

[129] There are 154 depository institutions (and their depository affiliates) that are subject to the Bureau's administrative enforcement authority. For purposes of this PRA analysis, the Bureau's respondents under Regulation Z are 130 depository institutions that originate either open or closed-end mortgages and an estimated 2,515 non-depository institutions that are subject to the Bureau's administrative enforcement authority. Unless otherwise specified, all references to burden hours and costs for the Bureau respondents for the collection under Regulation Z are based on a calculation of half of the estimated 2,515 non-depository institutions.

[130] The burden-hour estimate of training assumes that a total of 30 minutes is required for training on all aspects of the proposed rule. For simplicity, these time estimates assume that an equal amount of time is spent on each of the four provisions, but the Bureau expects the proportion of time allocated to each topic in the 30 minute total training time may vary. The estimation methodology also assumes that a trainer will spend an hour for every ten hours of trainee time.

follows. The Bureau estimates that 54 depository institutions and 354 non-depository institutions subject to the Bureau's administrative enforcement authority would originate high-cost mortgages.[131] The Bureau estimates that this universe of relevant providers would each incur a one-time burden of 24 minutes for compliance or legal staff to read and review the relevant sections of the regulation (12 minutes for each of two compliance or legal staff members). The Bureau also estimates that this universe of relevant providers would incur a one-time burden of 7.5 minutes each to conduct initial training for each loan officer or other loan originator concerning the receipt of certification of counseling. The Bureau estimates that the total one-time burden across all relevant providers of complying with the high-cost mortgage housing counseling certification requirement would be about 2,100 hours and roughly $98,000.

On an ongoing basis, the Bureau estimates that respondents would incur a burden of 2 minutes per origination to receive and review the certification form. In addition, the Bureau estimates that, on average, a creditor would incur a cost of $0.025 to retain the certification form. The Bureau estimates that the total ongoing burden across all relevant providers of complying with the high-cost mortgage housing counseling certification requirement would be about 400 hours and $20,000 annually. The Bureau's estimates of the total one-time and ongoing annual paperwork burden to all Bureau respondents to comply with the requirement to receive certification of high-cost mortgage counseling are set forth in Tables 1 and 2, below.

3. Receipt of Documentation of Counseling for Negative Amortization Loans

The Bureau does not separately estimate the paperwork burden to respondents of complying with the requirement to receive documentation that first-time borrowers in negatively amortizing loans have received pre-loan homeownership counseling, as required by proposed § 1026.36(k). The Bureau believes that any such burden will be minimal. The universe of respondents for this provision is negligible. Based on data from the 2007 Survey of Consumer Finances, the Bureau estimates that only 0.3 percent of all outstanding mortgages in 2007 had negative amortization features. This estimate is an upper bound on the share of negatively amortizing loans held by first-time borrowers. Further, the Bureau believes that few if any mortgages originated currently could potentially negatively amortize. Moreover, the Bureau believes that the burden to respondents of complying with the provision would be *de minimis* since the required elements of the documentation are minimal, and the provision would require creditors only to receive and retain this documentation as part of the loan file.

4. HOEPA Disclosure Form

The Bureau believes that respondents will incur certain one-time and ongoing paperwork burden pursuant to proposed § 1026.32(a)(1), which implements Dodd-Frank's extension of HOEPA coverage to purchase money mortgage loans and open-end credit plans. As a result of proposed § 1026.32(a)(1), respondents that extend purchase money mortgage loans or open-end credit plans that are high-cost mortgages would be required to provide borrowers the special HOEPA disclosure required by § 1026.32(c). The Bureau has identified the following paperwork burdens in connection with proposed § 1026.32(a)(1).

a. Revising the HOEPA Disclosure Form

First, the Bureau estimates the burden to creditors originating high-cost purchase money mortgage loans and high-cost HELOCs of revising the HOEPA disclosure required by § 1026.32(c). The Bureau believes that respondents making high-cost purchase money mortgage loans would incur minimal or no additional burden, because the Bureau expects that these respondents would provide the same HOEPA disclosures used for refinance and closed-end home-equity loans subject to § 1026.32.

As discussed in the section-by-section analysis to proposed § 1026.32(c), however, the calculation of certain of the required disclosures differs between the open-end and closed-end credit contexts. Therefore, the Bureau separately estimates the burden for revising the HOEPA disclosure for respondents likely to make high-cost HELOCs. The Bureau estimates that 45 depository institutions for which it has administrative enforcement authority would be likely to originate a high-cost HELOC. Because non-depository institutions are generally less able to fund lines of credit and to have access to the payment system, the Bureau believes that few, if any, non-depository institutions originate open-end credit plans.

The Bureau believes that respondents that are likely to make high-cost HELOCs would incur a one-time burden, but no ongoing burden, in connection with revising the HOEPA disclosure. The one-time burden includes a total estimated burden of less than 1,900 hours across all relevant providers to update their software and information technology systems to generate the HOEPA disclosure form appropriate for open-end credit plans. This estimate combines the burdens for large creditors and a fraction of smaller creditors whom the Bureau assumes would develop the necessary software and systems internally. The Bureau assumes that the remainder of smaller creditors would rely on third-party vendors to obtain a revised disclosure form for high-cost HELOCs; these small creditors are assumed to incur the dollar costs passed on from a vendor that offers the product but no hours burden. In addition, the Bureau assumes that respondents that are likely to make high-cost HELOCs would spend 7.5 minutes each training a subset of loan officers or other loan originators that may make such loans. The Bureau estimates that the training burden across all relevant providers would total nearly 1,300 hours. The total one-time burden across all relevant providers to revise the HOEPA disclosure is therefore about 3,100 hours. The Bureau estimates the corresponding dollar-cost burden is roughly $169,000, corresponding to about $34,000 per year for all respondents if this one-time cost were annualized over five years. The estimated total one-time burden is summarized in Table 1, below.

b. Providing the HOEPA Disclosure Form

Respondents that make any high-cost mortgage would incur costs to review the provisions of the regulation related to the HOEPA disclosure. These costs could vary considerably across creditors. A creditor that currently makes high-cost mortgages might be expected to have lower costs to review the relevant section of the regulation than would a creditor that has not previously made high-cost mortgages but now expects to make such loans as a result of, for example, the revised triggers and extension of HOEPA to purchase money mortgage loans and HELOCs. The Bureau's estimates are averages of these costs across lenders.

[131] In the case of high-cost mortgages, TILA defines ''creditor'' as a person that, in any 12 month period, originates two or more high-cost mortgages, or one or more high-cost mortgage through a broker. For purposes of determining the universe of relevant providers for this provision, the Bureau does not attempt to calculate how many of the respondents that have made HOEPA loans in the past made only one HOEPA loan. Thus, the number of relevant providers used to calculate the paperwork burden for this provision may be an overestimate.

One-time costs. Based on the length of the proposed section, the Bureau estimates the one-time burden across all relevant providers to read and review the HOEPA disclosure provision and to obtain any necessary legal guidance would be slightly more than 30 minutes for each of two legal or compliance staff members. Across all relevant providers, the Bureau assumes an average one-time burden of 7.5 minutes each per loan officer or other loan originator for initial training concerning the disclosure. Under these assumptions, the total one-time burden across all relevant providers is estimated to be about 2,200 hours and approximately $110,000, or about $22,000 annually if the costs were divided equally over five years.

Ongoing costs. On an ongoing basis, the Bureau estimates that producing and providing the required disclosures to an applicant will take approximately 2 minutes and that the cost of producing the required disclosures will be $0.10 per disclosure. The Bureau assumes that, on average, the cost of retaining a copy of the disclosure for recordkeeping will cost $0.025 per disclosure. The Bureau estimates that, taken together, the production, provision, and record-retention costs for across all relevant providers would total approximately 400 hours and nearly $21,000 annually.

TABLE 1—ONE-TIME COSTS FOR ALL CFPB RESPONDENTS

Information collection	Hours	Dollars
Provision of list of Federally approved housing counselors	16,400	869,000
Receipt of certification of counseling for high-cost mortgages	2,100	98,000
Revision of HOEPA disclosure for applicability to open-end credit	3,100	169,000
Provision of HOEPA disclosure	2,200	110,000
Total burden, All Respondents	23,900	1,246,000

TABLE 2—ONGOING COSTS FOR ALL CFPB RESPONDENTS

Information collection	Hours	Dollars
Provision of list of Federally approved housing counselors	258,700	13,406,000
Receipt of certification of counseling for high-cost mortgages	400	20,000
Revision of HOEPA disclosure for applicability to open-end credit	—	—
Provision of special HOEPA disclosure	400	21,000
Total annual burden, All Respondents	259,600	13,447,000

B. Comments

Comments are specifically requested concerning: (i) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (ii) the accuracy of the estimated burden associated with the proposed collections of information; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC, 20503, or by the internet to *http://oira_submission@omb.eop.gov*, with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov*.

List of Subjects

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Mortgagees, Mortgages, Mortgage servicing, Recordkeeping requirements, Reporting.

12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is shown inside bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation X, 12 CFR part 1024, and Regulation Z, 12 CFR part 1026, as set forth below.

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

1. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5581.

2. A new § 1024.20 is added to read as follows:

►§ 1024.20 List of homeownership counselors.

(a) *Provision of list.* (1) Except as otherwise provided in this section, not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must provide the loan applicant with a clear and conspicuous written list of five homeownership counselors or counseling organizations located:

(i) Within the zip code of the loan applicant's current address; or

(ii) If five counselors or counseling organizations are not within the zip code of the loan applicant's current address, then within the zip code or zip codes closest to the loan applicant's current address.

(2) The list of homeownership counselors or counseling organizations distributed to each loan applicant under this section shall include only homeownership counselors and counseling organizations listed on either:

(i) The most current list of homeownership counselors or counseling organizations made available by the Bureau to lenders for use in complying with the requirements of this section; or

(ii) The most current list maintained by HUD of homeownership counselors or counseling organizations who are certified by the Secretary of HUD pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)), or are otherwise approved by HUD.

(3) The list of homeownership counselors or counseling organizations provided under this section must include:

(i) The name, business address, telephone number, and, if available from the Bureau or HUD, the email address and Web site of each listed homeownership counselor or counseling organization; and

(ii) The Web site addresses and telephone numbers of the Bureau and HUD where applicants can access information on homeownership counseling.

(4) The list of homeownership counselors or counseling organizations provided under this section may be combined and provided with other mortgage loan disclosures required pursuant to Regulation Z or this part unless prohibited by Regulation Z or this part.

(5) A mortgage broker or dealer may provide the list of homeownership counselors or counseling organizations required under this section to any loan applicant from whom it receives or for whom it prepares an application. If the mortgage broker or dealer has provided the required list of homeownership counselors or counseling organizations, the lender is not required to provide an additional list. The lender is responsible for ensuring that the list of homeownership counselors or counseling organizations is provided to a loan applicant in accordance with this section.

(6) If the lender, mortgage broker, or dealer does not provide the list of homeownership counselors or counseling organizations required under this section to the loan applicant in person, the lender must mail or deliver the list to the loan applicant by other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (ESIGN) (15 U.S.C. 7001 *et seq.*).

(7) The lender is not required to provide the list of homeownership counselors or counseling organizations required under this section if, before the end of the three-business-day period provided in paragraph (a)(1) of this section, the lender denies the application or the loan applicant withdraws the application.

(8) If a mortgage loan transaction involves more than one lender, only one list of homeownership counselors or counseling organizations required under this section must be given to the loan applicant and the lenders shall agree among themselves which lender must comply with the requirements that this section imposes on any or all of them. If there is more than one loan applicant, the required list of homeownership counselors or counseling organizations may be provided to any loan applicant with primary liability on the mortgage loan obligation.

(b) *Open-end lines of credit (home-equity plans) under Regulation Z.* For a federally related mortgage loan that is a home-equity line of credit under Regulation Z, a lender or mortgage broker that provides the loan applicant with the list of homeownership counselors or counseling organizations required under this section may comply with the timing and delivery requirements set out in either paragraph (a) of this section or 12 CFR 1026.40(b).

(c) *Home Equity Conversion Mortgages.* A lender is not required to provide an applicant for a Home Equity Conversion Mortgage, as defined in 12 U.S.C. 1715z–20(b)(3), the list of homeownership counselors or counseling organizations required under this section, if the lender is required by HUD to provide, and does provide, a list of counselors or counseling agencies specializing in counseling on such mortgages to the applicant.◄

PART 1026—TRUTH IN LENDING (REGULATION Z)

3. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. ►2601; 2603–2605, 2607, 2609, 2617, 5511,◄ 5512, ►5532,◄ 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

4. Section 1026.1 is amended by revising paragraph (d)(5) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end loans ►and open-end credit plans◄ that have rates or fees above specified amounts ►or certain prepayment penalties◄. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with [closed-end] mortgage transactions that are subject to § 1026.32. Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

5. Section 1026.31 is amended by revising paragraph (c)(1) to read as follows:

§ 1026.31 General rules.

* * * * *

(c) *Timing of disclosure.* (1) *Disclosures for certain* [*closed-end*] *home mortgages.* The creditor shall furnish the disclosures required by § 1026.32 at least three business days prior to consummation ►or account opening◄ of a ►high-cost mortgage as defined in § 1026.32(a)◄ [mortgage transaction covered by § 1026.32].

(i) *Change in terms.* After complying with paragraph (c)(1) of this section and prior to consummation ►or account opening◄, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subpart.

(ii) *Telephone disclosures.* A creditor may provide new disclosures by telephone if the consumer initiates the change and if, ►prior to or◄ at consummation ►or account opening◄:

(A) The creditor provides new written disclosures; and

(B) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation ►or prior to account opening, as applicable◄.

(iii) *Consumer's waiver of waiting period before consummation ►or account opening◄.* The consumer may, after receiving the disclosures required by paragraph (c)(1) of this section, modify or waive the three-day waiting period between delivery of those disclosures and consummation ►or account opening◄ if the consumer determines that the extension of credit is needed to meet a bona fide personal

financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to § 1026.23(e)(2).

* * * * *

6. Section 1026.32 is amended by:

A. Revising the section heading;

B. Revising paragraph (a);

C. Revising paragraph (b);

D. Revising paragraphs (c)(3), (4) and (5);

E. Revising paragraph (d) introductory text, paragraph (d)(1), and paragraphs (d)(6) through (8).

The additions and revisions read as follows:

§ 1026.32 Requirements for ►high-cost◄ [certain closed-end] home mortgages.

(a) ►*High-cost mortgages*◄ [*Coverage.*] (1) ►*Coverage.* For purposes of this subpart, *high-cost mortgage* means any consumer credit transaction, other than a reverse-mortgage transaction as defined in § 1026.33(a), that is secured by the consumer's principal dwelling, and in which:◄ [Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:]

Alternative 1—Paragraph (a)(1)(i)

(i) ►The annual percentage rate applicable to the transaction, as described in paragraph (a)(2) of this section, will exceed the average prime offer rate, as defined in § 1026.35(a)(2)(ii), for a comparable transaction by more than:

(A) 6.5 percentage points for a first-lien transaction, other than as described in paragraph (a)(1)(i)(B) of this section;

(B) 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the total loan amount is less than $50,000; or

(C) 8.5 percentage points for a subordinate-lien transaction; or◄ [The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or]

Alternative 2—Paragraph (a)(1)(i)

(i) ►The transaction coverage rate, as defined in § 1026.35(a)(2)(i), applicable to the closed-end mortgage loan or the annual percentage rate applicable to the open-end credit plan, as provided in paragraph (a)(2) of this section, will exceed the average prime offer rate, as defined in § 1026.35(a)(2)(ii), for a comparable transaction by more than:

(A) 6.5 percentage points for a first-lien transaction, other than as described in paragraph (a)(1)(i)(B) of this section;

(B) 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the total loan amount is less than $50,000; or

(C) 8.5 percentage points for a subordinate-lien transaction; or◄ [The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or]

(ii) The total points and fees payable [by the consumer at or before loan closing will exceed] ►in connection with the transaction, as described in paragraphs (b)(1) through (5) of this section, will exceed:

(A) 5 percent of the total loan amount for a transaction with a total loan amount of $20,000 or more; or

(B) The lesser of 8 percent of the total loan amount or $1,000 for a transaction with a total loan amount of less than $20,000◄ [the greater of 8 percent of the total loan amount, or $400]; the ►$1,000◄ [$400] figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1[.] ►; or

(iii) Under the terms of the loan contract or open-end credit agreement, the creditor can charge a prepayment penalty, as defined in paragraph (b)(8) of this section, more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than two percent of the amount prepaid.◄

(2) ►*Determination of transaction coverage rate or annual percentage rate.* For purposes of paragraph (a)(1)(i) of this section, a creditor shall determine the transaction coverage rate or annual percentage rate, as applicable, for a transaction based on the following:

(i) For a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan or plan, the interest rate in effect on the date of consummation or account opening of the transaction;

(ii) For a variable-rate transaction in which the interest rate may vary during the term of the loan or plan in accordance with an index that is not under the creditor's control, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or plan to the value of the index rate in effect on the date of the consummation or account opening of the transaction; and

(iii) For a transaction in which the interest rate may vary during the term of the loan or plan, other than a transaction described in paragraph (a)(2)(ii) of this section, the maximum interest rate that may be imposed during the term of the loan or plan.◄ [This section does not apply to the following:

(i) A residential mortgage transaction.

(ii) A reverse mortgage transaction subject to § 1026.33.

(iii) An open-end credit plan subject to subpart B of this part.]

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a)(1)(ii) of this section, ►in connection with a closed-end mortgage loan,◄ *points and fees* means:

(i) All items [required to be disclosed under § 1026.4(a) and 1026.4(b), except interest or the time-price differential;] ►included in the finance charge under § 1026.4(a) and (b), but excluding items described in § 1026.4(c) through (e) (except to the extent otherwise included by this paragraph (b)(1)) and also excluding:

(A) Interest or the time-price differential;

(B) Any premium or other charge for any guaranty or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge is:

(*1*) Assessed in connection with any Federal or State agency program;

(*2*) Not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; or

(*3*) Payable after consummation.◄

(ii) All compensation paid ►directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), including a loan originator that is also the creditor in a table-funded transaction◄ [to mortgage brokers];

(iii) All items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes) ►payable at or before consummation, unless:◄ [unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and]

(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;◄

(iv) ►Premiums or other charges payable at or before consummation for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract;◄ [Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.]

►(v) The maximum prepayment penalty, as defined in paragraph (b)(8)(i) of this section, that may be charged or collected under the terms of the mortgage loan; and

(vi) The total prepayment penalty, as defined in paragraph (b)(8)(i) of this section, incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.◄

(2) ►For purposes of paragraph (b)(1)(ii) of this section, the term *points and fees* does not include compensation paid to:

(i) An employee of a retailer of manufactured homes who does not take a residential mortgage loan application, offer or negotiate terms of a residential mortgage loan, or advise a consumer on loan terms (including rates, fees, and other costs) but who, for compensation or other monetary gain, or in expectation of compensation or other monetary gain, assists a consumer in obtaining or applying to obtain a residential mortgage loan;

(ii) A person that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person is compensated by a creditor or loan originator, as defined in § 1026.36(a)(1), or by any agent of the creditor or loan originator; or

(iii) A servicer or servicer employees, agents, and contractors, including but not limited to those who offer or negotiate terms of a transaction for purposes of renegotiating, modifying, replacing, and subordinating principal of existing mortgages where borrowers are behind in their payments, in default, or have a reasonable likelihood of being in default or falling behind.

(3) For purposes of paragraph (a)(1)(ii) of this section, in connection with an open-end credit plan, *points and fees* means:

(i) All items included in the finance charge under § 1026.4(a) and (b) and payable at or before account opening, except interest or the time-price differential;

(ii) All items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes) payable at or before account opening, unless:

(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;

(iii) Premiums or other charges payable at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract;

(iv) The maximum prepayment penalty, as defined in paragraph (b)(8)(ii) of this section, that may be charged or collected under the terms of the open-end credit plan;

(v) Any fees charged for participation in an open-end credit plan, as described in § 1026.4(c)(4), whether assessed on an annual or other periodic basis; and

(vi) Any transaction fee, including any minimum fee or per-transaction fee, that will be charged for a draw on the credit line.

(4) For purposes of paragraph (b)(3) of this section, the term *points and fees* does not include any fees or charges that the creditor waives at or before account opening unless such fees or charges may be imposed on the consumer after account opening.

(5) For purposes of paragraphs (b)(1) and (3) of this section, the term *points and fees* does not include:

(i) *Bona fide third-party charges.* Any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, except to the extent that the charge is required to be included in points and fees under paragraph (b)(1)(i)(B) of this section. For purposes of this paragraph (b)(5)(i), the term *loan originator* means a loan originator as that term is defined in § 1026.36(a)(1), notwithstanding § 1026.36(f).

(ii) *Bona fide discount points.* (A) Up to two bona fide discount points paid by the consumer in connection with the transaction if the interest rate for the loan or plan without such points does not exceed:

(*1*) The average prime offer rate, as defined in § 1026.35(a)(2)(ii), by more than one percentage point; or

(*2*) In the case of a transaction secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than one percentage point.

(B) If two bona fide discount points have not been excluded under paragraph (b)(5)(ii)(A) of this section, up to one bona fide discount point paid by the consumer in connection with the transaction if the interest rate for the loan or plan without such points does not exceed:

(*1*) The average prime offer rate, as defined in § 1026.35(a)(2)(ii), by more than two percentage points; or

(*2*) In the case of a transaction secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than two percentage points.

(C) For purposes of this paragraph (b)(5)(ii), the term *bona fide discount point* has the same meaning as in § 1026.43(e)(3)(iv).

(6) *Total loan amount.* (i) *Closed-end mortgage loans.* The total loan amount for a closed-end mortgage loan is calculated by taking the amount of credit extended at consummation that the consumer is legally obligated to repay, as reflected in the loan contract, and deducting any cost that is both included in points and fees under § 1026.32(b)(1) and financed by the creditor.

(ii) *Open-end credit plan.* The total loan amount for an open-end credit plan is the credit limit for the plan when the account is opened.

(7)◄ *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

►(8) *Prepayment penalty.* (i) *Closed-end mortgage loans.* For a closed-end mortgage loan, *prepayment penalty* means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due.

(ii) *Open-end credit plans.* For an open-end credit plan, *prepayment penalty* means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term.◄

(c) * * *

(3) *Regular payment;* ►*minimum periodic payment example;*◄ *balloon payment.* ►(i) For a closed-end loan, the◄[The] amount of the regular monthly (or other periodic) payment and the amount of any balloon payment ►provided in the credit contract, if permitted under paragraph (d)(1) of this section◄. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

►(ii) For an open-end credit plan:

(A) An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. The example must be based on the following assumptions:

(1) The consumer borrows the full credit line, as disclosed in paragraph (c)(5) of this section, at account opening and does not obtain any additional extensions of credit;

(2) The consumer makes only minimum periodic payments during the draw period and any repayment period; and

(3) The annual percentage rate used to calculate the example payments remains the same during the draw period and any repayment period. The creditor must provide the minimum periodic payment example based on the annual percentage rate for the plan, as described in paragraph (c)(2) of this section, except that if an introductory annual percentage rate applies, the creditor must use the rate that will apply to the plan after the introductory rate expires.

(B) If the credit contract provides for a balloon payment under the plan as permitted under paragraph (d)(1) of this section, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in paragraph (c)(3)(ii)(A) of this section.

(C) A statement that the example payments show the first minimum periodic payments at the current annual percentage rate if the consumer borrows the maximum credit available when the account is opened and does not obtain any additional extensions of credit, or a substantially similar statement.

(D) A statement that the example payments are not the consumer's actual payments and that the actual minimum periodic payments will depend on the amount the consumer borrows, the interest rate applicable to that period, and whether the consumer pays more than the required minimum periodic payment, or a substantially similar statement.◄

(4) *Variable-rate.* For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be ►included in the contract by◄ [disclosed under] § 1026.30.

(5) *Amount borrowed* ►*; credit limit.* (i) For a closed-end mortgage loan◄ [For a mortgage refinancing], the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

►(ii) For an open-end credit plan, the credit limit for the plan when the account is opened.◄

(d) *Limitations.* A ►high-cost mortgage◄ [mortgage transaction subject to this section] shall not include the following terms:

Alternative 1—Paragraph (d)(1)(i)

(1)(i) *Balloon payment.* ►Except as provided by paragraphs (d)(1)(ii) and (iii) of this section, a payment schedule with a payment that is more than twice as large as the average of regular periodic payments.◄ [For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.]

Alternative 2—Paragraph (d)(1)(i)

(1)(i) *Balloon payment.* ►Except as provided by paragraphs (d)(1)(ii) and (iii) of this section, a payment schedule with a payment that is more than two times a regular periodic payment.◄ [For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.]

(ii) *Exception.* The limitations in paragraph (d)(1)(i) of this section do not apply to ►a mortgage transaction with a payment schedule that is adjusted to the seasonal or irregular income of the consumer.

(iii) *Open-end credit plans.* If the terms of an open-end credit plan provide for a repayment period during which no further draws may be taken, the limitations in paragraph (d)(1)(i) of this section apply only to the repayment period. If the terms of an open-end credit plan do not provide for any repayment period, the limitations in paragraph (d)(1)(i) of this section apply to the draw period.◄ [loans with maturities of less than one year, if the purpose of the loan is a ''bridge'' loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.]

* * * * *

(6) *Prepayment penalties.* ►A prepayment penalty, as defined in paragraph (b)(8) of this section.◄ [Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d).]

(7) ►[Reserved.]◄ [*Prepayment penalty exception.* A mortgage transaction subject to this section may provide for a prepayment penalty (including a refund calculated according to the rule of 78s) otherwise permitted by law if, under the terms of the loan:

(i) The penalty will not apply after the two-year period following consummation;

(ii) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;

(iii) At consummation, the consumer's total monthly debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified in accordance with § 1026.34(a)(4)(ii); and

(iv) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.]

(8)►*Acceleration of debt.*◄ [*Due-on-demand clause.*] A demand feature that permits the creditor to ►accelerate the indebtedness by terminating the high-cost mortgage◄ [terminate the loan] in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

►(i) The consumer fails to meet the repayment terms for any outstanding balance that results in a default in

payment under the loan or open-end credit agreement;

(ii) The acceleration is pursuant to a due-on-sale clause in the loan or open-end credit agreement; or

(iii) The consumer materially violates some other provision of the loan or open-end credit agreement unrelated to the payment schedule.◄

[(i) There is fraud or material misrepresentation by the consumer in connection with the loan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(iii) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.]

7. Section 1026.34 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1026.34 Prohibited acts or practices in connection with high-cost mortgages.

(a) *Prohibited acts or practices for high-cost mortgages.* [A creditor extending mortgage credit subject to § 1026.32 shall not:] (1) *Home improvement contracts.* ►A creditor shall not pay◄ [Pay] a contractor under a home improvement contract from the proceeds of a ►high-cost mortgage◄ [mortgage covered by § 1026.32], other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) *Notice to assignee.* ►A creditor may not sell◄ [Sell] or otherwise assign a ►high-cost mortgage◄ [mortgage subject to § 1026.32] without furnishing the following statement to the purchaser or assignee: ''Notice: This is a mortgage subject to special rules under the Federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.''

(3) *Refinancings within one-year period.* Within one year of having extended ►a high-cost mortgage, a creditor shall not refinance any high-cost mortgage to the same borrower into another high-cost mortgage◄ [credit subject to § 1026.32, refinance any loan subject to § 1026.32 to the same borrower into another loan subject to § 1026.32], unless the refinancing is in the borrower's interest. An assignee holding or servicing ►a high-cost mortgage◄ [an extension of mortgage credit subject to § 1026.32,– shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any ►high-cost mortgage◄ [loan subject to § 1026.32] to the same borrower into another ►high-cost mortgage◄ [loan subject to § 1026.32], unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors►.◄ [, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee,]

(4) *Repayment ability* ►*for high-cost mortgages.* In connection with a closed-end, high-cost mortgage, a creditor must comply with the repayment ability requirements set forth in § 1026.43. In connection with an open-end, high-cost mortgage, a creditor shall not open a plan for a consumer where credit is or will be extended◄ [Extend credit subject to § 1026.32 to a consumer] based on the value of the consumer's collateral without regard to the consumer's repayment ability as of ►account opening◄ [consummation], including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations.

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in § 1026.35(b)(3)(i), and similar expenses.

(ii) *Verification of repayment ability.* Under this paragraph (a)(4) a creditor must verify the consumer's repayment ability as follows:

(A) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(B) Notwithstanding paragraph (a)(4)(ii)(A), a creditor has not violated paragraph (a)(4)(ii) if the amounts of income and assets that the creditor relied upon in determining repayment ability are not materially greater than the amounts of the consumer's income or assets that the creditor could have verified pursuant to paragraph (a)(4)(ii)(A) at the time ►of account opening◄ [the loan was consummated].

(C) A creditor must verify the consumer's current obligations.

(iii) *Presumption of compliance.* A creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(A) Verifies the consumer's repayment ability as provided in paragraph (a)(4)(ii);

(B) ►Determines the consumer's repayment ability taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(i) of this section, and using the largest required minimum periodic payment based on the following assumptions:

(*1*) The consumer borrows the full credit line at account opening with no additional extensions of credit;

(*2*) The consumer makes only required minimum periodic payments during the draw period and any repayment period;

(*3*) If the annual percentage rate may increase during the plan, the maximum annual percentage rate that is included in the contract, as required by § 1026.30, applies to the plan at account opening and will apply during the draw period and any repayment period.◄ [Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(i); and]

(C) Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.

(iv) *Exclusions from presumption of compliance.* Notwithstanding the previous paragraph, no presumption of compliance is available for a transaction for which:

(A) The regular periodic payments [for the first seven years] would cause the principal balance to increase; or

(B) The [term of the loan is less than seven years and the] regular periodic payments when aggregated do not fully amortize the outstanding principal balance ►except as otherwise provided by § 1026.32(d)(1)(ii)◄.

(v) *Exemption.* This paragraph (a)(4) does not apply to temporary or ''bridge'' loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months.

►(5) *Pre-loan counseling.* (i) *Certification of counseling required.* A creditor shall not extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved to provide such counseling by the Secretary of the U.S. Department of Housing and Urban Development or, if permitted by the Secretary, by a State housing finance authority.

(ii) *Timing of counseling.* The counseling required under this paragraph (a)(5) must occur after the consumer receives either the good faith estimate required by the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) or the disclosures required by § 1026.40.

(iii) *Affiliation prohibited.* (A) *General.* The counseling required under this paragraph (a)(5) shall not be provided by a counselor who is employed by or affiliated with the creditor.

(B) *Exception.* The prohibition under paragraph (a)(5)(iii)(A) does not apply to a State housing finance authority that both extends a high-cost mortgage to a consumer and provides, either itself or through an affiliate, counseling to the consumer on the high-cost mortgage.

(iv) *Content of certification.* The certification of counseling required under paragraph (a)(5)(i) must include:

(A) The name(s) of the consumer(s) who obtained counseling;

(B) The date(s) of counseling;

(C) The name and address of the counselor;

(D) A statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms provided in either the good faith estimate or the disclosures required by § 1026.40; and

(E) A statement that the counselor has verified that the consumer(s) received the disclosures required by either § 1026.32(c) or the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) with respect to the transaction.

(v) *Counseling fees.* A creditor may pay the fees of a counselor or counseling organization for providing counseling required under this paragraph (a)(5) but may not condition the payment of such fees on the consummation or account-opening of a mortgage transaction. If the consumer withdraws the application that would result in the extension of a high-cost mortgage, a creditor may not condition the payment of such fees on the receipt of certification from the counselor required by paragraph (a)(5)(i) of this section. A creditor may, however, confirm that a counselor has provided counseling to the consumer pursuant to this paragraph (a)(5) prior to paying the fee of a counselor or counseling organization.

(vi) *Steering prohibited.* A creditor that extends a high-cost mortgage shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (a)(5).

(vii) *List of counselors.* (A) *General.* A creditor must provide to a consumer for whom counseling is required under this paragraph (a)(5), a notice containing the Web site addresses and telephone numbers of the Bureau and the U.S. Department of Housing and Urban Development for access to information about housing counseling, and a list of five counselors or counseling organizations approved by the Secretary of the U.S. Department of Housing and Urban Development to provide the counseling required under paragraph (a)(5) of this section. The notice must be provided no later than the time when either the good faith estimate required by the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) or the disclosures required by § 1026.40, as applicable, must be provided.

(B) *Safe harbor.* A creditor is deemed to have complied with the requirements of paragraph (a)(5)(vii)(A) if the creditor provides the list of homeownership counselors required by 12 CFR 1024.20 to a consumer for whom counseling is required under this paragraph (a)(5).

(6) *Recommended default.* A creditor or mortgage broker, as defined in section 1026.36(a)(2), may not recommend or encourage default on an existing loan or other debt prior to and in connection with the consummation or account opening of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(7) *Modification and deferral fees.* A creditor, successor-in-interest, assignee, or any agent of such parties may not charge a consumer any fee to modify, renew, extend or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

(8) *Late fees.* (i) *General.* Any late payment charge imposed in connection with a high-cost mortgage must be specifically permitted by the terms of the loan contract or open-end credit agreement and may not exceed four percent of the amount of the payment past due. No such charge may be imposed more than once for a single late payment.

(ii) *Timing.* A late payment charge may be imposed in connection with a high-cost mortgage only if the payment is not received by the end of the 15-day period beginning on the date the payment is due or, in the case of a high-cost mortgage on which interest on each installment is paid in advance, the end of the 30-day period beginning on the date the payment is due.

(iii) *Multiple late charges assessed on payment subsequently paid.* A late payment charge may not be imposed in connection with a high-cost mortgage payment if any delinquency is attributable only to a late payment charge imposed on an earlier payment, and the payment otherwise is a full payment for the applicable period and is paid by the due date or within any applicable grace period.

(iv) *Failure to make required payment.* The terms of a high-cost mortgage agreement may provide that any payment shall first be applied to any past due balance. If the consumer fails to make a timely payment by the due date and subsequently resumes making payments but has not paid all past due payments, the creditor may impose a separate late payment charge for any payment(s) outstanding (without deduction due to late fees or related fees) until the default is cured.

(9) *Payoff statements.* (i) *Fee prohibition.* In general, a creditor or servicer (as defined in 12 CFR 1024.2(b)) may not charge a fee for providing to a consumer, or a person authorized by the consumer to obtain such information, a statement of the amount due to pay off the outstanding balance of a high-cost mortgage.

(ii) *Processing fee.* A creditor or servicer may charge a processing fee to cover the cost of providing a payoff statement, as described in paragraph (a)(9)(i) of this section, by fax or courier, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages. A creditor or servicer shall make a payoff statement available to a consumer, or a person authorized by the consumer to obtain such information, by a method other than by fax or courier and without charge pursuant to paragraph (a)(9)(i) of this section.

(iii) *Processing fee disclosure.* Prior to charging a processing fee for provision of a payoff statement by fax or courier, as permitted pursuant to paragraph (a)(9)(ii) of this section, a creditor or servicer shall disclose to a consumer or a person authorized by the consumer to obtain the consumer's payoff statement that payoff statements, as described in

paragraph (a)(9)(i) of this section, are available for free pursuant to paragraph (a)(9)(i) of this section.

(iv) *Fees permitted after multiple requests.* A creditor or servicer that has provided a payoff statement, as described in paragraph (a)(9)(i) of this section, to a consumer, or a person authorized by the consumer to obtain such information, without charge, other than the processing fee permitted under paragraph (a)(9)(ii) of this section, four times during a calendar year, may thereafter charge a reasonable fee for providing such statements during the remainder of the calendar year. Fees for payoff statements provided to a consumer in a subsequent calendar year are subject to the requirements of this section.

(v) *Timing of delivery of payoff statements.* A payoff statement, as described in paragraph (a)(9)(i) of this section, for a high-cost mortgage shall be provided by a creditor or servicer within five business days after receiving a request for such statement by a consumer or a person authorized by the consumer to obtain such statement.

(10) *Financing of points and fees.* A creditor that extends credit under a high-cost mortgage may not finance any points and fees, as that term is defined in § 1026.32(b)(1) through (5). Credit insurance premiums or debt cancellation or suspension fees that are required to be included in points and fees under § 1026.32(b)(1)(iv) or (3)(iii) shall not be considered financed by the creditor when they are calculated and paid in full on a monthly basis.◄

(b) *Prohibited acts or practices for dwelling-secured loans;* [*open-end credit.* In connection with credit secured by the consumer's dwelling that does not meet the definition in § 1026.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of § 1026.32.]► *structuring loans to evade high-cost mortgage requirements.* A creditor shall not structure any transaction that is otherwise a high-cost mortgage in a form, for the purpose, and with the intent to evade the requirements of a high-cost mortgage subject to this subpart, including by dividing any loan transaction into separate parts.◄

8. Section 1026.36 is revised to add new paragraphs (g), (h), (i), (j), and (k) as follows:

§ 1026.36 Prohibited acts or practices in connection with credit secured by a dwelling.

* * * * *

►(g) [Reserved.]

(h) [Reserved.]

(i) [Reserved.]

(j) [Reserved.]

(k) *Negative amortization counseling.* (1) *Counseling required.* A creditor shall not extend credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization for the loan, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a counseling organization or counselor certified or approved by the U.S. Department of Housing and Urban Development to provide such counseling.

(2) *Definitions.* For the purposes of this paragraph (k), the following definitions apply:

(i) A ''first-time borrower'' means a consumer who has not previously received a closed-end mortgage loan or open-end credit plan secured by a dwelling.

(ii) ''Negative amortization'' means a payment schedule with regular periodic payments that cause the principal balance to increase.

(3) *Steering prohibited.* A creditor that extends credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (k).

(4) *List of counselors.* (i) *General.* A creditor must provide to a consumer for whom counseling is required under this paragraph (k), a notice containing the Web site addresses and telephone numbers of the Bureau and the U.S. Department of Housing and Urban Development for access to information about homeownership counseling, and a list of five counselors or counseling organizations certified or approved by the U.S. Department of Housing and Urban Development to provide homeownership counseling. The notice must be provided no later than the time when the good faith estimate required by the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) must be provided.

(ii) *Safe harbor.* A creditor is deemed to have complied with the requirements of paragraph (k)(4)(i) of this section if the creditor provides the list of homeownership counselors required by 12 CFR 1024.20 to a consumer for whom counseling is required under this paragraph (k).◄

9. In Supplement I to Part 1026—Official Interpretations:

A. Under *Section 1026.31—General Rules:*

i. The subheading *31(c)(1) Disclosures for certain closed-end home mortgages* and paragraph 1. under that subheading are revised.

ii. Under subheading *31(c)(1)(i) Change in terms,* paragraph 2. is revised.

iii. Under subheading *31(c)(1)(ii) Telephone disclosures,* paragraph 1. is revised.

iv. The subheading *31(c)(1)(iii) Consumer's waiver of waiting period before consummation* is revised.

B. Under *Section 1026.32—Requirements for Certain Closed-End Home Mortgages:*

i. The heading *Section 1026.32—Requirements for Certain Closed-End Home Mortgages* is revised.

ii. The subheading *32(a) Coverage* is revised.

iii. The subheading *32(a)(1) Coverage* and paragraph 1. under that subheading are added.

iv. Under new subheading *32(a)(1) Coverage:*

a. Under subheading *Paragraph 32(a)(1)(i),* paragraphs 1., 2., 3., and 4. are revised.

b. Under subheading *Paragraph 32(a)(1)(ii),* paragraph 1. is re-designated and revised as paragraph 1. under subheading *32(b)(6) Total loan amount,* subheading *32(b)(6)(i) Closed-end mortgage loans,* paragraph 2. is re-designated as paragraph 1. under subheading *Paragraph 32(a)(1)(ii)* and new paragraph 2. is added.

c. The subheading *Paragraph 32(a)(1)(iii)* and paragraphs 1. and 2. under that subheading are added.

v. The subheading *Paragraph 32(a)(2)* and paragraph 1. under that subheading are revised and paragraphs 2., 3., and 4. are added.

vi. Under subheading *32(b) Definitions:*

a. Under subheading *Paragraph 32(b)(1)(i),* paragraph 1. is revised and paragraphs 2., 3., and 4. are added.

b. Under subheading *Paragraph 32(b)(1)(ii),* paragraph 1. is revised, paragraph 2. is re-designated and revised under subheading *Paragraph 32(b)(1)(iii),* paragraph 1. and new paragraphs 2. and 3. are added under subheading *Paragraph 32(b)(1)(ii).*

c. Under subheading *Paragraph 32(b)(1)(iv),* paragraph 1. is revised and paragraph 2. is added.

d. The subheading *Paragraph 32(b)(3)(i)* and paragraph 1. under that subheading are added.

e. The subheading *Paragraph 32(b)(3)(ii)* and paragraph 1. under that subheading are added.

f. The subheading *Paragraph 32(b)(3)(iii)* and paragraph 1. under that subheading are added.

g. The subheading *Paragraph 32(b)(3)(v)* and paragraph 1. under that subheading are added.

h. The subheading *Paragraph 32(b)(3)(vi)* and paragraphs 1. and 2. under that subheading are added.

i. The subheading *Paragraph 32(b)(4)* and paragraph 1. under that subheading are added.

j. The subheading *Paragraph 32(b)(5),* the subheading *32(b)(5)(i) Bona fide third-party charges* and paragraphs 1., 2., and 3. under that subheading, and the subheading *32(b)(5)(ii) Bona fide discount points* and paragraph 1. under that subheading are added.

k. The subheading *32(b)(8) Prepayment penalty* and paragraphs 1., 2., and 3. under that subheading are added.

vii. Under subheading *32(c) Disclosures:*

a. The subheading *32(c)(2) Annual percentage rate* and paragraph 1. under that subheading are added.

b. The subheading *32(c)(3) Regular payment; balloon payment* is revised, paragraph 1. is re-designated as subheading *Paragraph 32(c)(3)(i),* paragraph 1., and new paragraph 1. is added under subheading *32(c)(3) Regular payment; balloon payment.*

c. Under subheading *32(c)(4) Variable-rate,* paragraph 1. is revised.

d. The subheading *32(c)(5) Amount borrowed* and paragraph 1. under that subheading are revised.

viii. Under subheading *32(d) Limitations:*

a. Paragraph 1. is revised.

b. Under subheading *32(d)(1)(i) Balloon payment,* paragraph 1. is revised and paragraph 2. is added.

c. Under subheading *32(d)(2) Negative amortization,* paragraph 1. is revised.

d. Under subheading *32(d)(6) Prepayment penalties,* paragraph 1. is removed and reserved.

e. The subheading *32(d)(7) Prepayment penalty exception* and paragraph 1. under that subheading are removed and reserved.

f. Under the subheading *32(d)(7) Prepayment penalty exception,* the subheading *Paragraph 32(d)(7)(iii)* and paragraphs 1., 2., and 3. under that subheading are removed, and the subheading *Paragraph 32(d)(7)(iv)* and paragraphs 1. and 2. under that subheading are removed.

g. The subheading *32(d)(8) Due-on-demand clause* is revised.

h. The subheading *Paragraph 32(d)(8)(ii)* and paragraph 1. under that subheading are revised.

i. Under the subheading *Paragraph 32(d)(8)(iii),* paragraphs 1. and 2. are revised and paragraph 3. is added.

C. Under *Section 1026.34—Prohibited Acts or Practices in Connection with High-Cost Mortgages:*

i. The subheading *34(a)(2) Notice to Assignee* is revised.

ii. Under the subheading *34(a)(3) Refinancings within one-year period,* paragraph 2. is revised.

iii. Under the subheading *34(a)(4) Repayment ability:*

a. Paragraphs 1., 2., 3., 4., and 5. are revised.

b. Under the subheading *Paragraph 34(a)(4)(ii)(B),* paragraph 2. is revised.

c. Under the subheading *Paragraph 34(a)(4)(ii)(C),* paragraph 1. is revised.

d. Under the subheading *34(a)(4)(iii) Presumption of compliance,* paragraph 1. is revised.

e. Under the subheading *Paragraph 34(a)(4)(iii)(B),* paragraph 1. is revised.

iv. New *34(a)(5) Pre-loan counseling, 34(a)(6) Recommended default, 34(a)(7) Modification and deferral fees, 34(a)(8) Late fees, 34(a)(9) Payoff statements* and *34(a)(10) Financing of points and fees* are added.

v. The subheading *34(b) Prohibited acts or practices for dwelling-secured loans; open-end credit* and paragraphs 1. and 2. under that subheading are revised.

D. Under *Section 1026.36—Prohibited Acts or Practices in Connection with Credit Secured by a Dwelling:*

i. New *36(k) Negative amortization counseling* is added.

The revisions, removals, and additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 1026.31—General Rules

* * * * *

31(c)(1) Disclosures for certain ❚*closed-end*❚ *home mortgages.*

1. *Pre-consummation* ►*or account opening*◄ *waiting period.* A creditor must furnish § 1026.32 disclosures at least three business days prior to consummation ►for a closed-end, high-cost mortgage and at least three business days prior to account opening for an open-end, high-cost mortgage◄. Under § 1026.32, ''business day'' has the same meaning as the rescission rule in comment 2(a)(6)–2—all calendar days except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). However, while the disclosure rule under §§ 1026.15 and 1026.23 extends to midnight of the third business day, the rule under § 1026.32 does not. For example, under § 1026.32, if disclosures were provided on a Friday, consummation ►or account opening◄ could occur any time on Tuesday, the third business day following receipt of the disclosures. If the timing of the rescission rule were to be used, consummation ►or account opening◄ could not occur until after midnight on Tuesday.

31(c)(1)(i) Change in terms.

* * * * *

2. *Sale of optional products at consummation* ►*or account opening*◄. If the consumer finances the purchase of optional products such as credit insurance and as a result the monthly payment differs from what was previously disclosed under § 1026.32, redisclosure is required and a new three-day waiting period applies. (See comment 32(c)(3)–1 on when optional items may be included in the regular payment disclosure.)

31(c)(1)(ii) Telephone disclosures.

1. *Telephone disclosures.* Disclosures by telephone must be furnished at least three business days prior to consummation ►and prior to account opening◄, calculated in accord with the timing rules under § 1026.31(c)(1).

31(c)(1)(iii) Consumer's waiver of waiting period before consummation ►or account opening◄.

* * * * *

Section 1026.32—Requirements for ►*High-Cost*◄❚*Certain Closed-End Home*❚ *Mortgages*

32(a) ►*High-Cost Mortgages.*◄❚*Coverage.*❚

►*32(a)(1) Coverage.*

1. The term *high-cost mortgage* includes both a closed-end mortgage loan and an open-end credit plan secured by the consumer's principal dwelling. For purposes of determining coverage under § 1026.32, an open-end consumer credit transaction is the account opening of an open-end credit plan. An advance of funds or a draw on the credit line under an open-end credit plan subsequent to account opening does not constitute an open-end ''transaction.''◄

Paragraph 32(a)(1)(i).

1. ►*Transaction coverage rate.* The transaction coverage rate is calculated solely for purposes of determining whether a closed-end transaction is subject to § 1026.32. The creditor is not required to disclose the transaction coverage rate to the consumer. The creditor determines the transaction coverage rate in the same manner as the transaction's annual percentage rate under § 1026.32(a)(2) except that, for purposes of calculating the transaction coverage rate and determining coverage under § 1026.32, the amount of the prepaid finance charge is modified in accordance with § 1026.35(a)(2)(i). For guidance on determining the transaction coverage rate, see commentary to § 1026.35(a)(2)(i). The transaction coverage rate that results from these special rules must be compared to the average prime offer rate to determine whether the closed-end transaction is subject to § 1026.32.◄❚*Application date.* An

application is deemed received when it reaches the creditor in any of the ways applications are normally transmitted. (See § 1026.19(a).) For example, if a borrower applies for a 10-year loan on September 30 and the creditor counteroffers with a 7-year loan on October 10, the application is deemed received in September and the creditor must measure the annual percentage rate against the appropriate Treasury security yield as of August 15. An application transmitted through an intermediary agent or broker is received when it reaches the creditor, rather than when it reaches the agent or broker. (See comment 19(b)–3 to determine whether a transaction involves an intermediary agent or broker.)]

2. ►*Average prime offer rate; closed-end credit.* The term ''average prime offer rate'' is defined in § 1026.35(a)(2)(ii). *High-cost mortgages* include consumer credit transactions secured by the consumer's principal dwelling with a transaction coverage rate or an annual percentage rate, as applicable, that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by the specified amount. The published table of average prime offer rates indicates how to identify the comparable transaction. For guidance on determining the average prime offer rate for closed-end credit for purposes of this section, see comments 35(a)(2)(ii)–1 through –4.◄[*When fifteenth not a business day.* If the 15th day of the month immediately preceding the application date is not a business day, the creditor must use the yield as of the business day immediately preceding the 15th.]

3. ►*Average prime offer rate; open-end credit plans.* Section 1026.32(a)(1)(i) requires a creditor to identify a ''comparable transaction'' when determining the average prime offer rate for an open-end credit plan. The published table of average prime offer rates lists average prime offer rates for a wide variety of types of closed-end loans. Accordingly, § 1026.32(a)(1)(i) requires a creditor to determine the average prime offer rate for an open-end credit plan by reference to the average prime offer rate for the most closely comparable closed-end loan, based on applicable loan characteristics and other loan pricing terms. For example, if a home-equity line of credit has a variable-rate feature, a creditor must utilize the appropriate, corresponding rate table for adjustable rates for closed-end loans. If the variable-rate feature has a fixed-rate period (*i.e.,* the period until the rate adjusts) that is not in whole years, a creditor must use the table for the loans using the number of whole years closest to the actual term. For example, if a variable-rate feature has an initial fixed-rate period of 20 months, a creditor must use the table for two-year adjustable rate loans. If the variable-rate feature has no initial fixed-rate period or has an initial fixed-rate period of less than one year, a creditor must use the applicable table for one-year adjustable rate loans. For example, if the initial fixed-rate period is six months, a creditor must use the applicable one-year annual percentage rate. ◄[*Calculating annual percentage rates for variable-rate loans and discount loans.* Creditors must use the rules set out in the commentary to § 1026.17(c)(1) in calculating the annual percentage rate for variable-rate loans (assume the rate in effect at the time of disclosure remains unchanged) and for discount, premium, and stepped-rate transactions (which must reflect composite annual percentage rates).]

4. ►*Total loan amount less than $50,000.* See § 1026.32(b)(6) and comment 32(b)(6)–1 for guidance on total loan amount for purposes of § 1026.32(a)(1)(i).◄[*Treasury securities.* To determine the yield on comparable Treasury securities for the annual percentage rate test, creditors may use the yield on actively traded issues adjusted to constant maturities published in the Federal Reserve Board's ''Selected Interest Rates'' (statistical release H–15). Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity. If the loan's maturity is exactly halfway between security maturities, the annual percentage rate on the loan should be compared with the yield for Treasury securities having the lower yield. In determining the loan's maturity, creditors may rely on the rules in § 1026.17(c)(4) regarding irregular first payment periods. For example:

i. If the H–15 contains a yield for Treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the annual percentage rate for an 8-year mortgage loan is compared with the yield of securities having a 7-year maturity, and the annual percentage rate for a 9-year mortgage loan is compared with the yield of securities having a 10-year maturity.

ii. If a mortgage loan has a term of 15 years, and the H–15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the annual percentage rate for a 15-year mortgage loan with the yield for constant maturities of 10 years.

iii. If a mortgage loan has a term of 30 years, and the H–15 does not contain a yield for 30-year constant maturities, but contains a yield for 20-year constant maturities, and an average yield for securities with remaining terms to maturity of 25 years and over, then the annual percentage rate on the loan is compared with the yield for 20-year constant maturities.]

Paragraph 32(a)(1)(ii).

1. [*Total loan amount.* For purposes of the ''points and fees'' test, the total loan amount is calculated by taking the amount financed, as determined according to § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii) and § 1026.32(b)(1)(iv) that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example.

i. If the consumer finances a $300 fee for a creditor-conducted appraisal and pays $400 in points at closing, the amount financed under § 1026.18(b) is $9,900 ($10,000 plus the $300 appraisal fee that is paid to and financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 1026.32(b)(1)(iii). It is deducted from the amount financed ($9,900) to derive a total loan amount of $9,600.

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under § 1026.18(b). In this case, the amount financed is the same as the total loan amount: $9,600 ($10,000, less $400 in prepaid finance charges).

iii. If the consumer finances a $300 fee for an appraisal conducted by someone other than the creditor or an affiliate, the $300 fee is not included with other points and fees under § 1026.32(b)(1)(iii). The amount financed under § 1026.18(b) is $9,900 ($10,000 plus the $300 fee for an independently-conducted appraisal that is financed by the creditor, less the $400 paid in cash and deducted as prepaid finance charges).

iv. If the consumer finances a $300 fee for a creditor-conducted appraisal and a $500 single premium for optional credit life insurance, and pays $400 in points at closing, the amount financed under § 1026.18(b) is $10,400 ($10,000, plus the $300 appraisal fee that is paid to and financed by the creditor, plus the $500 insurance premium that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 1026.32(b)(1)(iii), and the $500 insurance premium is added under 1026.32(b)(1)(iv). The $300 and $500 costs are deducted from the amount financed ($10,400) to derive a total loan amount of $9,600.

2.]►*Annual adjustment of $1,000 amount.*◄[*Annual adjustment of $400 amount.* A mortgage loan is covered by § 1026.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The $400 figure] ►The $1,000 figure in § 1026.32(a)(1)(ii)(B)◄ is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year. [The adjustment for the upcoming year will be included in any proposed commentary published in the fall, and incorporated into the commentary the following spring. The adjusted figures are:]

►2. *Historical adjustment of $400 amount.* Prior to [DATE THAT THE FINAL RULE TAKES EFFECT], a mortgage loan was covered by § 1026.32 if the total points and fees payable by the consumer at or before loan consummation exceeded the greater of $400 or 8 percent of the total loan amount. The $400 figure was adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1, as follows:◄

i. For 1996, $412, reflecting a 3.00 percent increase in the CPI–U from June 1994 to June 1995, rounded to the nearest whole dollar.

ii. For 1997, $424, reflecting a 2.9 percent increase in the CPI–U from June 1995 to June 1996, rounded to the nearest whole dollar.

iii. For 1998, $435, reflecting a 2.5 percent increase in the CPI–U from June 1996 to June 1997, rounded to the nearest whole dollar.

iv. For 1999, $441, reflecting a 1.4 percent increase in the CPI–U from June 1997 to June 1998, rounded to the nearest whole dollar.

v. For 2000, $451, reflecting a 2.3 percent increase in the CPI–U from June 1998 to June 1999, rounded to the nearest whole dollar.

vi. For 2001, $465, reflecting a 3.1 percent increase in the CPI–U from June 1999 to June 2000, rounded to the nearest whole dollar.

vii. For 2002, $480, reflecting a 3.27 percent increase in the CPI–U from June 2000 to June 2001, rounded to the nearest whole dollar.

viii. For 2003, $488, reflecting a 1.64 percent increase in the CPI–U from June 2001 to June 2002, rounded to the nearest whole dollar.

ix. For 2004, $499, reflecting a 2.22 percent increase in the CPI–U from June 2002 to June 2003, rounded to the nearest whole dollar.

x. For 2005, $510, reflecting a 2.29 percent increase in the CPI–U from June 2003 to June 2004, rounded to the nearest whole dollar.

xi. For 2006, $528, reflecting a 3.51 percent increase in the CPI–U from June 2004 to June 2005, rounded to the nearest whole dollar.

xii. For 2007, $547, reflecting a 3.55 percent increase in the CPI–U from June 2005 to June 2006, rounded to the nearest whole dollar.

xiii. For 2008, $561, reflecting a 2.56 percent increase in the CPI–U from June 2006 to June 2007, rounded to the nearest whole dollar.

xiv. For 2009, $583, reflecting a 3.94 percent increase in the CPI–U from June 2007 to June 2008, rounded to the nearest whole dollar.

xv. For 2010, $579, reflecting a 0.74 percent decrease in the CPI–U from June 2008 to June 2009, rounded to the nearest whole dollar.

xvi. For 2011, $592, reflecting a 2.2 percent increase in the CPI–U from June 2009 to June 2010, rounded to the nearest whole dollar.

xvii. For 2012, $611, reflecting a 3.2 percent increase in the CPI–U from June 2010 to June 2011, rounded to the nearest whole dollar.

►*Paragraph 32(a)(1)(iii).*

1. *Maximum period and amount.* Section 1026.32(a)(1)(iii) provides that a closed-end mortgage loan or an open-end credit plan is a high-cost mortgage if, under the terms of the loan contract or open-end credit agreement, a creditor can charge either (i) a prepayment penalty more than 36 months after consummation or account opening, or (ii) total prepayment penalties that exceed two percent of any amount prepaid. Section 1026.32(a)(1)(iii) applies only for purposes of determining whether a transaction is subject to the high-cost mortgage requirements and restrictions in § 1026.32(c) and (d) and § 1026.34. However, if a transaction is subject to those requirements and restrictions by operation of any provision of § 1026.32(a)(1), including by operation of § 1026.32(a)(1)(iii), then the transaction may not include a prepayment penalty. See § 1026.32(d)(6). As a result, § 1026.32(a)(1)(iii) effectively establishes a maximum period during which a prepayment penalty may be imposed, and a maximum prepayment penalty amount that may be imposed, on a closed-end mortgage loan (other than a reverse mortgage) or open-end credit plan secured by a consumer's principal dwelling. Closed-end mortgage loans are subject to the additional prepayment penalty restrictions set forth in § 1026.43(g).

2. *Examples; open-end credit plans.* If the terms of an open-end credit agreement allow for a prepayment penalty that exceeds two percent of the initial credit limit for the plan, the agreement will be deemed to permit a creditor to charge a prepayment penalty that exceeds two percent of the ''amount prepaid'' within the meaning of § 1026.32(a)(1)(iii). The following examples illustrate how to calculate whether the terms of an open-end credit agreement comply with the maximum prepayment penalty period and amounts described in comment 32(a)(1)(iii).

i. Assume that the terms of a home-equity line of credit with an initial credit limit of $10,000 require the consumer to pay a $500 flat fee if the consumer terminates the plan less than 36 months after account opening. The $500 fee constitutes a prepayment penalty under § 1026.32(b)(8)(ii), and the penalty is greater than two percent of the $10,000 initial credit limit, which is $200. Under § 1026.32(a)(1)(iii), the plan is a high-cost mortgage subject to the requirements and restrictions set forth in §§ 1026.32 and 1026.34.

ii. Assume that the terms of a home-equity line of credit with an initial credit limit of $10,000 and a ten-year term require the consumer to pay a $200 flat fee if the consumer terminates the plan prior to its normal expiration. The $200 prepayment penalty does not exceed two percent of the initial credit limit, but the terms of the agreement permit the creditor to charge the fee more than 36 months after account opening. Thus, under § 1026.32(a)(1)(iii), the plan is a high-cost mortgage subject to the requirements and restrictions set forth in §§ 1026.32 and 1026.34.

iii. Assume that, under the terms of a home-equity line of credit with an initial credit limit of $150,000, the creditor may charge the consumer any closing costs waived by the creditor if the consumer terminates the plan less than 36 months after account opening. Assume also that the creditor waived closing costs of $1,000. Bona fide third-party charges comprised $800 of the $1,000 in waived closing costs, and origination charges retained by the creditor or its affiliate comprised the remaining $200. Under § 1026.32(b)(8)(ii), the $800 in bona fide third-party charges is not a prepayment penalty, while the $200 for the creditor's own originations costs is a prepayment penalty. The total prepayment penalty of $200 is less than two percent of the initial $150,000 credit limit, and the penalty does not apply if the consumer terminates the plan more than 36 months after account opening. Thus, the plan is not a high-cost mortgage under § 1026.32(a)(1)(iii).◄

[*Paragraph***]** *32(a)(2)* ►*Determination of transaction coverage rate or annual percentage rate.*◄

1. **[***Exemption limited.* Section 1026.32(a)(2) lists certain transactions exempt from the provisions of § 1026.32. Nevertheless, those transactions may be subject to the provisions of § 1026.35, including any provisions of § 1026.32 to which § 1026.35 refers. *See* § 1026.35(a).**]** ►*Determining interest rate for transaction coverage rate or annual percentage rate.* The guidance set forth in the commentary to § 1026.17(c)(1) addresses calculation of the annual percentage rates disclosures for discounted and premium variable-rate loans. Section 1026.32(a)(2) requires a different calculation of the annual percentage rate or transaction coverage rate, as applicable, solely to determine coverage under § 1026.32(a)(1)(i).

2. *Open-end credit plan.* The annual percentage rate for an open-end credit plan must be determined in accordance with § 1026.32(a)(2), regardless of whether there is an advance of funds at account opening. Section 1026.32(a)(2) does not require the calculation of the annual percentage rate for any extensions of credit subsequent to account opening. Any draw on the credit line subsequent to account opening is not treated as a separate transaction for purposes of determining annual percentage rate threshold coverage.

3. *Rates that vary.* i. Section 1026.32(a)(2)(ii) applies when the interest rate is determined by an index that is outside the creditor's control and the maximum margin is set forth in the agreement. A creditor must use the rules that apply to variable-rate transactions to determine the annual percentage rate even if the transaction also has a discounted fixed rate for a period of time, such as an initial interest rate if the rate that applies after the expiration of the fixed rate is variable. Accordingly, in determining the interest rate under § 1026.32(a)(2)(ii), a creditor must disregard the fixed initial interest rate and use the fully-indexed rate using the maximum margin that could apply. In determining the maximum margin, a creditor must consider the maximum margin that might apply, *e.g.,* a specified higher margin such as when a preferred rate is terminated, if the borrower's employment with the creditor ends.

ii. Section 1026.32(a)(2)(iii) applies when the interest rates applicable to a transaction may vary, except as described in § 1026.32(a)(2)(ii). For example, § 1026.32(a)(2)(iii) applies to a closed-end mortgage loan when interest rate changes are at the creditor's discretion, such as when the index is internally defined (for example, by that creditor's prime rate). Section 1026.32(a)(2)(iii) also applies where multiple fixed rates apply to a transaction, such as a stepped-rate mortgage. For example, assume the following rates will apply to a transaction: Three percent for the first six months, four percent for the next 10 years, and five percent for the remaining loan term. In this example, § 1026.32(a)(2)(iii) would be used to determine the interest rate and five percent would be the maximum interest rate applicable to the transaction.

4. *Fixed-rate and term-payment options.* If an open-end credit plan only has a fixed-rate during the draw period, a creditor must use the interest rate applicable to that feature to determine the annual percentage rate, as

required by § 1026.32(a)(2)(i). However, if an open-end credit plan has a variable-rate and offers a fixed-rate and term-payment option during the draw period, § 1026.32(a)(2) requires a creditor to use the terms applicable to the variable-rate feature for determining the annual percentage rate, as described in § 1026.32(a)(2)(ii).◄

32(b) Definitions.

Paragraph 32(b)(1)(i).

1. *General.* Section 1026.32(b)(1)(i) includes in the total ''points and fees'' items [defined as finance charges under §§ 1026.4(a) and 1026.(4)(b). Items excluded from the finance charge under other provisions of § 1026.4 are not included in the total ''points and fees'' under paragraph 32(b)(1)(i), but may be included in ''points and fees'' under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per-diem interest, is excluded from ''points and fees'' under § 1026.32(b)(1).]►included in the finance charge under § 1026.4(a) and (b), but excludes items described in § 1026.4(c) through (e) (except to the extent otherwise included by § 1026.32(b)(1)); interest, including per-diem interest; and certain mortgage insurance premiums, as discussed in comments 32(b)(1)(i)–2 through –4. For purposes of § 1026.32(b)(1)(i), ''items included in the finance charge under § 1026.4(a) and (b)'' means only those items included under § 1026.4(a) and (b), without reference to any other provisions of § 1026.4, including § 1026.4(g). To illustrate: A fee imposed by the creditor for an appraisal performed by an employee of the creditor meets the definition of ''finance charge'' under § 1026.4(a) as ''any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.'' However, § 1026.4(c)(7)(iv) lists appraisal fees. Therefore, under the general rule regarding the charges that must be counted as points and fees, a fee imposed by the creditor for an appraisal performed by an employee of the creditor would not be counted in points and fees. Section 1026.32(b)(1)(iii), however, expressly re-includes in points and fees items listed in § 1026.4(c)(7) (including appraisal fees) if the creditor receives compensation in connection with the charge. A creditor would receive compensation for an appraisal performed by its own employee. Thus, the appraisal fee in this example must be included in the calculation of points and fees.

2. *Upfront Federal and State mortgage insurance premiums and guaranty fees.* Under § 1026.32(b)(1)(i)(B)(*1*) and (*3*), upfront mortgage insurance premiums or guaranty fees in connection with a Federal or State agency program are not ''points and fees,'' even though they are finance charges under § 1026.4(a) and (b). For example, if a consumer is required to pay a $2,000 mortgage insurance premium before or at closing for a loan insured by the U.S. Federal Housing Administration, the $2,000 must be treated as a finance charge but is not counted in ''points and fees.''

3. *Upfront private mortgage insurance premiums.* i. Under § 1026.32(b)(1)(i)(B)*(2)* and *(3),* upfront private mortgage insurance premiums are not ''points and fees,'' even though they are finance charges under § 1026.4(a) and (b)—but only to the extent that the premium amount does not exceed the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)).

ii. In addition, to qualify for the exclusion from points and fees, upfront private mortgage insurance premiums must be required to be refunded on a pro rata basis and the refund must be automatically issued upon notification of the satisfaction of the underlying mortgage loan.

iii. To illustrate: Assume that a $3,000 upfront private mortgage insurance premium charged on a closed-end mortgage loan is required to be refunded on a pro rata basis and automatically issued upon notification of the satisfaction of the underlying mortgage loan. Assume also that the maximum upfront premium allowable under the National Housing Act is $2,000. In this case, the creditor could exclude $2,000 from ''points and fees'' but would have to include the $1,000 that exceeds the allowable premium under the National Housing Act. However, if the $3,000 upfront private mortgage insurance premium were not required to be refunded on a pro rata basis and automatically issued upon notification of the satisfaction of the underlying mortgage loan, the entire $3,000 premium must be included in ''points and fees.''

4. *Method of paying private mortgage insurance premiums.* Upfront private mortgage insurance premiums that do not qualify for an exclusion from ''points and fees'' under § 1026.32(b)(1)(i)(B)*(2)* must be included in ''points and fees'' for purposes of this section whether paid before or at closing, in cash or financed, and whether the insurance is optional or required. Such charges are also included whether the amount represents the entire premium or an initial payment.◄

Paragraph 32(b)(1)(ii).

1. ►*Loan originator compensation—general*◄[*Mortgage broker fees*]. In determining ''points and fees'' for purposes of ►§ 1026.32◄[this section], compensation paid by a consumer ►or creditor◄ to a ►loan originator◄[mortgage broker (directly or through the creditor for delivery to the broker)] is included in the calculation whether or not the amount is disclosed as a finance charge. [Mortgage broker fees that are not paid by the consumer are not included.] ►Loan originator◄[Mortgage broker] fees already included in the ►points and fees◄ calculation as finance charges under § 1026.32(b)(1)(i) need not be counted again under § 1026.32(b)(1)(ii).

►2. *Loan originator compensation—examples.*

i. In determining ''points and fees'' under § 1026.32, loan originator compensation includes the dollar value of compensation paid to a loan originator for a closed-end mortgage loan, such as a bonus, commission, yield spread premium, award of merchandise, services, trips, or similar prizes, or hourly pay for the actual number of hours worked on a particular transaction. Compensation paid to a loan originator for a closed-end mortgage loan must be included in the ''points and fees'' calculation for that loan whenever paid, whether before, at, or after closing, as long as that compensation amount can be determined at the time of closing. Thus, loan originator compensation for a closed-end mortgage loan includes compensation that will be paid as part of a periodic bonus, commission, or gift, if a portion of the dollar value of the bonus, commission, or gift can be attributed to that loan. The following examples illustrate the rule:

A. Assume that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus every year based on the number of loan applications taken by the loan officer that result in consummated transactions during that year, and that each consummated transaction increases the bonus by $100. In this case, the $100 bonus must be counted in the amount of loan originator compensation that the creditor includes in ''points and fees.''

B. Assume that, according to a creditor's compensation policies, the creditor awards its loan officers a year-end bonus equal to a flat dollar amount for each of the consummated transactions originated by the loan officer during that year. Assume also that the per-transaction dollar amount is determined at the end of the year, based on the total dollar value of consummated transactions originated by the loan officer. If at the time a mortgage transaction is consummated the loan officer has originated total volume that qualifies the loan officer to receive a $300 bonus per transaction, the $300 bonus is loan originator compensation that must be included in ''points and fees'' for the transaction.

C. Assume that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus every year based on the number of consummated transactions originated by the loan officer during that year. Assume also that for the first 10 transactions originated by the loan officer in a given year, no bonus is awarded; for the next 10 transactions originated by the loan officer up to 20, a bonus of $100 per transaction is awarded; and for each transaction originated after the first 20, a bonus of $200 per transaction is awarded. In this case, for the first 10 transactions originated by a loan officer during a given year, no amount of loan originator compensation need be included in ''points and fees.'' For any mortgage transaction made after the first 10, up to the 20th transaction, $100 must be included in ''points and fees.'' For any mortgage transaction made after the first 20, $200 must be included in ''points and fees.''

ii. In determining ''points and fees'' under this section, loan originator compensation excludes compensation that cannot be attributed to a particular transaction at the time of origination, including, for example:

A. Compensation based on the long-term performance of the loan originator's loans.

B. Compensation based on the overall quality of a loan originator's loan files.

C. The base salary of a loan originator who is also the employee of the creditor, not

accounting for any bonuses, commissions, pay raises, or other financial awards based solely on a particular transaction or the number or amount of closed-end mortgage loans originated by the loan originator.

3. *Name of fee.* Loan originator compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. For example, if a loan originator imposes a ''processing fee'' and retains the fee, the fee is loan originator compensation under § 1026.32(b)(1)(ii) whether the originator expends the fee to process the consumer's application or uses it for other expenses, such as overhead.

Paragraph 32(b)(1)(iii).

1. *Other charges.*◀[2. *Example.*] Section 1026.32(b)(1)(iii) defines ''points and fees'' to include all items listed in § 1026.4(c)(7), other than amounts held for the future payment of taxes. An item listed in § 1026.4(c)(7) may be excluded from the ''points and fees'' calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the ''points and fees'' calculation (assuming no compensation is paid to the creditor ►or its affiliate◀). ►By contrast, a◀[A] fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation[, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount].

Paragraph 32(b)(1)(iv).

1. ►*Credit insurance and debt cancellation or suspension coverage.*◀[*Premium amount.*] In determining ''points and fees'' for purposes of ►§ 1026.32◀[this section], premiums [paid at or before closing] for credit insurance ►or any debt cancellation or suspension agreement or contract are included in points and fees if they are paid at or before consummation, whether they are paid in cash or, if permitted by applicable law, financed. Such charges are also included whether the amount represents the entire premium for the coverage or an initial payment.◀[are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment.]

►2. *Credit property insurance.* Credit property insurance includes insurance against loss of or damage to personal property, such as a houseboat or manufactured home. Credit property insurance covers the creditor's security interest in the property. Credit property insurance does not include homeowners insurance, which, unlike credit property insurance, typically covers not only the dwelling but its contents, and designates the consumer, not the creditor, as the beneficiary.

Paragraph 32(b)(3)(i).

1. *Finance charge.* The points and fees calculation under § 1026.32(b)(3) generally does not include items that are included in the finance charge but that are payable after account opening, such as minimum monthly finance charges or charges based on either account activity or inactivity. Transaction fees also generally are not included in the points and fees calculation, except as provided in § 1026.32(b)(3)(vi).

Paragraph 32(b)(3)(ii).

1. *Other charges.* See comment 32(b)(1)(iii)–1 for further guidance concerning the inclusion of items listed in § 1026.4(c)(7) in points and fees for open-end credit plans.

Paragraph 32(b)(3)(iii).

1. *Credit insurance and debt cancellation or suspension coverage.* See comments 32(b)(1)(iv)–1 and –2 for further guidance concerning the inclusion of premiums for credit insurance and debt cancellation or suspension coverage in points and fees for open-end credit plans.

Paragraph 32(b)(3)(v).

1. *Participation fees.* Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis, must be included in the points and fees calculation for purposes of § 1026.32. These fees include annual fees or other periodic fees that must be paid as a condition of access to the plan itself. See commentary to § 1026.4(c)(4) for a description of these fees. For purposes of the points and fees calculation, the creditor must assume that any annual fee is charged each year for the original term of the plan. For example, assume that the terms of an open-end credit plan with a ten-year term permit the creditor to impose an annual fee of $50 for the consumer to maintain access to the plan. Section 1026.32(b)(3)(v) requires the creditor to include in points and fees the $500 that the consumer will pay in annual fees over the ten-year term of the plan.

Paragraph 32(b)(3)(vi).

1. *Transaction fees to draw down the credit line.* Section 1026.32(b)(3)(vi) requires creditors in open-end credit plans to include in points and fees any transaction fee, including any per-transaction fee, that will be charged for a draw on the credit line. Section 1026.32(b)(3)(vi) requires the creditor to assume that the consumer will make at least one draw during the term of the credit plan. Thus, if the terms of the open-end credit plan permit the creditor to charge a $10 transaction fee each time the consumer draws on the credit line, § 1026.32(b)(3)(vi) requires the creditor to include one $10 charge in the points and fees calculation.

2. *Fixed-rate loan option.* If the terms of an open-end credit plan permit a consumer to draw on the credit line using either a variable-rate feature or a fixed-rate feature, § 1026.32(b)(3)(vi) requires the creditor to use the terms applicable to the variable-rate feature for determining the transaction fee that must be included in the points and fees calculation.

Paragraph 32(b)(4).

1. *Fees or charges waived at or before account opening.* Under § 1026.32(b)(4), a charge that the creditor waives at or before account opening may be excluded from points and fees for an open-end credit plan unless the creditor may impose the charge after account opening. For example, a charge that a creditor waives at or before account opening must be included in points and fees as a prepayment penalty under § 1026.32(b)(3)(iv) if the creditor can impose the charge if the consumer terminates the open-end credit plan prior to the end of its term. To illustrate, assume that, in opening an open-end credit plan with a ten-year term, a creditor waives a $300 processing fee. Also assume that the terms of the open-end credit plan provide that the consumer must repay the fee if the consumer terminates the plan within three years after account opening. The waived processing fee is a prepayment penalty as defined in § 1026.32(b)(8)(ii), because it is a fee that the creditor may impose and retain if the consumer terminates the plan prior to the end of its term. Under § 1026.32(b)(4), the creditor must include the waived processing fee in points and fees under § 1026.32(b)(3)(iv).

Paragraph 32(b)(5).

32(b)(5)(i) Bona fide third-party charges.

1. Section 1026.36(a)(1) and comment 36(a)–1 provide guidance about the term *loan originator* as used in § 1026.32(b)(5)(i).

2. *Example.* Assume that, prior to loan consummation, a creditor pays $400 for an appraisal conducted by a third-party not affiliated with the creditor. At consummation, the creditor charges the consumer $400 and retains that amount as reimbursement for the fee that the creditor paid to the third-party appraiser. For purposes of determining whether the transaction is a high-cost mortgage, the creditor need not include in points and fees the $400 it retains as reimbursement.

3. *Private mortgage insurance.* For purposes of determining whether a closed-end mortgage loan is a high-cost mortgage, the exclusion for bona fide third party charges not retained by the creditor, loan originator, or an affiliate of either is limited by § 1026.32(b)(1)(i)(B) in the general definition of points and fees. Section 1026.32(b)(1)(i)(B) requires inclusion in points and fees for closed-end mortgage loans of premiums or other charges payable at or before consummation for any private guaranty or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge exceeds the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)). These premiums or charges must also be included if the premiums or charges are not required to be refundable on a pro-rated basis, or the refund is not required to be automatically issued upon notification of the satisfaction of the underlying mortgage loan. Under these circumstances, even if the premiums or other charges are not retained by the creditor, loan originator, or an affiliate of either, they must be included in the points and fees calculation for purposes of determining whether a transaction is a high-cost mortgage. See comments 32(b)(1)(i)–3 and –4 for further discussion of including upfront private mortgage insurance premiums in the points and fees calculation for closed-end mortgage loans.

32(b)(5)(ii) Bona fide discount points.

1. *Average prime offer rate.* For purposes of § 1026.32(b)(5)(ii)(A)(*1*) and (B)(*1*), the

average prime offer rate used is the same average prime offer rate that applies to a comparable transaction as of the date the discounted interest rate for the transaction is set. See comment 32(a)(1)(i)–1 for guidance on determining the applicable average prime offer rate for a comparable transaction for a closed-end mortgage loan. See comment 32(a)(1)(i)–2 for guidance on determining the applicable average prime offer rate for a comparable transaction for an open-end credit plan. See comments 43(e)(3)(ii)–3 and –4 for examples of how to calculate bona fide discount points for closed-end mortgage loans secured by real property.

32(b)(6) Total loan amount.

32(b)(6)(i) Closed-end mortgage loans.

1. *Total loan amount; example.* The following example illustrates how to calculate the total loan amount for closed-end mortgage loans. Assume that the face amount of a closed-end mortgage note is $100,000. If the consumer pays a $300 fee for a creditor-conducted appraisal by having it deducted from loan proceeds and pays $400 in points in cash at consummation, the total loan amount is $99,700. Because the $300 appraisal fee is paid to the creditor, it is included in points and fees under § 1026.32(b)(1)(iii). Because it is included in points and fees and is financed by the creditor, it is deducted from the face amount of the note ($100,000) to derive a total loan amount of $99,700, pursuant to § 1026.32(b)(6)(i).

32(b)(8) Prepayment penalty.

1. *Examples of prepayment penalties; closed-end mortgage loans.* For purposes of § 1026.32(b)(8)(i), the following are examples of prepayment penalties:

i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such ''balance,'' even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. ''Interest accrual amortization'' refers to the method by which the amount of interest due for each period (*e.g.,* month) in a transaction's term is determined. For example, ''monthly interest accrual amortization'' treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan.

iii. A minimum finance charge in a simple interest transaction.

iv. Computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

2. *Examples of prepayment penalties; open-end credit plans.* For purposes of § 1026.32(b)(8)(ii), the term *prepayment penalty* includes a charge, including a waived closing cost, imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term. This includes a charge imposed if the consumer terminates the plan outright or, for example, if the consumer terminates the plan in connection with obtaining a new loan or plan with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either. However, the term *prepayment penalty* does not include a waived bona fide third-party charge imposed by the creditor if the consumer terminates the open-end credit plan during the first 36 months after account opening.

3. *Fees that are not prepayment penalties.* For purposes of § 1026.32(b)(8)(i) and (ii), fees which are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full or when an open-end credit plan is terminated, if such fees are imposed whether or not the loan is prepaid or the consumer terminates the plan prior to the end of its term. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan or line of credit.

ii. Loan guarantee fees.

iii. In the case of an open-end credit plan, fees that are not prepayment penalties also include any fee that the creditor may impose in lieu of termination and acceleration under comment 40(f)(2)–2.◄

32(c) Disclosures.

* * * * *

►*32(c)(2) Annual percentage rate.*

1. *Disclosing annual percentage rate for open-end high-cost mortgages.* In disclosing the annual percentage rate for an open-end, high-cost mortgage under § 1026.32(c)(2), creditors must comply with § 1026.6(a)(1). If a fixed-rate, discounted introductory or initial interest rate is offered on the transaction, § 1026.32(c)(2) requires a creditor to disclose the annual percentage rate of the fixed-rate, discounted introductory or initial interest rate feature, and the rate that would apply when the feature expires.◄

32(c)(3) Regular payment; ►*minimum periodic payment example;*◄*balloon payment.*

1. ►*Balloon payment.* Except as provided in § 1026.32(d)(1)(ii) and (iii), a mortgage transaction subject to this section may not include a payment schedule that results in a balloon payment.

Paragraph 32(c)(3)(i)

1.◄ *General.* The regular payment is the amount due from the borrower at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. In disclosing the regular payment, creditors may rely on the rules set forth in § 1026.18(g); however, the amounts for voluntary items, such as credit life insurance, may be included in the regular payment disclosure only if the consumer has previously agreed to the amounts.

i. If the loan has more than one payment level, the regular payment for each level must be disclosed. For example:

A. In a 30-year graduated payment mortgage where there will be payments of $300 for the first 120 months, $400 for the next 120 months, and $500 for the last 120 months, each payment amount must be disclosed, along with the length of time that the payment will be in effect.

B. If interest and principal are paid at different times, the regular amount for each must be disclosed.

C. In discounted or premium variable-rate transactions where the creditor sets the initial interest rate and later rate adjustments are determined by an index or formula, the creditor must disclose both the initial payment based on the discount or premium and the payment that will be in effect thereafter. Additional explanatory material which does not detract from the required disclosures may accompany the disclosed amounts. For example, if a monthly payment is $250 for the first six months and then increases based on an index and margin, the creditor could use language such as the following: ''Your regular monthly payment will be $250 for six months. After six months your regular monthly payment will be based on an index and margin, which currently would make your payment $350. Your actual payment at that time may be higher or lower.''

1. *Calculating ''worst-case'' payment example.* ►For a closed-end mortgage loan, creditors◄[Creditors] may rely on instructions in § 1026.19(b)(2)(viii)(B) for calculating the maximum possible increases in rates in the shortest possible timeframe, based on the face amount of the note (not the hypothetical loan amount of $10,000 required by § 1026.19(b)(2)(viii)(B)). The creditor must provide a maximum payment for each payment level, where a payment schedule provides for more than one payment level and more than one maximum payment amount is possible. ►For an open-end credit plan, the maximum monthly payment must be based on the following assumptions:

i. The consumer borrows the full credit line at account opening with no additional extensions of credit.

ii. The consumer makes only minimum periodic payments during the draw period and any repayment period.

iii. If the annual percentage rate may increase during the plan, the maximum

annual percentage rate that is included in the contract, as required by § 1026.30, applies to the plan at account opening.◄

32(c)(5) Amount borrowed►; credit limit◄.

1. *Optional insurance; debt-cancellation coverage.* ►For closed-end mortgage loans, this◄[This] disclosure is required when the amount borrowed in a refinancing includes premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident. See comment 4(d)(3)–2 and comment app. G and H–2 regarding terminology for debt-cancellation coverage.

32(d) Limitations.

1. *Additional prohibitions applicable under other sections.* Section 1026.34 sets forth certain prohibitions in connection with ►high-cost mortgages◄[mortgage credit subject to § 1026.32], in addition to the limitations in § 1026.32(d). Further, § 1026.35(b) prohibits certain practices in connection with ►closed-end◄ transactions that meet the coverage test in § 1026.35(a). Because the coverage test in § 1026.35(a) is generally broader than the coverage test in § 1026.32(a), most [§ 1026.32] ►closed-end high-cost mortgages◄ [mortgage loans] are also subject to the prohibitions set forth in § 1026.35(b) (such as escrows), in addition to the limitations in § 1026.32(d).

32(d)(1)(i) Balloon payment.

Alternative 1—Paragraph 32(d)(1)(i)

1. *Regular periodic payments.* The repayment schedule for a [§ 1026.32]►high-cost◄ mortgage loan [with a term of less than five years] must fully amortize the outstanding principal balance through ''regular periodic payments.'' A payment is a ''regular periodic payment'' if it is not more than twice the [amount of other payments]►average of earlier scheduled payments. For purposes of open-end credit plans, the term ''regular periodic payment'' or ''periodic payment'' means the required minimum periodic payment.◄

Alternative 2—Paragraph 32(d)(1)(i)

1. *Regular periodic payments.* The repayment schedule for a [§ 1026.32]►high-cost◄ mortgage loan [with a term of less than five years] must fully amortize the outstanding principal balance through ''regular periodic payments.'' A payment is a ''regular periodic payment'' if it is not more than [twice] ►two times◄ the amount of other payments. ►For purposes of open-end credit plans, the term ''regular periodic payment'' or ''periodic payment'' means the required minimum periodic payment.

2. *No repayment period.* If the terms of an open-end credit plan do not provide for a repayment period, the repayment schedule must fully amortize any outstanding principal balance in the draw period through regular periodic payments. However, the limitation on balloon payments in § 1026.32(d)(1)(i) does not preclude increases in regular periodic payments that result solely from the initial draw or additional draws on the credit line during the draw period.◄

32(d)(2) Negative amortization.

1. *Negative amortization.* The prohibition against negative amortization in a ►high-cost mortgage◄[mortgage covered by § 1026.32] does not preclude reasonable increases in the principal balance that result from events permitted by the legal obligation unrelated to the payment schedule. For example, when a consumer fails to obtain property insurance and the creditor purchases insurance, the creditor may add a reasonable premium to the consumer's principal balance, to the extent permitted by the legal obligation.

* * * * *

32(d)(6) ►[Reserved.]◄[*Prepayment penalties.*

1. *State law.* For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable state law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the state law definition in determining if a refund is a prepayment penalty.]

32(d)(7) ►[Reserved.]◄[*Prepayment penalty exception.*

Paragraph 32(d)(7)(iii).

1. *Calculating debt-to-income ratio.* ''Debt'' does not include amounts paid by the borrower in cash at closing or amounts from the loan proceeds that directly repay an existing debt. Creditors may consider combined debt-to-income ratios for transactions involving joint applicants. For more information about obligations and inflows that may constitute ''debt'' or ''income'' for purposes of § 1026.32(d)(7)(iii), see comment 34(a)(4)–6 and comment 34(a)(4)(iii)(C)–1.

2. *Verification.* Creditors shall verify income in the manner described in § 1026.34(a)(4)(ii) and the related comments. Creditors may verify debt with a credit report. However, a credit report may not reflect certain obligations undertaken just before or at consummation of the transaction and secured by the same dwelling that secures the transaction. Section 1026.34(a)(4) may require creditors to consider such obligations; see comment 34(a)(4)–3 and comment 34(a)(4)(ii)(C)–1.

3. *Interaction with Regulation B.* Section 1026.32(d)(7)(iii) does not require or permit the creditor to make inquiries or verifications that would be prohibited by Regulation B, 12 CFR part 1002.

Paragraph 32(d)(7)(iv).

1. *Payment change.* Section 1026.32(d)(7) sets forth the conditions under which a mortgage transaction subject to this section may have a prepayment penalty. Section 1026.32(d)(7)(iv) lists as a condition that the amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation. The following examples show whether prepayment penalties are permitted or prohibited under § 1026.32(d)(7)(iv) in particular circumstances.

i. Initial payments for a variable-rate transaction consummated on January 1, 2010 are $1,000 per month. Under the loan agreement, the first possible date that a payment in a different amount may be due is January 1, 2014. A prepayment penalty is permitted with this mortgage transaction provided that the other § 1026.32(d)(7) conditions are met, that is: provided that the prepayment penalty is permitted by other applicable law, the penalty expires on or before December 31, 2011, the penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or its affiliate, and at consummation the consumer's total monthly debts do not exceed 50 percent of the consumer's monthly gross income, as verified.

ii. Initial payments for a variable-rate transaction consummated on January 1, 2010 are $1,000 per month. Under the loan agreement, the first possible date that a payment in a different amount may be due is December 31, 2013. A prepayment penalty is prohibited with this mortgage transaction because the payment may change within the four-year period following consummation.

iii. Initial payments for a graduated-payment transaction consummated on January 1, 2010 are $1,000 per month. Under the loan agreement, the first possible date that a payment in a different amount may be due is January 1, 2014. A prepayment penalty is permitted with this mortgage transaction provided that the other § 1026.32(d)(7) conditions are met, that is: provided that the prepayment penalty is permitted by other applicable law, the penalty expires on or before December 31, 2011, the penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or its affiliate, and at consummation the consumer's total monthly debts do not exceed 50 percent of the consumer's monthly gross income, as verified.

iv. Initial payments for a step-rate transaction consummated on January 1, 2010 are $1,000 per month. Under the loan agreement, the first possible date that a payment in a different amount may be due is December 31, 2013. A prepayment penalty is prohibited with this mortgage transaction because the payment may change within the four-year period following consummation.

2. *Payment changes excluded.* Payment changes due to the following circumstances are not considered payment changes for purposes of this section:

i. A change in the amount of a periodic payment that is allocated to principal or interest that does not change the total amount of the periodic payment.

ii. The borrower's actual unanticipated late payment, delinquency, or default; and

iii. The borrower's voluntary payment of additional amounts (for example when a consumer chooses to make a payment of interest and principal on a loan that only requires the consumer to pay interest).]

32(d)(8) ►*Acceleration of debt*◄[*Due-on-demand clause*].

Paragraph ►*32(d)(8)(i)*◄[*32(d)(8)(ii)*].

1. *Failure to meet repayment terms.* A creditor may terminate a loan ►or open-end credit agreement◄ and accelerate the balance when the consumer fails to meet the repayment terms ►resulting in a default in payment under the agreement◄[provided for in the agreement]; a creditor may do so, however, only if the consumer actually fails

to make payments ►resulting in a default in the agreement◄. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under ►§ 1026.32(d)(8)(i)◄[this provision] if the consumer fails to meet the repayment terms ►resulting in a default◄ of the agreement. Section ►1026.32(d)(8)(i)◄[1026.32(d)(8)(ii)] does not override any State or other law that requires a creditor to notify a borrower of a right to cure, or otherwise places a duty on the creditor before it can terminate a loan ►or open-end credit agreement◄ and accelerate the balance.

Paragraph 32(d)(8)(iii).

1. ►*Material violation of agreement.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance based on a material violation of some other provision of the agreement unrelated to the payment schedule. See comments 32(d)(8)(iii)–2 and –3 for examples of material violations of an agreement that would permit a creditor to terminate and accelerate.◄[*Impairment of security.* A creditor may terminate a loan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the loan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.]

2. [*Examples.*]►*Material impairment of security for the loan.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance based on a material violation of the agreement if the consumer's action or inaction adversely affects the creditor's security for the loan or open-end credit plan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate a loan or open-end credit agreement and accelerate the balance.◄

i. ►*Examples.*◄ A creditor may terminate and accelerate, for example, if:

A. [The consumer transfers title to the property or sells the property without the permission of the creditor.

B.] The consumer fails to maintain required insurance on the dwelling.

[C.]►B.◄ The consumer fails to pay taxes on the property.

[D.]►C.◄ The consumer permits the filing of a lien senior to that held by the creditor.

[E.] ►D.◄ [The sole consumer obligated on the credit dies.

F. The property is taken through eminent domain.

G]. A prior lienholder forecloses.

ii. By contrast, the filing of a judgment against the consumer would ►be cause for◄[permit] termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely ►and materially◄ affected ►in violation of the loan or open-end credit agreement◄. If the consumer commits waste or otherwise destructively uses or fails to maintain the property ►, including demolishing or removing structures from the property,◄ such that the action adversely affects the security ►in a material way◄, the loan ►or open-end credit agreement◄ may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. [If one of two consumers obligated on a loan dies, the creditor may terminate the loan and accelerate the balance if the security is adversely affected.] If the consumer moves out of the dwelling that secures the loan and that action adversely affects the security ►in a material way◄, the creditor may terminate a loan ►or open-end credit agreement◄ and accelerate the balance.

►3. *Fraud or material misrepresentation.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance based on a material violation of the agreement if the consumer violates the agreement through fraud or material misrepresentation in connection with the loan or open-end credit agreement. What constitutes fraud or misrepresentation is determined by applicable State law.◄

Section 1026.34—Prohibited Acts or Practices in Connection with High-Cost Mortgages

34(a) Prohibited acts or practices for high-cost mortgages.

34(a)(1) Home-improvement contracts.

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34(a)(2) Notice to ►assignee.◄[Assignee]

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34(a)(3) Refinancings within one-year period.

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2. *Application of the one-year refinancing prohibition to creditors and assignees.* The prohibition in § 1026.34(a)(3) applies where ►a high-cost mortgage◄[loan extension of credit subject to § 1026.32] is refinanced into another ►high-cost mortgage◄[loan subject to § 1026.32]. The prohibition is illustrated by the following examples. Assume that Creditor A makes a ►high-cost mortgage◄[loan subject to § 1026.32] on January 15, 2003, secured by a first lien; this loan is assigned to Creditor B on February 15, 2003:

i. Creditor A is prohibited from refinancing the January 2003 loan (or any other ►high-cost mortgage◄[loan subject to § 1026.32] to the same borrower) into a ►high-cost mortgage◄[loan subject to § 1026.32], until January 15, 2004. Creditor B is restricted until January 15, 2004, or such date prior to January 15, 2004 that Creditor B ceases to hold or service the loan. During the prohibition period, Creditors A and B may make a subordinate lien loan that does not refinance a ►high-cost mortgage◄[loan subject to § 1026.32]. Assume that on April 1, 2003, Creditor A makes but does not assign a second-lien ►high-cost mortgage◄[loan subject to § 1026.32]. In that case, Creditor A would be prohibited from refinancing either the first-lien or second-lien loans (or any other ►high-cost mortgage◄ loans to that borrower [subject to § 1026.32]) into another ►high-cost mortgage◄[loan subject to § 1026.32] until April 1, 2004.

ii. The loan made by Creditor A on January 15, 2003 (and assigned to Creditor B) may be refinanced by Creditor C at any time. If Creditor C refinances this loan on March 1, 2003 into a new ►high-cost mortgage◄[loan subject to § 1026.32], Creditor A is prohibited from refinancing the loan made by Creditor C (or any other ►high-cost mortgage◄[loan subject to § 1026.32] to the same borrower) into another ►high-cost mortgage◄[loan subject to § 1026.32] until January 15, 2004. Creditor C is similarly prohibited from refinancing any ►high-cost mortgage◄[loan subject to § 1026.32] to that borrower into another until March 1, 2004. (The limitations of § 1026.34(a)(3) no longer apply to Creditor B after Creditor C refinanced the January 2003 loan and Creditor B ceased to hold or service the loan.)

34(a)(4) Repayment ability ►for high-cost mortgages◄.

1. *Application of repayment ability rule.* The § 1026.34(a)(4) prohibition against making loans without regard to consumers' repayment ability applies to ►open-end, high-cost mortgages◄[mortgage loans described in § 1026.32(a)]. ►The § 1026.43 repayment ability provisions apply to closed-end, high-cost mortgages. Accordingly, in connection with a closed-end, high-cost mortgage, § 1026.34(a)(4) requires a creditor to comply with the repayment ability requirements set forth in § 1026.43.◄[In addition, the § 1026.34(a)(4) prohibition applies to higher-priced mortgage loans described in § 1026.35(a). *See* § 1026.35(b)(1).]

2. *General prohibition.* Section 1026.34(a)(4) prohibits a creditor from ►extending credit under a high-cost, open-end credit plan ◄[extending credit subject to § 1026.32 to a consumer] based on the value of the consumer's collateral without regard to the consumer's repayment ability as of ►account opening◄[consummation], including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and property tax and insurance obligations. A creditor may base its determination of repayment ability on current or reasonably expected income from employment or other sources, on assets other than the collateral, or both.

3. *Other dwelling-secured obligations.* For purposes of § 1026.34(a)(4), current obligations include another credit obligation of which the creditor has knowledge undertaken prior to or at ►account opening◄[consummation of the transaction] and secured by the same dwelling that secures the ►high-cost mortgage◄ transaction[subject to § 1026.32 or § 1026.35]. [For example, where a transaction subject to § 1026.35 is a first-lien transaction for the purchase of a home, a creditor must consider a ''piggyback'' second-lien transaction of which it has knowledge that is used to finance part of the down payment on the house.]

4. *Discounted introductory rates and non-amortizing or negatively-amortizing payments.* A credit agreement may determine

a consumer's initial payments using a temporarily discounted interest rate or permit the consumer to make initial payments that are non-amortizing [or negatively amortizing]. (Negative amortization is permissible for loans covered by § 1026.35(a), but not § 1026.32). In such cases the creditor may determine repayment ability using the assumptions provided in § 1026.34(a)(4)(iv).

5. *Repayment ability as of* ►*account opening*◄[*consummation*]. Section 1026.34(a)(4) prohibits a creditor from disregarding repayment ability based on the facts and circumstances known to the creditor as of ►account opening◄[consummation]. In general, a creditor does not violate this provision if a consumer defaults because of a significant reduction in income (for example, a job loss) or a significant obligation (for example, an obligation arising from a major medical expense) that occurs after ►account opening◄[consummation]. However, if a creditor has knowledge as of ►account opening◄[consummation] of reductions in income, for example, if a consumer's written application states that the consumer plans to retire within twelve months without obtaining new employment, or states that the consumer will transition from full-time to part-time employment, the creditor must consider that information.

* * * * *

Paragraph 34(a)(4)(ii)(B).

1. * * *

2. *Materially greater than.* Amounts of income or assets relied on are not materially greater than amounts that could have been verified at [consummation]►account opening◄ if relying on the verifiable amounts would not have altered a reasonable creditor's decision to extend credit or the terms of the credit.

Paragraph 34(a)(4)(ii)(C).

1. *In general.* A credit report may be used to verify current obligations. A credit report, however, might not reflect an obligation that a consumer has listed on an application. The creditor is responsible for considering such an obligation, but the creditor is not required to independently verify the obligation. Similarly, a creditor is responsible for considering certain obligations undertaken just before or at ►account opening◄[consummation of the transaction] and secured by the same dwelling that secures the transaction (for example, a ''piggy back'' loan), of which the creditor knows, even if not reflected on a credit report. *See* comment 34(a)(4)–3.

34(a)(4)(iii) Presumption of compliance.

1. *In general.* A creditor is presumed to have complied with § 1026.34(a)(4) if the creditor follows the three underwriting procedures specified in paragraph 34(a)(4)(iii) for verifying repayment ability, determining the payment obligation, and measuring the relationship of obligations to income. The procedures for verifying repayment ability are required under ►§ 1026.34(a)(4)(ii)◄ [paragraph 34(a)(4)(ii)]; the other procedures are not required but, if followed along with the required procedures, create a presumption that the creditor has complied with § 1026.34(a)(4). The consumer may rebut the presumption with evidence that the creditor nonetheless disregarded repayment ability despite following these procedures. For example, evidence of a very high debt-to-income ratio and a very limited residual income could be sufficient to rebut the presumption, depending on all of the facts and circumstances. If a creditor fails to follow one of the non-required procedures set forth in ►§ 1026.34(a)(4)(iii)◄ [paragraph 34(a)(4)(iii)], then the creditor's compliance is determined based on all of the facts and circumstances without there being a presumption of either compliance or violation.

Paragraph 34(a)(4)(iii)(B)

1. *Determination of payment schedule.* To retain a presumption of compliance under § 1026.34(a)(4)(iii), a creditor must determine the consumer's ability to pay the principal and interest obligation based on the maximum scheduled payment [in the first seven years following consummation]. In general, a creditor should determine a payment schedule for purposes of § 1026.34(a)(4)(iii)(B) based on the guidance in the commentary to [§ 1026.17(c)(1)] ►§ 1026.32(c)(3)◄. [Examples of how to determine the maximum scheduled payment in the first seven years are provided as follows (all payment amounts are rounded):

i. *Balloon-payment loan; fixed interest rate.* A loan in an amount of $100,000 with a fixed interest rate of 8.0 percent (no points) has a 7-year term but is amortized over 30 years. The monthly payment scheduled for 7 years is $733 with a balloon payment of remaining principal due at the end of 7 years. The creditor will retain the presumption of compliance if it assesses repayment ability based on the payment of $733.

ii. *Fixed-rate loan with interest-only payment for five years.* A loan in an amount of $100,000 with a fixed interest rate of 8.0 percent (no points) has a 30-year term. The monthly payment of $667 scheduled for the first 5 years would cover only the interest due. After the fifth year, the scheduled payment would increase to $772, an amount that fully amortizes the principal balance over the remaining 25 years. The creditor will retain the presumption of compliance if it assesses repayment ability based on the payment of $772.

iii. *Fixed-rate loan with interest-only payment for seven years.* A loan in an amount of $100,000 with a fixed interest rate of 8.0 percent (no points) has a 30-year term. The monthly payment of $667 scheduled for the first 7 years would cover only the interest due. After the seventh year, the scheduled payment would increase to $793, an amount that fully amortizes the principal balance over the remaining 23 years. The creditor will retain the presumption of compliance if it assesses repayment ability based on the interest-only payment of $667.

iv. *Variable-rate loan with discount for five years.* A loan in an amount of $100,000 has a 30-year term. The loan agreement provides for a fixed interest rate of 7.0 percent for an initial period of 5 years. Accordingly, the payment scheduled for the first 5 years is $665. The agreement provides that, after 5 years, the interest rate will adjust each year based on a specified index and margin. As of consummation, the sum of the index value and margin (the fully-indexed rate) is 8.0 percent. Accordingly, the payment scheduled for the remaining 25 years is $727. The creditor will retain the presumption of compliance if it assesses repayment ability based on the payment of $727.

v. *Variable-rate loan with discount for seven years.* A loan in an amount of $100,000 has a 30-year term. The loan agreement provides for a fixed interest rate of 7.125 percent for an initial period of 7 years. Accordingly, the payment scheduled for the first 7 years is $674. After 7 years, the agreement provides that the interest rate will adjust each year based on a specified index and margin. As of consummation, the sum of the index value and margin (the fully-indexed rate) is 8.0 percent. Accordingly, the payment scheduled for the remaining years is $725. The creditor will retain the presumption of compliance if it assesses repayment ability based on the payment of $674.

vi. *Step-rate loan.* A loan in an amount of $100,000 has a 30-year term. The agreement provides that the interest rate will be 5 percent for two years, 6 percent for three years, and 7 percent thereafter. Accordingly, the payment amounts are $537 for two years, $597 for three years, and $654 thereafter. To retain the presumption of compliance, the creditor must assess repayment ability based on the payment of $654.]

* * * * *

►*34(a)(5) Pre-loan counseling.*

1. *State housing finance authority.* For purposes of § 1026.34(a)(5), a ''State housing finance authority'' has the same meaning as ''State housing finance agency'' provided in 24 CFR 214.3.

34(a)(5)(i) Certification of counseling required.

1. *HUD-approved counselor.* For purposes of § 1026.34(a)(5), counselors approved by the Secretary of the U.S. Department of Housing and Urban Development are homeownership counselors certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)), or as otherwise determined by the Secretary.

2. *Processing applications.* Prior to receiving certification of counseling, a creditor may not extend a high-cost mortgage, but may engage in other activities, such as processing an application that will result in the extension of a high-cost mortgage (by, for example, ordering an appraisal or title search).

3. *Form of certification.* The written certification of counseling required by § 1026.34(a)(5)(i) may be received by mail, email, facsimile, or any other method, so long as the certification is in a retainable form.

34(a)(5)(ii) Timing of counseling.

1. *Disclosures for open-end credit plans.* Section 1026.34(a)(5)(ii) permits receipt of either the good faith estimate required by RESPA or the disclosures required under § 1026.40 to allow counseling to occur. Pursuant to 12 CFR 1024.7(h), the disclosures required by § 1026.40 can be provided in lieu of a good faith estimate for open-end credit plans.

2. *Initial disclosure.* Counseling may occur after receipt of either an initial good faith estimate required by RESPA or a disclosure form pursuant to § 1026.40, regardless of whether a revised good faith estimate or revised disclosure form pursuant to § 1026.40 is subsequently provided to the consumer.

34(a)(5)(iv) Content of certification.

1. *Statement of counseling on advisability.* A statement that a consumer has received counseling on the advisability of the high-cost mortgage means that the consumer has received counseling about key terms of the mortgage transaction, as set out in either the RESPA good faith estimate or the disclosures provided to the consumer pursuant to § 1026.40; the consumer's budget, including the consumer's income, assets, financial obligations, and expenses; and the affordability of the mortgage transaction for the consumer. Examples of such terms of the mortgage transaction include the initial interest rate, the initial monthly payment, whether the payment may increase, how the minimum periodic payment will be determined, and fees imposed by the creditor, as may be reflected in the applicable disclosure. A statement that a consumer has received counseling on the advisability of the high-cost mortgage does not require the counselor to have made a judgment or determination as to the appropriateness of the mortgage transaction for the consumer.

2. *Statement of verification.* A statement that a counselor has verified that the consumer has received the disclosures required by either § 1026.32(c) or by RESPA for the high-cost mortgage means that a counselor has confirmed, orally, in writing, or by some other means, receipt of such disclosures with the consumer.

34(a)(5)(v) Counseling fees.

1. *Financing.* Section 1026.34(a)(5)(v) does not prohibit a creditor from financing the counseling fee as part of the transaction for a high-cost mortgage, if the fee is a bona fide third-party charge as provided by § 1026.32(b)(5)(i).

34(a)(5)(vi) Steering prohibited.

1. An example of an action that constitutes steering would be when a creditor repeatedly highlights or otherwise distinguishes the same counselor in the notices the creditor provides to consumers pursuant to § 1026.34(a)(5)(vii).

2. Section 1026.34(a)(5)(vi) does not prohibit a creditor from providing a consumer with objective information related to counselors or counseling organizations in response to a consumer's inquiry. An example of an action that would not constitute steering would be when a consumer asks the creditor for information about the fees charged by a counselor, and the creditor responds by providing the consumer information about fees charged by the counselor to other consumers that previously obtained counseling pursuant to § 1026.34(a)(5).

34(a)(5)(vii) List of counselors.

1. *Multiple creditors; multiple consumers.* In the event of a high-cost mortgage transaction that involves multiple creditors or multiple consumers, see §§ 1026.5(d) and 1026.17(d) and related commentary for guidance.

34(a)(6) Recommended default.

1. *Facts and circumstances.* Whether a creditor or mortgage broker ''recommends or encourages'' default for purposes of § 1026.34(a)(6) depends on all of the relevant facts and circumstances.

2. *Examples.* i. A creditor or mortgage broker ''recommends or encourages'' default when the creditor or mortgage broker advises the consumer to stop making payments on an existing loan knowing that the consumer's cessation of payments will cause the consumer to default on the existing loan.

ii. A creditor or mortgage broker does not ''recommend or encourage'' default if the creditor or mortgage broker advises a consumer, in good faith, to stop payment on an existing loan that is intended to be paid prior to the loan entering into default by the proceeds of a high-cost mortgage upon the consummation of that high-cost mortgage, if the consummation is delayed for reasons outside the control of the creditor or mortgage broker.

34(a)(8) Late fees.

34(a)(8)(i) General.

1. For purposes of § 1026.34(a)(8), in connection with an open-end credit plan, the amount of the payment past due is the required minimum periodic payment as provided under the terms of the open-end credit agreement.

34(a)(8)(iii) Multiple late charges assessed on payment subsequently paid.

1. Section 1026.34(a)(8)(iii) prohibits the pyramiding of late fees or charges in connection with a high-cost mortgage payment. For example, assume that a consumer's regular periodic payment of $500 is due on the 1st of each month. On August 25, the consumer makes a $500 payment which was due on August 1, and as a result, a $10 late charge is assessed. On September 1, the consumer makes another $500 payment for the regular periodic payment due on September 1, but does not pay the $10 late charge assessed on the August payment. Under § 1026.34(a)(8)(iii), it is impermissible to allocate $10 of the consumer's September 1 payment to cover the late charge, such that the September payment becomes delinquent. In short, because the $500 payment made on September 1 is a full payment for the applicable period and is paid by its due date or within any applicable grace period, no late charge may be imposed on the account in connection with the September payment.

34(a)(8)(iv) Failure to make required payment.

1. Under § 1026.34(a)(8)(iv), if a consumer fails to make one or more required payments and then resumes making payments but fails to bring the account current, it is permissible, if permitted by the terms of the loan contract or open-end credit agreement, to apply the consumer's payments first to the past due payment(s) and to impose a late charge on each subsequent required payment until the account is brought current. To illustrate: Assume that a consumer's regular periodic payment of $500 is due on the 1st of each month, or before the expiration of a 15-day grace period. Also assume that the consumer fails to make a timely installment payment by August 1 (or within the applicable grace period), and a $10 late charge therefore is imposed. The consumer resumes making monthly payments on September 1. Under § 1026.34(a)(8)(iv), if permitted by the terms of the loan contract, the creditor may apply the $500 payment made on September 1 to satisfy the missed $500 payment that was due on August 1. If the consumer makes no other payment prior to the end of the grace period for the payment that was due on September 1, the creditor may also impose a $10 late fee for the payment that was due on September 1.

34(a)(10) Financing of points and fees.

1. *Points and fees.* For purposes of § 1026.34(a)(10), ''points and fees'' means those items that are required to be included in the calculation of points and fees under § 1026.32(b)(1) and (3). Thus, for example, in connection with the extension of credit under a high-cost mortgage, a creditor may finance a fee charged by a third-party counselor in connection with the consumer's receipt of pre-loan counseling under § 1026.34(a)(5), because, pursuant to § 1026.32(b)(5)(i), such a fee is excluded from the calculation of points and fees as a bona fide third-party charge.

2. *Examples of financing points and fees.* For purposes of § 1026.34(a)(10), points and fees are financed if, for example, they are added to the loan balance or financed through a separate note, if the note is payable to the creditor or to an affiliate of the creditor. In the case of an open-end credit plan, a creditor also finances points and fees if the creditor advances funds from the credit line to cover the fees.◄

34(b) Prohibited acts or practices for dwelling-secured loans; [*open-end credit*] ►*structuring loans to evade high cost mortgage requirements*◄

1. ►*Examples.* A creditor structures a transaction in violation of § 1026.34(b) if, for example:

i. The creditor structures a loan that would otherwise be a high-cost mortgage as two loans, for example, to divide the loan fees in order to avoid the points and fees threshold for high-cost mortgages in § 1026.32(a)(1)(ii).

ii. The creditor structures a high-cost mortgage as an open-end home-equity line of credit that is in fact a closed-end home-equity loan in order to evade the requirement under § 1026.32(b)(1) to include loan originator compensation in the points and fees calculation for closed-end mortgage loans.

2. ◄*Amount of credit extended.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit►.◄ [, including § 1026.32 if the rate or fee trigger is met. In] ►Thus, in determining the ''total loan amount'' for purposes of◄ applying the triggers under § 1026.32, [the ''amount financed,'' including the ''principal loan amount'' must be determined. In making the determination], the amount of credit that would have been extended if the loan had been documented as a closed-end loan is a factual determination to be made in each case. Factors to be considered include the amount of money the consumer originally requested, the amount of the first advance or

the highest outstanding balance, or the amount of the credit line. The full amount of the credit line is considered only to the extent that it is reasonable to expect that the consumer might use the full amount of credit.

Section 1026.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling

* * * * *

►*36(k) Negative amortization counseling.*

36(k)(1) Counseling required.

1. *HUD-certified or -approved counselor or counseling organization.* For purposes of § 1026.36(k), organizations or counselors certified or approved by the U.S. Department of Housing and Urban Development (HUD) to provide the homeownership counseling required by § 1026.36(k) include counselors and counseling organizations that are certified or approved pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) or 24 CFR part 214, unless HUD determines otherwise.

2. *Homeownership counseling.* The counseling required under § 1026.36(k) must include information regarding the risks and consequences of negative amortization.

3. *Documentation.* Examples of documentation that demonstrate a consumer has received the counseling required under § 1026.36(k) include a certificate of counseling, letter, or email from a HUD-certified or -approved counselor or counseling organization indicating that the consumer has received homeownership counseling.

4. *Processing applications.* Prior to receiving documentation that a consumer has received the counseling required under § 1026.36(k), a creditor may not extend credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling that may result in negative amortization, but may engage in other activities, such as processing an application for such a transaction (by, for example, ordering an appraisal or title search).

36(k)(3) Steering prohibited.

1. See comments 34(a)(5)(vi)-1 and -2 for guidance concerning steering.

36(k)(4) List of counselors.

1. *Multiple creditors; multiple consumers.* In the event of a closed-end transaction secured by a dwelling that may result in negative amortization that involves multiple creditors or multiple first-time borrows, see § 1026.17(d) and related commentary for guidance.◄

Dated: July 9, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–17059 Filed 8–7–12; 4:15 pm]

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Part IV

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171,172,173, *et al.*

Hazardous Materials: Harmonization with International Standards (RRR); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176 and 178

[Docket Nos. PHMSA–2012–0027 (HM–215L)]

RIN 2137–AE87

Hazardous Materials: Harmonization with International Standards (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to amend the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the Hazardous Materials Regulations with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations and subsequently address a petition for rulemaking.

DATES: Comments must be received by October 15, 2012.

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

Federal Rulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery: To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2012–0027 (HM–215L) or RIN 2137–AE87 for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov* .

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at the Docket Operations office at the above address (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Michael Stevens, Office of Hazardous Materials Standards or Vincent Babich, International Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC, 20590–0001.

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I. Executive Summary

PHMSA has initiated a rulemaking project to maintain alignment with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. This rulemaking project is part of our ongoing biennial process to harmonize the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) with international regulations and standards.

Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) permits PHMSA to depart from international standards to promote safety or other overriding public interest, but otherwise requires PHMSA to align the HMR with international transport standards and requirements to the extent practicable (see 49 U.S.C. 5120).

Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials to and from the United States and becomes increasingly important as the volume of hazardous materials transported in international commerce grows. By facilitating compliance, harmonization also tends to enhance safety for international movements, but only if the international standards themselves provide an appropriate level of safety. To that end, PHMSA actively participates in the development of international standards for the transportation of hazardous materials, frequently advocating the adoption in international standards of particular HMR requirements.

When considering the adoption of international standards under the HMR, we review and consider each amendment on its own merit, on the basis of its overall impact on transportation safety, and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR and without imposing undue burdens on the regulated community.

This NPRM proposes to amend the HMR to maintain alignment with various international standards. The following are some of the more noteworthy proposals in this NPRM:

• *Incorporate Revised Standards:* PHMSA proposes to incorporate by reference the newest versions of various international hazardous materials standards including the 2013–2014 International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), Amendment 36–12 to the International Maritime Dangerous Goods Code (IMDG Code), and the 17th Revised Edition of

the United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations). Additionally, we are proposing to update our incorporation by reference of the Canadian Transportation of Dangerous Goods Regulations to include Amendment 8 (SOR/2011–239) issued November 9, 2011, Amendment 9 (SOR/2011–60) issued March 16, 2011, and Amendment 10 (SOR/2011–210) issued October 12, 2011. Finally, in this NPRM PHMSA is proposing the adoption of updated International Standards Organization (ISO) standards.

If the amendments in this proposed rule are not adopted in the HMR by January 1, 2013, the date most of the international standards above take effect, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The amendments proposed in this rulemaking are intended to avoid this result.

• *Expand Packaging Authorizations:* Consistent with amendments adopted by the UN Model Regulations, PHMSA proposes to adopt changes throughout the Part 173 packaging requirements to authorize more flexibility when choosing packages for hazardous materials. These changes include, but are not limited to, the authorization to allow wood as a material of package construction for certain explosives the authorization to use metals other than steel or aluminum for drums and boxes; and the authorization, where appropriate, to permit the use of non-removable head drums in those instances where removable head drums are otherwise authorized.

These amendments will allow additional flexibility to the regulated community with respect to the material of construction authorized for such packages and types of packages authorized, without compromising safety.

• *Revise Vessel Stowage Codes:* PHMSA proposes to revise, consolidate, and delete various vessel stowage codes. Specifically, PHMSA is proposing to revise the vessel stowage location requirements for explosives by reducing the number of explosive stowage categories from 15 to 5 in column 10A of the Hazardous Materials Table (HMT) found in § 172.101. In addition to the changes in column 10A, in this NPRM PHMSA is proposing modifications to the vessel stowage codes listed in column 10B of the HMT. These changes are designed to harmonize with the IMDG Code, reduce the number of redundant vessel stowage codes and add various vessel segregation definitions in § 176.2.

These revisions to the vessel stowage requirements in column 10 of the HMT are proposed to eliminate redundant codes, align with modifications to the IMDG Code and to simplify the vessel stowage requirements by limiting the number of stowage options without compromising safety. PHMSA believes these changes will greatly simplify vessel stowage requirements and facilitate international transportation of hazardous materials in commerce by aligning the HMR with the IMDG Code, while continuing to achieve an appropriate level of safety.

• *Adopt Flexible Bulk Container Requirements:* PHMSA proposes to incorporate a new packaging definition, operational controls, performance-oriented standards, and testing requirements for Flexible Bulk Containers (FBCs). FBCs are bulk packages with a capacity over the currently authorized maximum volumetric capacity for IBCs. The maximum proposed volumetric capacity of FBCs is 15 cubic meters. PHMSA proposes to harmonize with the internationally recognized definition of FBCs, adopt performance-oriented packaging design and testing standards for FBCs, and impose operational controls on the use of FBCs in transport. These FBC requirements will be modeled after the FBC requirements adopted into the 17th Revised Edition of the UN Model Regulations.

FBCs provide shippers the opportunity to utilize a reusable packaging for bulk shipments of certain authorized low-hazard commodities. The associated design-type testing requirements ensure a high level of packaging integrity, and experience with such packagings in international transportation has verified the safety of these packagings.

• *Adopt Chemical Under Pressure Provisions:* We are proposing to revise the HMT to include entries for chemical under pressure as well as incorporate other safety requirements including but not limited to packaging requirements, segregation requirements, quantity limitations, and filling limits into the HMR.

There is often confusion with regard to the proper classification of chemical under pressure. Currently, these types of products are often incorrectly classified and transported as liquefied gases or shipped under special permits. The addition of packaging requirements specific to chemical under pressure will ensure that an appropriate level of safety is achieved for these unique materials.

• *Specify Minimum Size Requirements for Identification Number Markings on Non-Bulk Packages:* PHMSA proposes to add specific size requirements for identification number (i.e., ''UN,'' ''NA,'' ''ID'') markings as prescribed in § 172.301 for non-bulk packages. PHMSA proposes this minimum size marking for the ''UN,'' ''NA,'' and ''ID'' markings to align with newly adopted requirements in the 17th Revised Edition of the UN Model Regulations.

PHMSA recognizes the importance of establishing a minimum size requirement for the internationally recognized ''UN'' identification number marking system. Without a minimum size requirement for hazard communication, shippers may mark packages in a format that makes it difficult for first responders to identify the commodity associated with a particular package.

• *Revise HMT Entries:* In this NPRM, PHMSA proposes amendments to the § 172.101 Hazardous Materials Table (HMT) to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity limits. The proposed changes to the HMT mirror recent changes in the Dangerous Goods list of The 17th Revised Edition of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions.

If adopted in a final rule, the amendments proposed in this NPRM will result in minimal burdens on the regulated community. The benefits resulting from the adoption of the amendments include enhanced transportation safety resulting from the consistency of domestic and international hazard communication and continued access to foreign markets by U.S. manufacturers of hazardous materials. The majority of amendments in this NPRM should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

PHMSA solicits comments on the need for these amendments and others proposed in this NPRM. Specifically, PHMSA requests comments on the benefits and costs of international harmonization, including the impact on safety and any other relevant concerns regarding the amendments proposed in this NPRM. In addition, PHMSA solicits comment from the regulated community

regarding approaches to reducing the costs of this rule while maintaining or increasing the benefits. In its preliminary analysis, PHMSA concluded that the aggregate benefits justify the aggregate costs as a result of the amendments proposed in this NPRM. Nonetheless, PHMSA solicits public comment on specific changes (for example, greater flexibility with regard to a particular amendment) that might improve the rule.

II. Background

In a final rule published December 21, 1990 (Docket HM–181; 55 FR 52402), the Research and Special Programs Administration (RSPA), the predecessor agency to PHMSA, comprehensively revised the HMR to harmonize U.S. hazardous materials transportation requirements with the UN Model Regulations. The UN Model Regulations constitute a set of recommendations issued by the UNSCOE and the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The UN Model Regulations are amended and updated biennially by the UNSCOE and serve as the basis for national, regional, and international modal regulations, including the IMDG Code and the ICAO Technical Instructions.

Since publication of the 1990 rule, PHMSA has issued nine additional international harmonization rulemakings under Dockets: HM–215A [59 FR 67390]; HM–215B [62 FR 24690]; HM–215C [64 FR 10742]; HM–215D [66 FR 33316]; HM–215E [68 FR 44992]; HM–215G [69 FR 76044]; HM–215I [71 FR 78595]; HM–215J [74 FR 2200]; and HM–215K [76 FR 3308]. These rulemakings were based on biennial updates of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions.

Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and encourages alignment of the HMR with international transport standards to the extent practicable while recognizing that deviations may at times be necessary to be consistent with the public interest (see 49 U.S.C. 5120). Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Harmonization has also become increasingly important as the volume of hazardous materials transported in international commerce grows. By facilitating compliance, harmonization enhances safety. PHMSA actively participates in relevant international standard-setting bodies and promotes the adoption of standards consistent with the high safety standards set by the HMR.

When considering alignment of the HMR with international standards, we review and evaluate each amendment on its own merit, on the basis of its overall impact on transportation safety, and the on the basis of the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated community.

Based on this review and evaluation, in this NPRM PHMSA is proposing to revise the HMR to incorporate changes from the 17th Revised Edition of the UN Model Regulations, Amendment 36–12 to the IMDG Code, and the 2013–2014 ICAO Technical Instructions, which become effective January 1, 2013 (The IMDG Code is effective January 1, 2013; however, the previous amendment may continue to be used until January 1, 2014).

In addition, PHMSA proposes to incorporate by reference (see 171.8) the newest editions of various international standards. These standards incorporated by reference are authorized for use, under specific circumstances, in Subpart C of Part 171 of the HMR. This proposed rule is necessary to incorporate revisions to the international standards and, if adopted in the HMR, will be effective January 1, 2013.

Possible Interim Final Rule

If the changes in this proposed rule are not adopted by January 1, 2013, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage because these companies would be forced to comply with a dual system of regulations (specifically, the U.S. HMR, UN Model Regulations, and ICAO Technical Instructions). As previously noted, the changes to the international standards will take effect on January 1, 2013. Therefore, it is essential that a final rule incorporating these standards by reference be published no later than December 31, 2012 with an effective date of January 1, 2013. To this end, if it appears a final rule under this docket will not be published prior to January 1, 2013, PHMSA will publish a bridging document in the form of an interim final rule to amend the HMR by incorporating the 17th Revised Edition of the UN Recommendations and the 2013–2014 ICAO Technical Instructions.

With regard to Amendment 36–12 of the IMDG Code, the International Maritime Organization approved an implementation date of January 1, 2014. The current edition of the IMDG Code (Amendment 35–10) remains in effect through 2013 and, therefore, the newest version of the IMDG Code will not be included in any bridging document. The proposed incorporation by reference of the newest edition of the IMDG Code and all other changes proposed in this NPRM would be addressed in a subsequent final rule also under this Docket, PHMSA–2012–0027 (HM–215L). Accordingly, any interim final rule will only incorporate by reference editions of the international standards that become effective on January 1, 2013.

III. Harmonization Proposals in this NPRM

In addition to various revisions of the HMT and special provisions, in this NPRM, PHMSA is proposing the following amendments to harmonize the HMR with the most recent revisions to the UN Model Regulations, ICAO Technical Instructions, and the IMDG Code:

Chemical under pressure

Manufacturers in the United Kingdom, the United States, Australia, Canada, and other countries are supplying pressurized products contained and transported in gas cylinders. These products are liquids or solids such as adhesives, coatings, and cleaners combined with a gas or gas mixture in pressure receptacles under sufficient pressure to expel the contents. These mixtures are typically expelled from the pressurized cylinders as foams, streams, or thick sprays.

Currently the HMR does not address liquids or solids transported under pressure. A typical product that would meet this description is a combination of a propellant (gas phase) and a liquid or solid component. Accordingly, the term liquefied gas does not correctly identify the contents of the container, nor can the material accurately be described by the name of the gas or liquid/solid component alone.

The new entries (UN numbers) and corresponding provisions for ''chemical under pressure'' address their unique characteristics and ensure the safe transport of such materials. These entries and corresponding requirements were adopted into the 17th Revised Edition of the UN Model Regulations. Subsequently, ICAO and IMO adopted

the entries for chemicals under pressure as well as modal-specific requirements.

In this NPRM, PHMSA is proposing to revise the HMT to include individual entries for chemical under pressure and incorporate other safety requirements including, but not limited to, quantity and filling limits and packaging and segregation requirements.

Hazardous Materials Table (HMT)

In this NPRM, PHMSA proposes amendments to the HMT to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits. In addition, PHMSA is proposing to comprehensively revise vessel stowage requirements to align with recent changes adopted into the IMDG Code.

Incorporation by Reference

In this NPRM, PHMSA proposes to incorporate by reference the latest editions of various international transport standards including the 2013–2014 ICAO Technical Instructions, Amendment 36–12 of the IMDG Code, and the 17th Revised Edition of the UN Model Regulations. Additionally, we are proposing to update our incorporation by reference of the Canadian Transportation of Dangerous Goods Regulations to include Amendment 8 (SOR/2011–239) dated November 9, 2011; Amendment 9 (SOR/2011–60) dated March 16, 2011; and Amendment 10 (SOR/2011–210) dated October 12, 2011. This incorporation by reference augments the broad reciprocity provided in § 171.12 where the HMR allow the use of the Canadian TDG Regulations under certain conditions when transporting hazardous materials to or from Canada by highway or rail. Finally, PHMSA is proposing the incorporation by reference of new and updated International Standards Organization (ISO) standards.

Flexible Bulk Containers (FBCs)

In this NPRM, PHMSA proposes to incorporate a new packaging definition, operational controls, performance-oriented standards, and testing requirements for Flexible Bulk Containers (FBCs). FBCs are flexible bulk packages with a capacity over the currently authorized maximum volumetric capacity for flexible IBCs, but not exceeding 15 cubic meters. FBCs provide shippers the opportunity to utilize a reusable flexible packaging for bulk shipments of certain low-hazard commodities, all of which are currently authorized in non-specification bulk bins.

The 17th Revised Edition of the UN Model Regulations adopted a performance-oriented standard for flexible bulk container design and testing. PHMSA proposes to harmonize with the internationally recognized definition of FBCs, adopt the same performance-oriented packaging design and testing standards for FBCs, and impose similar operational controls on the use of FBCs in transport. The applicable proposed definitions, operational controls, performance-oriented standards, and testing requirements will be discussed in further detail in the section by section review portion of this NPRM.

Explosive Definitions

In this NPRM, PHMSA proposes modifying the definitions for ''Articles, explosive, extremely insensitive (Articles, EEI)'' and ''Cartridges, blank.'' We also propose to replace the definition for ''Explosive, extremely insensitive detonating substances (EIDS)'' with a new definition for ''Explosive, extremely insensitive substances (EIS).'' Finally, we propose to add a definition for ''Auxiliary explosive component, isolated.'' The addition and modification of these definitions will provide consistency with international regulations and clarity when utilizing the UN test series 7 for explosive classification.

Packaging Authorizations

Part 173 of the HMR describes the general requirements for shipments and packagings of hazardous materials. Consistent with amendments adopted by the UN Model Regulations, PHMSA proposes to amend various Part 173 packaging requirements to authorize more flexibility when selecting packagings for hazardous materials. These proposed amendments include, but are not limited to, the authorization to use wood as a material of package construction for certain explosives, the authorization to use metals other than steel or aluminum for boxes and drums for certain hazardous materials, and the incorporation of authorizations and specifications for FBCs.

Vessel Stowage Requirements

The requirements for vessel stowage are described and specified in § 172.101(k) and HMT entries are assigned appropriate vessel stowage codes and stowage special provisions in column (10) of the HMT. Column (10) is divided into two columns: column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels and column (10B) [Other provisions] specifies special stowage and segregation provisions.

In this NPRM, we are proposing to clarify these instructions by revising the vessel stowage location requirements for explosives and reducing the number of explosive stowage categories from 15 to 5 in column (10A) of the HMT. Specifically, explosive stowage categories 6 through 15 will be eliminated, and stowage categories 1 through 5 will be retained and modified. This consolidation of codes is proposed to eliminate redundant codes, align with modifications to the IMDG Code, and simplify the vessel stowage requirements by limiting the number of stowage options without compromising safety.

In addition to the HMT changes related to explosives stowage, in this NPRM PHMSA is proposing modifications to the vessel stowage provisions listed in column (10B) of the HMT. For harmonization with the IMDG Code, PHMSA proposes to incorporate the addition of a new definition for protected from sources of heat and potential or possible sources of ignition (see Section 176.2 of this NPRM for definitions), and subsequently revise and delete various vessel stowage provisions. These changes were developed to eliminate redundant codes, align with revisions to the IMDG Code, and simplify the vessel stowage requirements. By limiting the number of stowage options, we believe it will substantially reduce the complexity of the regulations without compromising safety.

The revisions and consolidations of vessel storage codes in column (10A) and the stowage provisions in (10B) of the HMT are discussed in further detail below. PHMSA believes these changes will greatly simplify vessel stowage requirements and facilitate the seamless international transport of hazardous materials by aligning with the IMDG Code.

Mercury

Consistent with the various international standards, PHMSA is proposing to add an internationally recognized proper shipping name and identification number for UN3506, Mercury contained in manufactured articles, and the addition of a Division 6.1 (toxic) subsidiary hazard risk to UN2809, Mercury. Data presented to the UN Committee of Experts on the Transport of Dangerous Goods (UNSCOE) in the last biennium indicated the need for assigning a subsidiary risk of Division 6.1 to

UN2809, Mercury, and the need to adopt a separate description for UN3506, Mercury contained in manufactured articles.

IV. Amendments Not Being Considered for Adoption in This NPRM

This NPRM proposes changes to the HMR based on amendments adopted in the 17th Revised Edition of the UN Model Regulations, the 2013–2014 edition of the ICAO Technical Instructions, and Amendment 36–12 to the IMDG Code. We are not, however, proposing to adopt all the amendments made to the various international standards into the HMR.

In many cases, amendments to the international recommendations and regulations have not been adopted because the framework or structure of the HMR makes adoption unnecessary. In other cases, we have addressed, or will address, the amendments in separate rulemaking proceedings. If we have inadvertently omitted an amendment in this NPRM, we will attempt to include the omission in the final rule. However, our ability to make changes in a final rule is limited by requirements of the Administrative Procedure Act (5 U.S.C. 553). In some instances, we can adopt a provision inadvertently omitted in the NPRM if it is clearly within the scope of changes proposed in the notice. Otherwise, in order to provide opportunity for notice and comment, the change must first be proposed in an NPRM.

One of the goals of this rulemaking is to continue to maintain consistency between the HMR and the international requirements. We are not striving to make the HMR identical to the international regulations but rather to remove or avoid potential barriers to international transportation.

The following is a list of significant amendments to the international regulations that we are not proposing to adopt in this NPRM, with a brief explanation of why the amendment was not included:

Security Provisions for High Consequence Dangerous Goods

The 17th Revised Edition of the UN Model Regulations adopted modifications to the security provisions specified in Chapter 1.4 with regard to ''high consequence dangerous goods.'' Specifically, these changes address the handling of certain Class 7 radioactive materials. In the 17th Revised Edition the UN adopted a list of transport security thresholds for specific radionuclides in Table 1.4.2 of Chapter 1.4. Materials identified in this table exceeding the transport security thresholds indicated in terabecquerels (TBq) would be subject to additional security requirements such as security training and security plans.

In this NPRM, PHMSA is not proposing the adoption of the changes to the security requirements found in the HMR with regard to high consequence dangerous goods. These amendments to the international recommendations and regulations are not being adopted because the existing safety and security requirements found in Subpart I of Part 172 are consistent with and provide for a level of safety and security equivalent to the revised UN Model Regulations.

Requirements for Lithium Batteries

On January 11, 2010, PHMSA published an NPRM in the **Federal Register** under Docket HM–224F (75 FR 1302). The NPRM included provisions to ensure lithium batteries are properly packaged to reduce the possibility of damage that could lead to a catastrophic incident, and minimize the consequences of an incident should one occur. In addition, PHMSA proposed to require lithium battery shipments to be accompanied by hazard communication that ensures appropriate and careful handling by air carrier personnel, including the flight crew, and informs both transport workers and emergency response personnel of actions to be taken in an emergency.

Subsequently, on April 11, 2012, PHMSA published a notice in the **Federal Register** requesting additional comment on the impacts of changes to the requirements for the air transport of lithium cells and batteries that were adopted into the 2013–2014 ICAO Technical Instructions. PHMSA is considering whether to harmonize the HMR with these requirements, and published a notice to allow interested persons an opportunity to supplement comments to the HM–224F NPRM.

The HM–224F NPRM and the April 11, 2012 notice, which PHMSA developed in close coordination with the Federal Aviation Administration (FAA), are the latest in a series of actions PHMSA has taken to address the potential risks posed by lithium batteries in transportation. These publications solicit comments on revisions to the HMR and are based on lithium battery provisions in the 16th Revised Edition of the UN Model Regulations and the 2013–2014 ICAO Technical Instructions. Because lithium batteries are addressed in separate battery-specific rulemakings and notices, PHMSA is not proposing amendments pertaining to the transportation of lithium cells and batteries in this NPRM. The docket for the lithium battery rulemaking can be found at *http://www.regulations.gov* under PHMSA–2009–0095.

Notification to the Pilot-In-Command

Section 175.33 of the HMR addresses the requirements for notification of pilot-in-command regarding hazardous materials stowed aboard the aircraft. Recent amendments adopted in the upcoming 2013–2014 edition of the ICAO Technical Instructions modify the information required to be given to the pilot-in-command as prescribed in Part 7; 4.1. These modifications include a requirement that the operator of an aircraft transporting hazardous materials provide personnel with responsibilities for operational control of the aircraft with the same information that is required to be provided to the pilot-in-command. In addition, the modifications also include a table of hazardous materials not required to appear on the notification provided to the pilot-in-command. Because better analysis is necessary to assess the regulatory impact of alignment with the ICAO Technical Instructions on this matter, PHMSA is not proposing to adopt the new provisions in this NPRM. However, PHMSA does intend to address these changes in a future rulemaking.

Requirements for Salvage Pressure Receptacles

The 17th Revised Edition of the UN Model Regulations adopted guidelines for Competent Authorities to use when issuing approvals for salvage pressure receptacles. These revisions are found in Chapter 1.2, 4.1, 5.4, and 6.2 of the UN Model Regulations. Specifically, these requirements address the packaging, hazard communication, and safe transport of salvage pressure receptacles, also known as salvage cylinders in the United States.

The HMR currently address the packaging, hazard communication, and safe transport of salvage cylinders in § 173.3(d) and do not require approval of the Associate Administrator to do so. PHMSA believes the current salvage cylinder requirements in the HMR provide a sufficient level of safety and adequately address the shipment of damaged and defective cylinders. Therefore, PHMSA is not proposing changes to the current HMR provisions for salvage cylinders in this NPRM.

Fireworks Classification Reference

The 17th Revised Edition of the UN Model Regulations adopted requirements for fireworks classification references. Specifically, a provision was

adopted requiring fireworks under identification numbers UN0333, UN0334, UN0335, UN0336, and UN0337, having been approved by a competent authority, to bear a classification reference on the shipping paper. The classification reference would indicate the country of the competent authority approval and would also include a unique serial reference for the specific firework device.

PHMSA intends to address fireworks-related issues in a separate rulemaking and, therefore, will not address fireworks-related issues in this NPRM. The docket for the fireworks rulemaking can be found at *http://www.regulations.gov* under PHMSA–2010–0320 (HM–257).

Criteria for Exclusion From Class 1

The ICAO and IMO recently adopted guidance issued to competent authorities regarding when an article or substance can be excluded from meeting the classification of a Class 1 (explosive) material. PHMSA is not adopting the issued guidance in this NPRM because it is classification parameters to be considered by a competent authority and not actual regulatory provisions.

Air Bag Inflator, Air Bag Module, or Seat-Belt Pretensioner Revisions

The 17th Revised Edition of the UN Model Regulations revised the authorized packagings used for the transportation of air bag inflators, air bag modules, or seat-belt pretensioners. Specifically, in addition to currently authorized packagings, the UN Model Regulations adopted authorizations for 1N2 and 1D drums, 3B2 jerricans, and 4A, 4B, 4N, and 4H1 boxes.

PHMSA is not addressing the additional packaging authorizations in this rulemaking as these and other related issues were addressed in a separate NPRM. The docket for the air bag inflator, air bag module, and seat-belt pretensioner rulemaking can be found at *http://www.regulations.gov* under PHMSA–2010–0201.

Pressure Relief Valves for Closed Cryogenic Receptacles

A new provision was added to Packing Instruction P203 of the 17th Revised Edition of the UN Model Regulations. The amendment prescribes that the frequency of periodic inspection and test of the pressure relief valves for closed cryogenic receptacles shall not exceed five years.

In this NPRM, PHMSA is not proposing to adopt this amendment. Section 173.316, ''Cryogenic Liquids in Cylinders,'' and § 173.301, ''General Requirements for Shipment of Compressed Gases and Other Hazardous Materials in Cylinders, UN Pressure Receptacles and Spherical Pressure Vessels'' do not specify the frequency of tests of pressure relief device systems. The HMR requires testing of these systems in accordance with the Compressed Gas Association's S–1.1, ''Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases'' and S–7, ''Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders.'' PHMSA believes these requirements already provide for an adequate level of safety of pressure relief device systems.

Absorbent Materials for Air Packaging

Numerous packing instructions of the ICAO Technical Instructions were revised to consistently provide that for certain liquid hazardous materials, inner packagings must be packed with sufficient absorbent material to absorb the entire contents of the inner packagings.

PHMSA does not intend to adopt these amendments in this NPRM. Rather, we adopted them in a separate rulemaking under docket PHMSA–2007–29364 (HM–231A). For example, in the final rule published in the **Federal Register** on April 16, 2012 (77 FR 22504), we revised § 173.27(e) to require that inner packagings be packaged in a rigid leakproof liner or rigid intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging before being placed in its outer package when absorbent material was required. Generally, this requirement is applicable to Packing Group I liquids.

UN Test Series 6(d) for Certain Division 1.4S Articles

Special provision 364 was added to the 17th Revised Edition of the UN Model Regulations that requires limited quantity packages of certain Division 1.4S explosives under the following descriptions ''UN 0012 Cartridges for weapons, inert projectile *or* Cartridges, small arms,'' ''UN0014 Cartridges for weapons, blank *or* Cartridges, small arms, blank *or* Cartridges for tools, blank,'' and ''UN0055 Cases, cartridge, empty with primer'' be capable of passing Test Series 6(d) in accordance with the UN Manual of Tests and Criteria as determined by the competent authority.

PHMSA believes that the current requirements for shipments of these articles adequately address the hazards associated with the transport of these limited quantity hazardous materials and, thus, will not be adopting the requirement for these materials as packaged to be capable of passing Test Series 6(d) of Part I of the UN Manual of Tests and Criteria.

Coolants, Conditioners, and Asphyxiates

In many instances cargo transport units are treated with substances to cool and condition the transport environment inside the transport unit. Occasionally gases presenting a risk of asphyxiation are used as part of this cooling and conditioning process. In this case an accumulation of these gases may present a risk to those handling these cargo transport units in transport.

The 17th Revised Edition of the UN Model Regulations adopted various requirements applicable to packages and cargo transport units containing substances presenting a risk of asphyxiation when used for cooling or conditioning purposes. Requirements adopted internationally include a new marking requirement for both packages and freight containers containing dangerous goods used for cooling and conditioning as well as the requirement to note that a dangerous good is being used as a coolant or conditioner on transport documents. PHMSA believes that the current requirements for shipments of dry ice and other potential coolants adequately address the hazards associated with the use of these hazardous materials as coolants or conditioners and notes that the current provisions of the HMR would not preclude the use of the new marking for domestic or international transport.

V. Section-By-Section Review

The following is a section-by-section review of the amendments proposed in this NPRM:

Part 171

Section 171.7

The ''National Technology Transfer and Advancement Act of 1996'' directs agencies to use voluntary consensus standards. According to the Office of Management and Budget (OMB), Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' government agencies must use voluntary consensus standards wherever practical in the development of regulations. Agency adoption of industry standards promotes productivity and efficiency in government and industry, expands opportunities for international trade, conserves resources, improves health

and safety, and protects the environment.

To these ends, PHMSA actively participates in the development and updating of consensus standards through representation on more than 20 consensus standard bodies. PHMSA regularly reviews updated consensus standards and considers their merit for inclusion in the HMR.

Section 171.7 provides a listing of all standards incorporated by reference into the HMR. For this rulemaking, we evaluated updated international consensus standards pertaining to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements and determined that the revised standards provide an enhanced level of safety without imposing significant compliance burdens. These standards have a well-established and documented safety history; their adoption will maintain the high safety standard currently achieved under the HMR. Therefore, we propose to update by adding and revising the incorporation by reference materials under the following organizations:

The *International Civil Aviation Organization (ICAO)* Technical Instructions for the Safe Transport of Dangerous Goods by Air, 2011–2012 Edition is revised to incorporate the 2013–2014 Edition.

The *International Convention for the Safety of Life at Sea* (SOLAS) Amendments 2002, Chapter II–2/ Regulation 19, Consolidated Edition 2004 is revised to incorporate the 2009 Consolidated Edition.

The *International Maritime Organization* (IMO) International Maritime Dangerous Goods Code, 2010 Edition, Incorporating Amendment 35–10, English Edition, Volumes 1 and 2 is revised to incorporate the 2012 Edition, Amendment 36–12.

The *International Organization for Standardization (ISO)* entries for ''ISO 10156:1996, Gases and Gas Mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Second edition, February 1996 (E)'' and ''ISO 10156–2:2005, Gas cylinders—Gases and gas mixtures—Part 2: Determination of oxidizing ability of toxic and corrosive gases and gas mixtures, First edition, August 2005, (E)'' are removed and replaced with entry for ''ISO 10156:2010: Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Third edition, March 2010.''

The entry ''ISO 4126–1: Safety valves—Part 1: General requirements, December 15, 1991, First edition'' is revised as the entry ''ISO 4126–1: Safety valves—Part 1: General requirements/ Cor 1, August 2, 2007, Second edition.'' The entry ''ISO 11117, Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders—Design, construction and tests, First edition, August 1998, (E)'' is revised as the entry ''ISO 11117:2008/ Cor 1:2009 Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, May 5, 2009, Second edition''.

The entries ''ISO 4126–7: Safety valves—Part 7: Common data/Cor 1, October 23, 2006, First edition,'' and ''ISO 13340 Transportable gas cylinders—Cylinders valves for non-refillable cylinders—Specification and prototype testing, April 5, 2001, First edition'' are added.

The *Transport Canada* entry, Transportation of Dangerous Goods Regulations, including Clear Language Amendments 1 through 7 is revised to include Amendments 8, 9 and 10.

The *United Nations* Recommendations on the Transport of Dangerous Goods—Model Regulations, 16th Revised Edition (2009), Volumes I and II, is revised to incorporate the 17th Revised Edition (2011), Volumes I and II.

The *United Nations* Recommendations on the Transport of Dangerous Goods—Manual of Tests and Criteria, Fifth Revised Edition (2009), is revised to incorporate Amendment 1 (2011).

Section 171.8

This section defines terms generally used throughout the HMR that have broad or multi-modal applicability. PHMSA is proposing to add the following defined term based on its adoption in the 17th Revised Edition of the UN Model Regulations: *Flexible Bulk Container (FBC):* This term means a flexible container with a capacity not exceeding 15 cubic meters and includes liners and attached handling devices and service equipment.

Currently the HMR do not prescribe requirements for the transport of FBCs. In this NPRM, PHMSA is proposing to adopt various transportation and manufacturing requirements for FBCs. Prior to adoption of such standards, the term ''Flexible Bulk Container'' must be defined. Therefore in this NPRM we are proposing to adopt the above definition of an FBC based on the definition for FBC adopted in the IMDG Code and 17th Revised Edition of the UN Model Regulations.

Part 172

Section 172.101

Section 172.101 provides instructions for using the Hazardous Materials Table (HMT) and the HMT itself. In this NPRM, PHMSA is proposing to revise the instructional text that precedes the HMT.

Paragraph (c) of § 172.101 describes the information indicated in column 2 of the HMT. Column 2 lists the hazardous materials descriptions and proper shipping names of materials designated as hazardous materials. Paragraph (c)(10) of § 172.101 prescribes how mixtures or solutions not identified specifically by name are described.

In this NPRM, PHMSA proposes to revise § 172.101(c)(10) to incorporate language adopted in the 17th Revised Edition of the UN Model Regulations that states mixtures and solutions must meet the definition of one or more hazard class to be classified as a hazardous material. This change will clarify that for a mixture or solution composed of one or more components that are classified as a hazardous material, the resulting mixture or solution must meet the definition of one or more hazard classes to be classified as a hazardous material.

Paragraph (k) of § 172.101 explains the purpose of column (10) of the HMT and prescribes the vessel stowage and segregation requirements for specific entries in the HMT. Column (10) is divided into two columns: column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels and column (10B) [Other provisions] specifies special stowage and segregation provisions.

In this NPRM, we are proposing to modify these instructions by revising the vessel stowage location requirements for explosives and reducing the number of explosive stowage categories from 15 to 5. Specifically, the explosive stowage categories 6 through 15 will be eliminated and stowage categories 1 through 5 will be modified. Changes to the explosive stowage categories are necessary because, as part of this NPRM, PHMSA proposes to remove magazine stowage Types ''A,'' ''C,'' and special stowage from Part 176 with the consolidation of authorized explosive stowage categories. The authorized explosive stowage categories will be replaced with a new term of art ''Closed cargo transport units for Class 1 (explosives).'' Included in this definition are freight containers or transport vehicles that are structurally serviceable in accordance with

§ 176.172, portable magazines conforming to § 176.137, and small vessel compartments (i.e., mast lockers and deck house). These changes will require Class 1 materials to be shipped in closed cargo transport units as defined above when stowed on deck.

Hazardous Materials Table (HMT)

In this NPRM, PHMSA is proposing to amend the HMT. Readers should review all changes for a complete understanding of the amendments. For purposes of the Government Printing Office's typesetting procedures, proposed changes to the HMT appear under three sections of the Table, ''remove,'' ''add,'' and ''revise.'' Certain entries in the HMT, such as those with revisions to the proper shipping names, appear as a ''remove'' and ''add.'' Proposed amendments to the HMT include the following:

New HMT entries

UN3497 Krill meal

UN3498 Iodine monochloride, liquid

This new HMT entry is a result of the division of the proper shipping name Iodine monochloride into two authorized proper shipping names; one for the liquid state of the commodity and another for the solid state. Solid shipments of Iodine monochloride remain assigned to UN1792.

UN3499 Capacitor, electric double layer (with an energy storage capacity greater than 0.3 Wh)

This new HMT entry is intended to cover capacitors with an energy storage capacity greater than 0.3 Wh. Capacitors are assigned as a Class 9 miscellaneous hazardous material and measures required to prevent short circuit are provided in special provision 361.

UN3500 Chemical under pressure, n.o.s.

UN3501 Chemical under pressure, flammable, n.o.s.

UN3502 Chemical under pressure, toxic, n.o.s.

UN3503 Chemical under pressure, corrosive, n.o.s.

UN3504 Chemical under pressure, flammable, toxic, n.o.s.

UN3505 Chemical under pressure, flammable, corrosive, n.o.s.

The ''Chemical under pressure. n.o.s.'' HMT entries are added to address shipments of liquids or solids (e.g., adhesives, coatings, and cleaners) combined with a gas or gas mixtures utilized to expel the contents from pressure vessels. The primary hazard class for these shipments is determined by the hazard presented by the propellant and any subsidiary risk is determined by the properties of the liquid or solid under pressure. Toxic gases are not permitted as propellants.

UN3506 Mercury contained in manufactured articles

This new entry was created to separately address manufactured articles containing mercury. The international community provided an exception from regulation for instruments and articles containing not more than 1 kg of mercury, when transported by means other than aircraft. PHMSA is unable to adopt a comparable exception as the reportable quantity for mercury is 0.454 kg (1.00 lbs.), but does propose to revise the current exception authorized in § 173.164(e) for shipments containing less than 0.454 kg (1.00 pound) to include transportation by vessel.

Removed HMT Entries

UN3492 Toxic by inhalation liquid, corrosive, flammable, n.o.s. with an inhalation toxicity lower than or equal to 200 ml/m^3 and saturated vapor concentration greater than or equal to 500 LC50

UN3493 Toxic by inhalation liquid, corrosive, flammable, n.o.s. with an inhalation toxicity lower than or equal to 1000 ml/m^3 and saturated vapor concentration greater than or equal to 10 LC50

These entries are proposed for removal from the HMT due to their similarity to UN3488 and UN3489 respectfully. The sole difference between these entries is the order of subsidiary risks, which does not affect the classification and transport conditions applied to shipments of these substances. As a result, PHMSA proposes to remove identification numbers UN3492 and UN3493 to avoid confusing shippers in determining which identification numbers to use.

Amendments to the Column (1) Symbols

Section 172.101(b) describes column (1) of the HMT and the associated symbols that may be indicated in the column. In accordance with § 172.101(b), the symbol ''G'' identifies proper shipping names for which one or more technical names of the hazardous material must be entered in parentheses in association with the basic description on a shipping paper. In this NPRM, PHMSA proposes to add a ''G'' to column (1) for ''UN1707, Thallium compounds, n.o.s.'' The addition of a ''G'' to this entry will provide notification of the technical name of this toxic material and thus aid emergency responders with providing an appropriate response.

Amendments to the Column (2) Hazardous Materials Descriptions and Proper Shipping Names

Section 172.101(c) describes column (2) of the HMT and the requirements for hazardous materials descriptions and proper shipping names. Among other requirements, in accordance with § 172.101(c)(1), proper shipping names indicated in column (2) of the HMT may be used in the singular or the plural form interchangeably. Regardless, in this NPRM, PHMSA is revising several entries in the HMT to remove the plural ending letter ''s'' to provide continuity with the internationally accepted proper shipping names. Specifically, PHMSA proposes to remove the letter ''s'' from: UN1107, Amyl chlorides; UN1111, Amyl mercaptans; UN1113, Amyl nitrites; and, UN2347, Butyl Mercaptans.

Generally the physical state (solid or liquid) appears before the hazard characteristics (toxic, flammable, etc.) in the sequence of wording used in proper shipping names specified in column (2) of the HMT. In some instances, the hazard characteristics are indicated before the physical state. In this NPRM, PHMSA is proposing changes to several proper shipping names to indicate the physical state before the hazard characteristics for consistency in formatting.

Current proper shipping names:

UN No.	Proper shipping name
3276	Nitriles, toxic, liquid, n.o.s.
3278	Organophosphorus compound, toxic, liquid, n.o.s.
3282	Organometallic compound, toxic, liquid, n.o.s.
3439	Nitriles, toxic, solid, n.o.s.
3464	Organophosphorus compound, toxic, solid, n.o.s.
3467	Organometallic compound, toxic, solid, n.o.s.

Proposed proper shipping names:

UN No.	Proper shipping name
3276	Nitriles, liquid, toxic, n.o.s.
3278	Organophosphorus compound, liquid, toxic, n.o.s.
3282	Organometallic compound, liquid, toxic, n.o.s.
3439	Nitriles, solid, toxic, n.o.s.
3464	Organophosphorus compound, solid, toxic, n.o.s.
3467	Organometallic compound, solid, toxic, n.o.s.

Currently, the HMT includes the entry ''Toxic, liquids, organic, n.o.s., UN2810'' with the proper shipping name indicated in column (2) that includes a comma between the words ''toxic'' and ''liquid.'' This is not

consistent with the UN Model Regulations, the ICAO Technical Instructions, or the IMDG Code as there is no comma between the words ''Toxic'' and ''liquid.'' PHMSA proposes to revise this entry by removing the comma for consistency with international standards and regulations and to provide shippers with the most appropriate shipping description.

A new proper shipping name ''Cartridges for tools, blank'' is proposed to be assigned to identification number UN0014. This proper shipping name more appropriately describes industrial blank cartridges currently described as ''UN0323, Cartridges, power device'' or ''ORM–D or ORM–D–AIR, Cartridges, power device *(used to project fastening devices).''* In this NPRM, PHMSA is proposing to remove the ''ORM–D'' entry for ''Cartridges, power device *(used to project fastening devices)''* as the proper shipping name for such articles is now ''Cartridges for tools, blank'' under identification number UN0014. Subsequent changes will be made to § 173.63 and the § 172.102(c)(1) special provision 347 to replace any references to ''ORM–D or ORM–D–AIR, Cartridges, power device *(used to project fastening devices)''* with the new description ''UN0014, Cartridges for tools, blank *(used to project fastening devices).''* Additionally, such articles are not subject to the UN Test Series 6(d) previously required under special provision 347. The description ''UN0323, Cartridges, power device'' will remain subject to special provision 347.

The proper shipping name for ''UN1305, Vinyltrichlorosilane, stabilized'' is amended by removing the term ''stabilized'' for consistency with the Dangerous Goods Lists of the various international standards and the HMT of the HMR. The proposed proper shipping name for UN1305 is ''Vinyltrichlorosilane.''

The 17th Revised Edition of the UN Model Regulations modified the qualifying text (text in italics) for UN Nos. 3381–3390 and UN Nos. 3488–3491. The proposed changes to these entries' qualifying or modifying text in italics would change the wording from ''with an inhalation toxicity lower than or equal to'' to ''with an LC50 lower than or equal to''. The intent of this terminology change is to better identify the criteria used to determine the proper classification of these substances.

The entry ''*Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde), see* Aviation regulated liquid, n.o.s. *or* Other regulated substances, liquid, n.o.s.'' appears in column (1) of the HMT. PHMSA proposes to revise this entry by placing it into the correct column (2) of the HMT. This is an editorial revision and simply corrects an unintended error in the HMT.

Amendments to the Column (4) identification numbers

Section 172.101(e) describes Column (4) of the HMT and the designation of the identification number to each proper shipping name. With the proposed addition of a separate identification number (UN3506) for the description ''Mercury contained in manufactured articles,'' PHMSA proposes to remove the description that is currently assigned to ''UN2809, Mercury.''

Amendments to the Column (6) label(s)

Section 172.101(g) describes Column (6) of the HMT and the labels required (primary and subsidiary) for specific entries in the HMT. Data presented to the UN Committee of Experts on the Transport of Dangerous Goods in this last biennium indicated a need for the addition of subsidiary risk of Division 6.1 (toxic) to be assigned to ''UN2809, Mercury'' and to the new entry ''UN3506, Mercury contained in manufactured articles.'' We note that for air transport, Special provision A192 provides relief from the labeling and documentation requirements of this new subsidiary risk.[1]

In addition to the changes above, data was also presented to the UN Committee of Experts on the Transport of Dangerous Goods that indicated the need for a subsidiary risk of Division 6.1 (toxic) to be assigned to UN2381 Dimethyl disulfide.

PHMSA proposes to make appropriate amendments to the HMT to account for these revisions to the UN Model Regulations.

Amendments to the Column (7) Special Provisions

Section 172.101(h) describes Column (7) of the HMT and the § 172.102(c) Special provisions assigned to specific entries in the HMT. The particular modifications to the entries in the HMT are discussed below. See *Section 172.102 special provisions* for a detailed discussion of the proposed additions, revisions, and deletions to the special provisions addressed in this NPRM.

Several HMT entries are revised to include bulk special provision B120. Special provision B120 indicates that the material, when offered in conformance with the applicable requirements of Part 178 and general packaging requirements in Part 173, may be offered for transportation in a Flexible Bulk Container. See *Section 172.102 special provisions* for a detailed discussion of our proposed addition of special provision B120.

In this NPRM, special provision B120 is proposed to be assigned to the following entries:

Proper shipping name	UN No.
Naphthalene, crude *or* Naphthalene, refined	UN1334
Sulfur (domestic and international entries)	UN1350
Calcium nitrate	UN1454
Magnesium nitrate	UN1474
Potassium nitrate	UN1486
Sodium nitrate	UN1498
Sodium nitrate and potassium nitrate mixtures	UN1499
Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance*	UN1942
Ammonium nitrate based fertilizer	UN2067
Paraformaldehyde	UN2213
Environmentally hazardous substance, solid, n.o.s	UN3077
Sodium perborate monohydrate	UN3377
Sodium carbonate peroxyhydrate	UN3378

[1] The scientific data and background regarding the adoption of these modifications are presented in working papers ST/SG/AC.10/C.3/2010/6 and ST/SG/AC.10/C.3/2010/67 entitled ''Mercury (UN2809): Subsidiary risk 6.1'' and ''Dimethyl disulphide (UN2381): subsidiary risk 6.1.'' These papers can be viewed at the following URLs: *http://www.unece.org/fileadmin/DAM/trans/doc/2010/ac10c3/ST-SG-AC10-C3-2010-06e.pdf.* and *http://www.unece.org/fileadmin/DAM/trans/doc/2010/ac10c3/ST-SG-AC10-C3-2010-67e.pdf.*

In this NPRM, new special provision 363 is proposed to be assigned to the following entries:

Proper shipping name	UN No.
Gas oil *or* Diesel fuel *or* Heating oil, light	UN1202
Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol*	UN1203
Kerosene	UN1223
Petroleum distillates, n.o.s. *or* Petroleum products, n.o.s	UN1268
Fuel, aviation, turbine engine	UN1863
Ethanol and gasoline mixture *or* Ethanol and motor spirit mixture *or* Ethanol and petrol mixture, *with more than 10% ethanol*	UN3475

See *Section 172.102 special provisions* for a detailed discussion of our proposed addition of special provision 363.

The entry for UN1008 Boron trifluoride is assigned new special provision 238. See *Section 172.102 Special provisions* for a detailed discussion of our proposed addition of special provision 238.

With the addition of a Division 6.1 (toxic) subsidiary risk to ''UN2381, Dimethyl disulfide,'' the portable tank codes and portable tank provisions are proposed to be revised as follows:

T4 is replaced by T7

TP1 is replaced by TP2, TP13, and TP39

See *Section 172.102 Special provisions* for a detailed discussion of our proposed addition of special provision TP39.

Review of the ''Guiding Principles for the Development of the UN Model Regulations (Guiding Principles)'' indicates that in some cases, the portable tank instructions for the transport of Division 4.3 liquid materials are not consistent with the Guiding Principles, and, in other instances, relevant portable tank special provisions were missing or incorrectly assigned. The following changes are proposed with deletions indicated by a strikethrough and additions or replacements shown in bold font.

UN No	PSN	Class	SR	PG	T	TP
2965	Boron Trifluoride Dimethyl Etherate	4.3	3 8	I	T10	TP2 TP7 **TP13**
3129	Water-reactive Liquid, Corrosive n.o.s.	4.3	8	I	T14	TP2 TP7 **TP13**
3129	Water-reactive Liquid, Corrosive n.o.s.	4.3	8	II	T11	TP2 **TP7**
3129	Water-reactive Liquid, Corrosive n.o.s.	4.3	8	III	T7	~~T P1~~**TP2** **TP7**
3148	Water-reactive Liquid, n.o.s.	4.3		I	~~T9~~ **T13**	TP2 TP7 TP41
3148	Water-reactive Liquid, n.o.s.	4.3		II	T7	TP2 **TP7**
3148	Water-reactive Liquid, n.o.s.	4.3		III	T7	~~TP1~~**TP2** **TP7**

See *Section 172.102 Special provisions* for a detailed discussion of our proposed addition of special provision TP41.

Special provisions A100 and A103 are revised to clarify that the weight (mass) limitations specified are net and not gross amounts for secondary lithium batteries. See *Section 172.102 Special provisions* for a detailed discussion of our proposed revision of special provisions A100 and A103.

Special provision A192 is added to note that regardless of the Division 6.1 (toxic) subsidiary risk indicated in the HMT, the toxic subsidiary risk label and an indication of the subsidiary risk on the shipping paper are not required for manufactured articles containing less than 0.454 kg (1.00 pound) of mercury. This special provision is assigned to the entry ''UN3506, Mercury contained in manufactured articles.''

Special provision A200 is added to require that certain articles may not be transported in passenger baggage and are to be shipped as cargo when transported via aircraft. Under certain circumstances, the articles affected by this special provision may be excepted from the requirements of the HMR. When these articles are not subject to the regulations, there is the potential for them to be inappropriately carried aboard an aircraft. In response to this safety concern, the ICAO Technical Instructions were revised to clarify that when transported by aircraft, these articles, regardless of whether they are otherwise excepted from the regulations, must be transported as cargo and may not be carried onboard an aircraft by passengers or

crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10, ''Exceptions for Passengers, Crewmembers, and Air Operators.'' Consistent with the revised ICAO Technical Instructions requirement, PHMSA proposes to adopt the special provision restricting these items from being carried aboard an aircraft by passengers and crewmembers.

This special provision is assigned to the following entries: ''UN3166, Engines, internal combustion *or* Engines, fuel cell, *flammable gas powered'';* ''UN3166, Engines, internal combustion *or* Engines, fuel cell, *flammable liquid powered'';* ''UN3166, Vehicle, *flammable gas powered or* Vehicle, fuel cell, *flammable gas powered'';* ''UN3166, Vehicle, *flammable liquid powered or* Vehicle, fuel cell, *flammable liquid powered'';* ''UN0503, Air bag inflators *or* Air bag modules *or* Seat-belt pretensioners''; and ''UN3268, Air bag inflators *or* Air bag modules *or* Seat-belt pretensioners.''

Special provision W10 is assigned to ''UN3486, Calcium hypochlorite mixture, dry, corrosive *with more than 10% but not more than 39% available chlorine''* and to ''UN2208, Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine.''* Special provision W10 indicates that, when offered for transportation by vessel, these entries may not be offered in Large Packagings. See *Section 172.102 Special provisions* for a detailed discussion of our proposed addition of special provision W10.

Amendments to the Column (9) quantity limitations

Section 172.101(j) describes Column (9) of the HMT and the quantity limitations for specific entries in the HMT. Furthermore, Columns (9A) and (9B) specify the maximum quantities that may be offered for transportation in one package by passenger-carrying aircraft or passenger-carrying rail car (Column (9A)) or by cargo-only aircraft (Column (9B)). Unless otherwise indicated the quantity limitations shown in column (9) of the HMT are net. PHMSA proposes to remove the gross weight indicator in columns (9A) (if authorized previously) and (9B) for the following battery entries. The quantity limit for these entries should be based on the weight of the battery or batteries and not the weight of the battery or batteries plus the packaging (i.e., the package).

UN3028 Batteries, dry, containing potassium hydroxide solid, *electric, storage*
UN2794 Batteries, wet, filled with acid, *electric storage*
UN2795 Batteries, wet, filled with alkali, *electric storage*
UN3468 Hydrogen in a metal hydride storage system *or* Hydrogen in a metal hydride storage system contained in equipment *or* Hydrogen in a metal hydride storage system packed with equipment
UN3090 Lithium battery
UN3091 Lithium batteries packed with equipment

PHMSA is proposing to revise column (9A) to forbid several entries previously authorized for shipment on passenger-carrying aircraft or passenger-carrying rail to harmonize with changes to the ICAO Technical Instructions. The following entries would now be forbidden on passenger-carrying aircraft or passenger-carrying rail.

UN1162 Dimethyldichlorosilane
UN1196 Ethyltrichlorosilane
UN1250 Methyltrichlorosilane
UN1298 Trimethylchlorosilane
UN1305 Vinyltrichlorosilane
UN2985 Chlorosilanes, flammable, corrosive, n.o.s.
UN3361 Chlorosilanes, toxic, corrosive, n.o.s.
UN3362 Chlorosilanes, toxic, corrosive, flammable, n.o.s.

Quantity limits of 450 L for ''UN3334, Aviation regulated liquid, n.o.s.'' and 400 kg for ''UN3335, Aviation regulated solid, n.o.s.'' are proposed for both columns (9A) and (9B). Previously, there was no limit to the amount authorized to be shipped in one package. These new quantity limits are consistent with authorized quantity limits found in the ICAO Technical Instructions.

Amendments to the Column (10) Vessel Stowage Requirements

Vessel Stowage Location (10A)

Section 172.101(k) explains the purpose of column (10) of the HMT and prescribes the vessel stowage and segregation requirements for specific entries in the HMT. Column (10) is divided into two columns: column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels and column (10B) [Other provisions] specifies special stowage and segregation provisions.

PHMSA is proposing to simplify the number of vessel stowage locations for shipments of Class 1 explosive materials to harmonize with recently adopted vessel explosive stowage categories in the IMDG Code. Currently, there are 15 possible stowage location codes available for assignment to column (10A) for explosive shipments. Recent changes in the IMDG Code have reduced the number of available explosive stowage location codes to five. This consolidation of codes was accomplished to reduce the complexity of the regulations without compromising safety.

The International Maritime Organization (IMO) determined that the term ''magazine'' was no longer necessary and the magazine concept could be incorporated into a broader definition for closed cargo transport units for Class 1 (explosives) material. In general, a magazine used to store and transport explosives is equivalent to a closed cargo transport unit with a wooden floor. A magazine type A has additional wooden walls, or walls covered with wooden pallets, and is currently only assigned to 7 entries in the HMT. A magazine type C is currently defined by a minimum distance to the ship's side of 2.4 m (8 feet). Proposed requirements to load Class 1 closed cargo transport units a minimum distance of 2.4 m (8 feet) from the ship's side wall remove the need for specific stowage category references to magazine stowage type C. The IMO, taking into account the properties of various classes and divisions of explosives, has determined that only 1.4S, 1.4G, 1.4D, and 1.4C explosives are acceptable on passenger ships. PHMSA agrees. Therefore, PHMSA has removed the majority of Class 1 stowage location codes and revised the remaining codes. The codes proposed for each Class 1 entry are grouped by proposed stowage code (01, 02, 03, 04, or 05) as follows:

Proposed Explosive Stowage Category

01—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) and on a passenger vessel
02—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) and ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transport units on a passenger vessel
03—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel
04—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transports on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel

05—means the material may be stowed ''on deck'' in closed cargo transport units on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel

Taking into account the properties of various classes and divisions of explosives, the IMO determined new stowage category assignments as follows:

Division	Stowage category	Division	Stowage category
1.1A	05	1.4F	05
1.1B	05	1.1G	03
1.2B	05	1.2G	03
1.4B	05	1.3G	03
1.1C	04	1.4G	02
1.2C	04	1.2H	05
1.3C	04	1.3H	05
1.4C	02	1.1J	05
1.1D	04	1.2J	05
1.2D	04	1.3J	05
1.4D	02	1.2K	05
1.5D	03	1.3K	05
1.1E	04	1.1L	05
1.2E	04	1.2L	05
1.4E	03	1.3L	05
1.1F	05	1.6N	03
1.2F	05	1.4S	01
1.3F	05		

PHMSA agrees with the assignments and, in particular, agrees that only 1.4S, 1.4G, 1.4D, and 1.4C explosives are acceptable on passenger ships.

Column (10A) in the HMT is revised to read Stowage Category 01 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
Articles, explosive, n.o.s	UN0349	Fuse, safety	UN0105
Articles, pyrotechnic *for technical purposes*	UN0432	Fuzes, detonating	UN0367
Cartridges, power device	UN0323	Fuzes, igniting	UN0368
Cartridges, signal	UN0405	Grenades, practice, *hand or rifle*	UN0110
Cartridges for weapons, blank *or* Cartridges, small arms, blank *or* Cartridges for tools, blank.	UN0014	Igniters	UN0454
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	UN0012	Lighters, fuse	UN0131
Cases, cartridge, empty with primer	UN0055	Primers, cap type	UN0044
Charges, bursting, plastics bonded	UN0460	Primers, tubular	UN0376
Charges, explosive, commercial *without detonator*	UN0445	Projectiles, *inert with tracer*	UN0345
Charges, shaped, *without detonator*	UN0441	Release devices, explosive	UN0173
Components, explosive train, n.o.s	UN0384	Rivets, explosive	UN0174
Cutters, cable, explosive	UN0070	Signal devices, hand	UN0373
Detonator assemblies, non-electric, *for blasting*	UN0500	Signals, distress, *ship*	UN0506
Detonators for ammunition	UN0366	Signals, railway track, explosive	UN0193
Detonators, electric *for blasting*	UN0456	Signals, smoke	UN0507
Detonators, non-electric *for blasting*	UN0455	Substances, explosive, n.o.s	UN0481
Fireworks	UN0337	Toy Caps	NA0337
Flares, aerial	UN0404		

Column (10A) in the HMT is revised to read Stowage Category 02 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
5-Mercaptotetrazol-1-acetic acid	UN0448	Flares, aerial	UN0403
Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	UN0503	Fuse, igniter *tubular metal clad*	UN0103
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*.	UN0297	Fuzes, detonating, *with protective features*	UN0410
Ammunition, incendiary *with or without burster, expelling charge or propelling charge*.	UN0300	Fuzes, igniting	UN0317
Ammunition, practice	UN0362	Grenades practice, *hand or rifle*	UN0452
Ammunition, proof	UN0363	Igniters	UN0325
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0303	Jet perforating guns, charged *oil well, with detonator*	NA0494

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0301	Jet perforating guns, charged, *oil well, without detonator*	UN0494
Articles, explosive, n.o.s	UN0351	Powder, smokeless	UN0509
Articles, explosive, n.o.s	UN0352	Primers, tubular	UN0320
Articles, explosive, n.o.s	UN0353	Projectiles, *inert, with tracer*	UN0425
Articles, explosive, n.o.s	UN0354	Projectiles, *with burster or expelling charge*	UN0347
Articles, pyrotechnic *for technical purposes*	UN0431	Projectiles, *with burster or expelling charge*	UN0435
Cartridges for weapons, blank *or* Cartridges, small arms, blank.	UN0338	Projectiles, *with bursting charge*	UN0344
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	UN0339	Propellant, solid	UN0501
Cartridges, oil well	UN0278	Rockets, line-throwing	UN0453
Cartridges, power device	UN0276	Rockets, *with expelling charge*	UN0438
Cartridges, signal	UN0312	Rockets, *with inert head*	UN0502
Cases, cartridges, empty with primer	UN0379	Signal devices, hand	UN0191
Cases, combustible, empty, without primer	UN0446	Signals, distress, *ship*	UN0505
Charges, bursting, plastics bonded	UN0459	Signals, railway track, explosive	UN0493
Charges, explosive, commercial *without detonator*	UN0444	Signals, smoke	UN0197
Charges, propelling	UN0491	Substances, explosive, n.o.s	UN0479
Charges, shaped, flexible, linear	UN0237	Substances, explosive, n.o.s	UN0480
Charges, shaped, *without detonator*	UN0440	Substances, explosive, n.o.s	UN0485
Cord, detonating, *flexible*	UN0289	Tetrazol-1-acetic acid	UN0407
Cord, detonating, mild effect *or* Fuse, detonating, mild effect *metal clad*.	UN0104	Tracers for ammunition	UN0306
Cord, igniter	UN0066	Warheads, rocket *with burster or expelling charge*	UN0370
Fireworks	UN0336		

Column (10A) in the HMT is revised to read Stowage Category 03 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammonium nitrate-fuel oil mixture *containing only prilled ammonium nitrate and fuel oil*.	NA0331	Flares, aerial	UN0421
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*.	UN0171	Flares, surface	UN0092
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*.	UN0254	Flares, surface	UN0418
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*.	UN0009	Flares, surface	UN0419
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*.	UN0010	Flash powder	UN0094
Ammunition, practice	UN0488	Flash powder	UN0305
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0015	Fuse, non-detonating *instantaneous or quickmatch*	UN0101
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0016	Fuzes, igniting	UN0316
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0018	Grenades, practice, *hand or rifle*	UN0318
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0019	Grenades, practice, *hand or rifle*	UN0372
Articles, explosive, extremely insensitive *or* Articles, EEI	UN0486	Igniters	UN0121
Articles, explosive, n.o.s	UN0471	Igniters	UN0314
Articles, pyrotechnic *for technical purposes*	UN0428	Igniters	UN0315
Articles, pyrotechnic *for technical purposes*	UN0429	Primers, tubular	UN0319
Articles, pyrotechnic *for technical purposes*	UN0430	Projectiles, *inert, with tracer*	UN0424
Bombs, photo-flash	UN0039	Projectiles, *with burster or expelling charge*	UN0434
Bombs, photo-flash	UN0299	Rockets, line-throwing	UN0238
Cartridges for weapons, *with bursting charge*	UN0412	Rockets, line-throwing	UN0240
Cartridges, flash	UN0049	Signals, distress, *ship*	UN0194
Cartridges, flash	UN0050	Signals, distress, *ship*	UN0195
Cartridges, signal	UN0054	Signals, railway track, explosive	UN0192
Explosive, blasting, type B *or* Agent blasting, Type B	UN0331	Signals, railway track, explosive	UN0492
Explosive, blasting, type E *or* Agent blasting, Type E	UN0332	Signals, smoke	UN0196
Fireworks	UN0333	Signals, smoke	UN0313
Fireworks	UN0334	Signals, smoke	UN0487
Fireworks	UN0335	Substances, explosive, n.o.s	UN0476
Flares, aerial	UN0093	Substances, explosive, n.o.s	UN0478
Flares, aerial	UN0420	Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s.	UN0482
		Tracers for ammunition	UN0212

Column (10A) in the HMT is revised to read Stowage Category 04 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
1H-Tetrazole	UN0504	Hexolite, *or* Hexotol *dry or wetted with less than 15 percent water, by mass.*	UN0118
1-Hydroxybenzotriazole, anhydrous, *dry or wetted with less than 20 percent water, by mass.*	UN0508	Hexotonal	UN0393
5-Nitrobenzotriazol	UN0385	Jet perforating guns, charged *oil well, with detonator*	NA0124
Ammonium nitrate, *with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	UN0222	Jet perforating guns, charged *oil well, without detonator*	UN0124
Ammonium perchlorate	UN0402	Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, or mixture of alcohol and water, by mass.*	UN0133
Ammonium picrate, *dry or wetted with less than 10 percent water, by mass.*	UN0004	Mines *with bursting charge*	UN0137
Articles, explosive, n.o.s	UN0462	Mines *with bursting charge*	UN0138
Articles, explosive, n.o.s	UN0463	Nitro urea	UN0147
Articles, explosive, n.o.s	UN0464	Nitrocellulose, *dry or wetted with less than 25 percent water (or alcohol), by mass.*	UN0340
Articles, explosive, n.o.s	UN0466	Nitrocellulose, plasticized *with not less than 18 percent plasticizing substance, by mass.*	UN0343
Articles, explosive, n.o.s	UN0467	Nitrocellulose, *unmodified or plasticized with less than 18 percent plasticizing substance, by mass.*	UN0341
Articles, explosive, n.o.s	UN0468	Nitrocellulose, wetted *with not less than 25 percent alcohol, by mass.*	UN0342
Articles, explosive, n.o.s	UN0470	Nitroglycerin, desensitized *with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass.*	UN0143
Black powder *or* Gunpowder, *granular or as a meal*	UN0027	Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 10 percent nitrogylcerin.*	UN0144
Black powder, compressed *or* Gunpowder, compressed *or* Black powder, in pellets *or* Gunpowder, in pellets.	UN0028	Nitroguanidine *or* Picrite, *dry or wetted with less than 20 percent water, by mass.*	UN0282
		Nitrostarch, *dry or wetted with less than 20 percent water, by mass.*	UN0146
Bombs, photo-flash	UN0038	Nitrotriazolone *or* NTO	UN0490
Bombs, *with bursting charge*	UN0034	Octolite *or* Octol, *dry or wetted with less than 15 percent water, by mass.*	UN0266
Bombs, *with bursting charge*	UN0035	Octonal	UN0496
Boosters, *without detonator*	UN0042	Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, *with not less than 7 percent wax by mass.*	UN0411
Boosters, *without detonator*	UN0283	Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass, or* Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass.*	UN0150
Bursters, *explosive*	UN0043	Pentolite, *dry or wetted with less than 15 percent water, by mass.*	UN0151
Cartridges for weapons, blank	UN0326	Powder cake, wetted *or* Powder paste, wetted *with not less than 17 percent alcohol by mass.*	UN0433
Cartridges for weapons, blank	UN0413	Powder cake, wetted *or* Powder paste, wetted *with not less than 25 percent water, by mass.*	UN0159
Cartridges for weapons, blank *or* Cartridges, small arms, blank.	UN0327	Powder, smokeless	UN0160
Cartridges for weapons, inert projectile	UN0328	Powder, smokeless	UN0161
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	UN0417	Projectiles, *with burster or expelling charge*	UN0346
Cartridges for weapons, *with bursting charge*	UN0006	Projectiles, *with bursting charge*	UN0168
Cartridges for weapons, *with bursting charge*	UN0321	Projectiles, *with bursting charge*	UN0169
Cartridges, oil well	UN0277	Propellant, liquid	UN0495
Cartridges, power device	UN0275	Propellant, liquid	UN0497
Cartridges, power device	UN0381	Propellant, solid	UN0498
Cases, combustible, empty, without primer	UN0447	Propellant, solid	UN0499
Charges, bursting, plastics bonded	UN0457	RDX and HMX mixtures, wetted *with not less than 15 percent water by mass or* RDX and HMX mixtures, desensitized *with not less than 10 percent phlegmatizer by mass.*	UN0391
Charges, bursting, plastics bonded	UN0458	Rocket motors	UN0186
Charges, demolition	UN0048	Rocket motors	UN0280
Charges, depth	UN0056	Rocket motors	UN0281
Charges, explosive, commercial *without detonator*	UN0442	Rockets, *with bursting charge*	UN0181
Charges, explosive, commercial *without detonator*	UN0443	Rockets, *with bursting charge*	UN0182
Charges, propelling	UN0271	Rockets, *with expelling charge*	UN0436

Proper shipping name	UN No.	Proper shipping name	UN No.
Charges, propelling	UN0272	Rockets, *with expelling charge*	UN0437
Charges, propelling	UN0415	Rockets, *with inert head*	UN0183
Charges, propelling, for cannon	UN0242	Sodium dinitro-o-cresolate, *dry or wetted with less than 15 percent water, by mass.*	UN0234
Charges, propelling, for cannon	UN0279	Sodium picramate, *dry or wetted with less than 20 percent water, by mass.*	UN0235
Charges, propelling, for cannon	UN0414	Sounding devices, explosive	UN0374
Charges, shaped, flexible, linear	UN0288	Sounding devices, explosive	UN0375
Charges, shaped, *without detonator*	UN0059	Substances, explosive, n.o.s	UN0474
Charges, shaped, *without detonator*	UN0439	Substances, explosive, n.o.s	UN0475
Charges, supplementary explosive	UN0060	Substances, explosive, n.o.s	UN0477
Cord detonating *or* Fuse detonating *metal clad*	UN0102	Tetranitroaniline	UN0207
Cord, detonating *or* Fuse, detonating *metal clad*	UN0290	Torpedoes *with bursting charge*	UN0329
Cord, detonating, *flexible*	UN0065	Torpedoes *with bursting charge*	UN0451
Cyclotetramethylenetetranitramine, desensitized *or* Octogen, desensitized *or* HMX, desensitized.	UN0484	Trinitroaniline *or* Picramide	UN0153
Cyclotetramethylenetetranitramine, wetted *or* HMX, wetted *or* Octogen, wetted *with not less than 15 percent water, by mass.*	UN0226	Trinitroanisole	UN0213
Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized *or* Hexogen, desensitized *or* RDX, desensitized.	UN0483	Trinitrobenzene, *dry or wetted with less than 30 percent water, by mass.*	UN0214
Cyclotrimethylenetrinitramine, wetted *or* Cyclonite, wetted *or* Hexogen, wetted *or* RDX, wetted *with not less than 15 percent water by mass.*	UN0072	Trinitrobenzenesulfonic acid	UN0386
Deflagrating metal salts of aromatic nitroderivatives, n.o.s.	UN0132	Trinitrobenzoic acid, *dry or wetted with less than 30 percent water, by mass.*	UN0215
Diethyleneglycol dinitrate, desensitized *with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass.*	UN0075	Trinitrochlorobenzene *or* Picryl chloride	UN0155
Dinitroglycoluril *or* Dingu	UN0489	Trinitrofluorenone	UN0387
Dinitrophenol, *dry or wetted with less than 15 percent water, by mass.*	UN0076	Trinitro-m-cresol	UN0216
Dinitrophenolates *alkali metals, dry or wetted with less than 15 percent water, by mass.*	UN0077	Trinitronaphthalene	UN0217
Dinitroresorcinol, *dry or wetted with less than 15 percent water, by mass.*	UN0078	Trinitrophenetole	UN0218
Dinitrosobenzene	UN0406	Trinitrophenol *or* Picric acid, *dry or wetted with less than 30 percent water, by mass.*	UN0154
Dipicryl sulfide, *dry or wetted with less than 10 percent water, by mass.*	UN0401	Trinitrophenylmethylnitramine *or* Tetryl	UN0208
Explosive, blasting, type A	UN0081	Trinitroresorcinol *or* Styphnic acid, *dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass.*	UN0219
Explosive, blasting, type B	UN0082	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass.*	UN0394
Explosive, blasting, type C	UN0083	Trinitrotoluene and Trinitrobenzene mixtures *or* TNT and trinitrobenzene mixtures *or* TNT and hexanitrostilbene mixtures *or* Trinitrotoluene and hexanitrostilnene mixtures.	UN0388
Explosive, blasting, type D	UN0084	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene *or* TNT mixtures containing trinitrobenzene and hexanitrostilbene.	UN0389
Explosive, blasting, type E	UN0241	Trinitrotoluene *or* TNT, *dry or wetted with less than 30 percent water, by mass.*	UN0209
Fracturing devices, explosive, *without detonators for oil wells.*	UN0099	Tritonal	UN0390
Fuzes, detonating, *with protective features*	UN0408	Urea nitrate, *dry or wetted with less than 20 percent water, by mass.*	UN0220
Fuzes, detonating, *with protective features*	UN0409	Warheads, rocket *with bursting charge*	UN0286
Grenades, *hand or rifle, with bursting charge*	UN0284	Warheads, rocket *with bursting charge*	UN0287
Grenades, *hand or rifle, with bursting charge*	UN0285	Warheads, torpedo *with bursting charge*	UN0221
Hexanitrodiphenylamine *or* Dipicrylamine *or* Hexyl	UN0079	Zirconium picramate, *dry or wetted with less than 20 percent water, by mass.*	UN0236
Hexanitrostilbene	UN0392		

Column (10A) in the HMT is revised to read Stowage Category 05 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition smoke, white phosphorus with burster, expelling charge, or propelling charge.	UN0245	Diazodinitrophenol, wetted with not less than 40 percent water or mixture of alcohol and water, by mass.	UN0074
Ammunition, incendiary liquid or gel, with burster, expelling charge or propelling charge.	UN0247	Fuzes, detonating	UN0106
Ammunition, incendiary, white phosphorus, with burster, expelling charge or propelling charge.	UN0243	Fuzes, detonating	UN0107
Ammunition, incendiary, white phosphorus, with burster, expelling charge or propelling charge.	UN0244	Fuzes, detonating	UN0257
Ammunition, smoke, white phosphorus with burster, expelling charge, or propelling charge.	UN0246	Grenades, hand or rifle, with bursting charge	UN0292
Ammunition, toxic with burster, expelling charge, or propelling charge.	UN0020	Grenades, hand or rifle, with bursting charge	UN0293
Ammunition, toxic with burster, expelling charge, or propelling charge.	UN0021	Guanyl nitrosaminoguanylidene hydrazine, wetted with not less than 30 percent water, by mass.	UN0113
Articles, explosive, n.o.s	UN0350	Guanyl nitrosaminoguanyltetrazene, wetted or Tetrazene, wetted with not less than 30 percent water or mixture of alcohol and water, by mass.	UN0114
Articles, explosive, n.o.s	UN0355	Lead azide, wetted with not less than 20 percent water or mixture of alcohol and water, by mass.	UN0129
Articles, explosive, n.o.s	UN0356	Lead styphnate, wetted or Lead trinitroresorcinate, wetted with not less than 20 percent water or mixture of alcohol and water, by mass.	UN0130
Articles, explosive, n.o.s	UN0465	Mercury fulminate, wetted with not less than 20 percent water, or mixture of alcohol and water, by mass.	UN0135
Articles, explosive, n.o.s	UN0469	Mines with bursting charge	UN0136
Articles, explosive, n.o.s	UN0472	Mines with bursting charge	UN0294
Articles, pyrophoric	UN0380	Primers, cap type	UN0377
Barium azide, dry or wetted with less than 50 percent water, by mass.	UN0224	Primers, cap type	UN0378
Bombs with flammable liquid, *with bursting charge*	UN0399	Projectiles, with burster or expelling charge	UN0426
Bombs with flammable liquid, *with bursting charge*	UN0400	Projectiles, with burster or expelling charge	UN0427
Bombs, photo-flash	UN0037	Projectiles, with bursting charge	UN0167
Bombs, *with bursting charge*	UN0033	Projectiles, with bursting charge	UN0324
Bombs, *with bursting charge*	UN0291	Rocket motors with hypergolic liquids with or without an expelling charge.	UN0250
Boosters with detonator	UN0225	Rocket motors with hypergolic liquids with or without an expelling charge.	UN0322
Boosters with detonator	UN0268	Rocket motors, liquid fueled	UN0395
Cartridges for weapons, with bursting charge	UN0005	Rocket motors, liquid fueled	UN0396
Cartridges for weapons, with bursting charge	UN0007	Rockets, liquid fueled with bursting charge	UN0397
Cartridges for weapons, with bursting charge	UN0348	Rockets, liquid fueled with bursting charge	UN0398
Components, explosive train, n.o.s	UN0382	Rockets, with bursting charge	UN0180
Components, explosive train, n.o.s	UN0383	Rockets, with bursting charge	UN0295
Components, explosive train, n.o.s	UN0461	Samples, explosive, other than initiating explosives	UN0190
Contrivances, water-activated, with burster, expelling charge or propelling charge.	UN0248	Sounding devices, explosive	UN0204
Contrivances, water-activated, with burster, expelling charge or propelling charge.	UN0249	Sounding devices, explosive	UN0296
Detonator assemblies, non-electric for blasting	UN0360	Substances, explosive, n.o.s	UN0357
Detonator assemblies, non-electric for blasting	UN0361	Substances, explosive, n.o.s	UN0358
Detonators for ammunition	UN0073	Substances, explosive, n.o.s	UN0359
Detonators for ammunition	UN0364	Substances, explosive, n.o.s	UN0473
Detonators for ammunition	UN0365	Torpedoes with bursting charge	UN0330
Detonators, electric, for blasting	UN0030	Torpedoes, liquid fueled, with inert head	UN0450
Detonators, electric, for blasting	UN0255	Torpedoes, liquid fueled, with or without bursting charge	UN0449
Detonators, non-electric, for blasting	UN0029	Warheads, rocket with burster or expelling charge	UN0371
Detonators, non-electric, for blasting	UN0267	Warheads, rocket with bursting charge	UN0369

Vessel stowage codes (10B).

Section 172.101(k) describes Column (10) of the HMT and the vessel stowage requirements for specific entries in the HMT. Furthermore, column (10B) [Other provisions] specifies codes for stowage requirements for specific hazardous materials. The meaning of each code in Column (10B) is set forth in § 176.84 of this subchapter.

Vessel shipments of Class 1 explosives are currently required to be stored away from all sources of heat including steam pipes, heating coils, sparks, and flame in accordance with § 176.116(a). In addition to this general provision in § 176.116, several vessel stowage codes in column (10B) make reference to shading or stowing away from heat. To harmonize with the IMDG Code, reduce the number of redundant vessel stowage codes, and incorporate the addition of a new definition for protected from sources of heat (see Section 176.2 of this NPRM for definition) PHMSA proposes to delete vessel stowage codes 50 and 48 and replace all references to these codes with stowage code 25. See *Section 176.84* for a detailed discussion of our proposed revision to stowage code 25.

The following proper shipping names and corresponding identification numbers will have stowage code 48 replaced with stowage code 25 in Column (10B) in the HMT.

Proper shipping name	UN No.	Proper shipping name	UN No.
Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity).*	UN1950	Calcium hypochlorite mixture, dry, corrosive with more than 10% but not more than 39% available chlorine.	UN3486
Aerosols, *flammable, (each not exceeding 1 L capacity)*	UN1950	Calcium hypochlorite mixtures, dry, with more than 10 percent but not more than 39 percent available chlorine.	UN2208
Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*	UN1950	Copra	UN1363
Aerosols, non-flammable, *(each not exceeding 1 L capacity).*	UN1950	Dichlorophenyl isocyanates	UN2250
Aerosols, poison, *(each not exceeding 1 L capacity)*	UN1950	Dicyclohexylammonium nitrite	UN2687
Ammonium nitrate based fertilizer	UN2067	Gallium	UN2803
Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, intermediate for blasting explosives.	UN3375	Hypochlorites, inorganic, n.o.s	UN3212
Ammonium nitrate, with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance.	UN1942	Isocyanates, toxic, flammable, n.o.s. *or* Isocyanate solutions, toxic, flammable, n.o.s., flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C.	UN3080
Batteries, nickel-metal hydride *see* Batteries, dry, sealed, n.o.s. for nickel-metal hydride batteries transported by modes other than vessel.	UN3496	Isocyanates, toxic, n.o.s. *or* Isocyanate solutions, toxic, n.o.s., flash point more than 61 degrees C and boiling point less than 300 degrees C.	UN2206
Benzyldimethylamine	UN2619	Isocyanatobenzotrifluorides	UN2285
5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene	UN2956	Lithium hypochlorite, dry *or* Lithium hypochlorite mixture	UN1471
Calcium hypochlorite, dry, corrosive *or* Calcium hypochlorite mixtures, dry, corrosive with more than 39% available chlorine (8.8% available oxygen).	UN3485	Methacrylonitrile, stabilized	UN3079
Calcium hypochlorite, dry *or* Calcium hypochlorite mixtures dry with more than 39 percent available chlorine (8.8 percent available oxygen).	UN1748	Phosphorous acid	UN2834
Calcium hypochlorite, hydrated, corrosive *or* Calcium hypochlorite, hydrated mixture, corrosive with not less than 5.5% but not more than 16% water.	UN3487	Propylene chlorohydrins	UN2611
Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, with not less than 5.5 percent but not more than 16 percent water.	UN2880	Sodium carbonate peroxyhydrate	UN3378
		Sodium perborate monohydrate	UN3377

The following proper shipping names and corresponding identification numbers will have stowage code 19 replaced with stowage code 25 in Column (10B) in the HMT if stowage code 25 is not currently listed in Column (10B). If the proper shipping name already is currently assigned both stowage code 19 and 25; stowage code 19 will be deleted.

Proper shipping name	UN No.	Proper shipping name	UN No.
Copra	UN1363	Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*	UN3314
Polymeric beads, expandable *evolving flammable vapor*	UN2211	Sulfur	NA1350
Sulfur	UN1350		

We also propose to assign stowage code 25 to every Class 1 explosive table entry to indicate these materials must be protected from sources of heat in accordance with the new proposed definition of ''protected from sources of heat'' in § 176.2. See *Section 176.84* for a detailed discussion of our proposed revision to stowage code 25 and § 176.2 for the proposed definition of ''protected from sources of heat.''

Stowage code 50 is currently not assigned to any HMT entries and is being proposed for deletion in this NPRM.

PHMSA proposes to revise stowage code 128 to account for a citation change in the IMDG Code. The proposed new text of stowage code 128 is ''stow in accordance with the IMDG Code, Sub-section 7.6.2.7.2 (incorporated by reference; see § 171.7 of this subchapter).''

PHMSA proposes to delete stowage codes 7E, 8E, and 20E. The proposed reduction in the number of vessel stowage categories in column (10A) makes these codes unnecessary and any applicable stowage requirements are covered by the requirements of the applied code in column (10A). Consequently, we propose to remove stowage codes 7E, 8E, or 20E from the following entries, as applicable:

The following proper shipping names and corresponding identification numbers will have stowage code 7E removed from column (10B) of the HMT.

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	UN0303	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	UN0301

The following proper shipping names and corresponding identification numbers will have stowage code 8E removed from column (10B) of the HMT.

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition smoke, white phosphorus *with burster, expelling charge, or propelling charge.*	UN0245	Articles, explosive, n.o.s	UN0354
Ammunition, smoke, white phosphorus *with burster, expelling charge, or propelling charge.*	UN0246	Articles, explosive, n.o.s	UN0355
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	UN0015	Articles, explosive, n.o.s	UN0356
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	UN0016	Articles, pyrophoric	UN0380
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	UN0303	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*	UN0248
Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	UN0018	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*	UN0249
Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	UN0019	Rocket motors with hypergolic liquids *with or without an expelling charge.*	UN0250
Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	UN0301	Rocket motors with hypergolic liquids *with or without an expelling charge.*	UN0322
Ammunition, toxic *with burster, expelling charge, or propelling charge.*	UN0020	Substances, explosive, n.o.s	UN0357
Ammunition, toxic *with burster, expelling charge, or propelling charge.*	UN0021	Substances, explosive, n.o.s	UN0358
		Substances, explosive, n.o.s	UN0359

The following proper shipping names and corresponding identification numbers will have stowage code 20E removed from column (10B) of the HMT.

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	UN0015	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	UN0018
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	UN0016	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	UN0019

During review of the explosive stowage codes it was noted that stowage code 1E was assigned to UN0504 1H–Tetrazole and UN0502 Rockets, with inert head. Stowage code 1E was removed in a final rule published on June 21, 2001, under Docket Number RSPA–2000–7702 (HM–215D) [66 FR 33316] entitled, ''Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions'' and, in this NPRM, PHMSA proposes to amend the listings for these two entries by removing these two codes whose requirements have been captured by other vessel stowage provisions.

Section 172.102 Special Provisions

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. PHMSA is proposing the following revisions to the § 172.102, Special provisions:

Special Provision 47

Special provision 47 provides classification exceptions for mixtures of solids and flammable liquids. In this NPRM, PHMSA proposes to revise special provision 47 to clarify that the requirement that each packaging must correspond with a design type that has passed a leakproofness test at the Packing Group II level applies only to single packagings.

Special Provision 48

Special provision 48 provides classification exceptions for mixtures of solids and toxic liquids. In this NPRM, PHMSA proposes to revise special provision 47 to clarify that the requirement that each packaging must correspond with a design type that has passed a leakproofness test at the Packing Group II level applies only to single packagings.

Special Provision 49

Special provision 49 provides classification exceptions for mixtures of solids and corrosive liquids. In this NPRM, PHMSA proposes to revise special provision 49 to clarify that the requirement that each packaging must correspond with a design type that has passed a leakproofness test at the Packing Group II level applies only to single packagings.

Special Provision 101

In a NPRM published in the **Federal Register** on August 31, 2006 (71 FR 51895), we proposed to remove § 172.102(c)(1), Special provision 101. In the NPRM, we stated that with the introduction of the letter ''G'' in Column (1), which requires the n.o.s. and generic proper shipping names to be supplemented with the technical name of the hazardous material, Special Provision 101 became obsolete. Consequently, because we did not receive public comment, the amendment was adopted as proposed in a final rule published in the **Federal Register** on December 29, 2006 (71 FR 78596).

Consequences of the removal of § 172.102(c)(1) Special provision 101 in 2006 may have resulted in

noncompliance for certain Department of Defense (DOD) explosive shipments. DOD recently asserted the current provisions in §§ 171.8 and 172.203(k) of the HMR do not permit technical names to be indicated in such a manner as former Special provision 101 required. For example, a DOD explosive shipment approved under the generic description ''Articles, explosive, n.o.s.'' was previously assigned Special provision 101 in column 7 of the § 172.101 Hazardous Materials Table that required the name of the particular substance or article to be specified as the technical name for the substance or article (e.g., ''Fuze, Grenade, M219A2'') in association with the basic description. Therefore, in this notice, PHMSA is proposing to reinstate special provision 101 for the following HMT entries:

UN0349 Articles, explosive, n.o.s.
UN0350 Articles, explosive, n.o.s.
UN0351 Articles, explosive, n.o.s.
UN0352 Articles, explosive, n.o.s.
UN0353 Articles, explosive, n.o.s.
UN0354 Articles, explosive, n.o.s.
UN0355 Articles, explosive, n.o.s.
UN0356 Articles, explosive, n.o.s.
UN0462 Articles, explosive, n.o.s.
UN0463 Articles, explosive, n.o.s.
UN0464 Articles, explosive, n.o.s.
UN0465 Articles, explosive, n.o.s.
UN0466 Articles, explosive, n.o.s.
UN0467 Articles, explosive, n.o.s.
UN0468 Articles, explosive, n.o.s.
UN0469 Articles, explosive, n.o.s.
UN0470 Articles, explosive, n.o.s.
UN0471 Articles, explosive, n.o.s.
UN0472 Articles, explosive, n.o.s.
UN0382 Components, explosive train, n.o.s.
UN0383 Components, explosive train, n.o.s.
UN0384 Components, explosive train, n.o.s.
UN0461 Components, explosive train, n.o.s.
UN0357 Substances, explosive, n.o.s.
UN0358 Substances, explosive, n.o.s.
UN0359 Substances, explosive, n.o.s.
UN0473 Substances, explosive, n.o.s.
UN0474 Substances, explosive, n.o.s.
UN0475 Substances, explosive, n.o.s.
UN0476 Substances, explosive, n.o.s.
UN0477 Substances, explosive, n.o.s.
UN0478 Substances, explosive, n.o.s.
UN0479 Substances, explosive, n.o.s.
UN0480 Substances, explosive, n.o.s.
UN0481 Substances, explosive, n.o.s.
UN0485 Substances, explosive, n.o.s.
UN0482 Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s.

Special Provision 118

Special provision 118 states that materials listing this special provision may not be transported under the provisions of Division 4.1 unless specifically authorized by the Associate Administrator. In the UN Model Regulations the corresponding special provision, SP 272, contained a note that the special provision referred to UN0143. This special provision in the UN Model Regulations has been revised to indicate that the special provision applies to both UN0143 and UN0150, as appropriate. To maintain consistency with the UN Model Regulations, in this NPRM PHMSA proposes to adopt this editorial note and revise special provision 118 by adding the language ''(see UN0143 or UN0150 as appropriate)'' following the existing text.

Special Provision 134

Special provision 134 would be revised to note that this provision also applies to equipment powered by wet batteries or sodium batteries that are transported with these batteries installed. This is a minor clarification of the original intent of this special provision.

Special Provision 155

Special provision 155 states that Fish meal or fish scrap may not be transported if the temperature at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (9 °F) above the ambient temperature, whichever is higher.

In this NPRM PHMSA proposes to revise special provision 155 by adding a reference to the new proper shipping name ''krill meal.'' Krill meal processes similar self-heating hazard characteristics to fish meal and scrap; therefore, application of this special provision is appropriate. This addition will clarify that special provision 155 applies to fish meal and fish scrap as well as krill meal. This revision is a clarification of the existing requirement.

Special Provision 237

Special provision 237 specifies that ''Batteries, dry, containing potassium hydroxide solid, *electric storage* '' must be prepared and packaged in accordance with the requirements of § 173.159(a), (b), and (c) and that for transportation by aircraft, the provisions of § 173.159(b)(2) are applicable.

In this NPRM PHMSA is proposing to add an additional sentence to special provision 237 clarifying the applicability of the provision. Specifically language is added to state that the entry for ''Batteries, dry, containing potassium hydroxide solid, *electric storage''* may only be used for the transport of non-activated batteries that contain dry potassium hydroxide and that are intended to be activated prior to use by the addition of an appropriate amount of water to the individual cells.

Special Provision 238

Special provision 238 is added to address neutron radiation detectors. Neutron detection is a key component used in nuclear arms interdiction in addition to other applications such as nuclear reactor monitoring, neutron-based cancer treatments, neutron spallation, nondestructive testing and health physics applications. Most neutron radiation detectors contain boron trifluoride gas, UN1008, which is currently forbidden by passenger and cargo aircraft as noted in Columns (9A) and (9B) of the HMT. Currently, neutron radiation detectors that contain this gas can only be transported by air under the terms of a special permit.

ICAO recently adopted a special provision specifically addressing neutron radiation detectors. The recently adopted special provision A191 permits, under certain conditions the transportation by cargo aircraft of neutron radiation detectors that contain boron trifluoride. These conditions include quantity of gas limitations, construction and packaging specifications. The special provision also provides that under certain conditions these neutron radiation detectors containing not more than 1 gram of boron trifluoride gas are not otherwise subject to the ICAO Technical Instructions.

PHMSA granted a special permit, for the transportation by all modes, of certain neutron radiation detectors containing boron trifluoride gas. The limitations set forth in Special Provision A191 of the ICAO Technical Instructions do not exceed any limitations of the special permit and, therefore, PHMSA proposes to adopt and apply them to all modes of transportation except passenger-carrying aircraft by incorporating them into § 172.102(c)(1), Special provision 238. Specifically, the special provision will provide packaging requirements (including pressure limitations), quantities permitted, and package construction requirements for radiation detectors containing non-pressurized boron trifluoride gas in excess of 1 gram. The special provision also provides additional exceptions from the HMR based on the transport mode and other conditions. The special provision is applicable to the entry ''UN1008, Boron trifluoride'' in the HMT. PHMSA believes the adoption of this special provision provides an adequate level of safety for the transportation of these items, while providing flexibility and without the need to obtain a special permit.

Special Provision 328

A new special provision 328 is added to clarify that when lithium cells or batteries are contained in the fuel cell system, the item must be described

under this entry and the entry ''Lithium batteries, contained in equipment.'' This special provision will be applied to UN3473 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing flammable liquids'';* UN3476 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing water-reactive substances'';* UN3477 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing corrosive substances'';* UN3478 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing liquefied flammable gas'';* and UN3479 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing hydrogen in metal hydride.''*

Special Provision 360

A new Special Provision 360 would be added and assigned to UN3091, ''Lithium batteries, contained in equipment'' to clarify that vehicles powered only by lithium batteries must be assigned to identification number UN3071, ''Battery powered vehicle''.

Special Provision 361

A new special provision 361 is added to clarify that certain capacitors with limited energy storage capability are excepted from the HMR. Specifically, the special provision will state that capacitors with an energy storage capacity of 0.3 Wh or less are not subject to the HMR. Furthermore this special provision will define energy storage capacity as the energy held by a capacitor, as calculated using the nominal voltage and capacitance.

Proposed § 173.176 provides that capacitors not installed in equipment must be transported in an uncharged state and capacitors installed in equipment must be transported in either an uncharged state or protected against short circuit. Certain types of capacitors such as asymmetrical capacitors are designed to maintain a terminal voltage. This special provision will also clarify the entry UN3499 does not apply to these capacitors. This special provision will be applied to the proposed HMT entry UN3499, ''Capacitor, *electric double layer (with an energy storage capacity greater than 0.3 Wh).''*

Special Provision 362

A new special provision 362 is added to specify when a material can be considered a chemical under pressure. Specifically, the special provision will state that classification of these materials is to be based on hazard characteristics of the components in the propellant, the liquid, or the solid forms. Further, this special provision will detail the appropriate primary and subsidiary hazard classes to be assigned to chemicals under pressure. Special provision 362 would be added and assigned to the following HMT entries: UN3500, Chemical under pressure, n.o.s.; UN3501, Chemical under pressure, flammable, n.o.s.; UN3503, Chemical under pressure, corrosive, n.o.s.; UN3502, Chemical under pressure, toxic n.o.s.; UN3504, Chemical under pressure, flammable, toxic, n.o.s.; and UN3505, Chemical under pressure, flammable, corrosive, n.o.s.

Special Provision 363

Prior to the publication of the 17th Revised Edition of the UN Model Regulations, the transport of large amounts of fuel in machinery was not specifically addressed in international transport regulations. In the most recent biennium of the UNSCOE, some experts expressed concerns about the transport of large amounts of fuel in machinery. This concern lead the international community to adopt in The 17th Revised Edition of the UN Model Regulations a special provision associated with fuel-related Class 3 entries.

Special Provision 363, as adopted in the UN Model Regulations, requires an article that contains fuel in excess of the limited quantity authorized amount and is ineligible to be described as Dangerous Goods in Machinery or Apparatus, UN3363, to conform to several general provisions to avoid being subject to the remainder of the HMR. Shipments utilizing this special provision require that the means of containment be in compliance with the construction requirements of the competent authority, all valves or openings in the means of containment containing dangerous goods shall be closed during transport, the machinery or equipment shall be loaded in an orientation to prevent leakage, and: (1) If the means of containment has a capacity of not more than 450 liters, one label would be required; (2) if the means of containment has a capacity greater than 450 liters but not more than 1,500 liters, it must be labeled on all four sides; or (3) if the means of containment has a capacity greater than 1,500 liters, it must be placarded on each side and each end. Additionally, shipping papers are required for such articles.

In this NPRM, PHMSA proposes to adopt Special Provision 363 modeled on the corresponding special provision adopted in the UN Model Regulations. This special provision would be assigned to the following HMT entries for transportation by vessel: UN1202, Gas oil *or* Diesel fuel *or* Heating oil, light; UN1203, Gasoline *including when mixed with ethyl alcohol, with not more than 10% alcohol;* UN1223, Kerosene; UN1268, Petroleum distillates, n.o.s. *or* Petroleum products, n.o.s.; UN1863, Fuel, aviation, turbine engine; and UN3475, Ethanol and gasoline mixture *or* Ethanol and motor spirit mixture *or* Ethanol and petrol mixture, with more than 10% ethanol.

While PHMSA generally agrees with the concept of addressing machinery or apparatus containing flammable liquid fuels in amounts that exceed the authorized limited quantity amounts and are ineligible to be described as UN3363, Dangerous goods in machinery or apparatus, we do have concerns related to the potential impact that adopting this special provision would have on shippers of generators and other similar articles that may currently be described as UN3166, Engines internal combustion, and are not subject to fuel limitations when transported by highway or rail. Conversely, PHMSA is soliciting public comment regarding any potential negative impact on the efficient and seamless flow of international commerce if we choose not to adopt Special Provision 363 in a final rule.

Special Provision 365

With the official adoption of a new proper shipping name UN3506 Mercury contained in manufactured articles in the 17th Revised Edition of the UN Model Regulations to address manufactured articles containing mercury, PHMSA proposes to add a new special provision 365 stating that manufactured instruments and articles containing mercury should reference UN3506. This special provision will be applied to UN2809 Mercury.

Special Provision A60

Special Provision A60 permits UN2014, Hydrogen peroxide, aqueous solution, to be transported in excepted quantities provided a comparative fire test between packages containing the solution and identical packages containing water demonstrated no difference in the burning rate. The likelihood of finding discernible differences with more accurate test equipment used today is much greater than it would have been with equipment used when the test

requirements were first developed. This more sensitive equipment often detects negligible differences between the two test subjects and, therefore, precludes transport of these small devices under the special provision. To address the issue, the ICAO Dangerous Goods Panel (DGP) adopted a proposal to allow small differences in burning rates.

In this NPRM we are proposing to harmonize with the ICAO Technical Instructions with regard to the comparative fire test for Hydrogen peroxide, aqueous solution. Special provision A60 is revised accordingly.

Special Provision A100

Special Provision A100 states that primary (non-rechargeable) lithium batteries and cells are forbidden for transport aboard passenger-carrying aircraft and secondary (rechargeable) lithium batteries and cells are authorized aboard passenger-carrying aircraft in packages that do not exceed a gross weight of 5 kg.

In this NPRM special provision A100 is revised to clarify the weight limitations for secondary lithium batteries are net and not gross quantities. There are some combinations of authorized battery packagings that contribute significantly towards the gross weight of the finished package. The intent of this proposed change is to indicate that the quantity limits for secondary lithium battery shipments aboard passenger-carrying aircraft are to be based on the actual weight of the batteries in each individual package and not the weight of the completed package.

Special Provision A103

Special Provision A103 specifies that lithium batteries contained in equipment is authorized aboard passenger carrying aircraft if the gross weight of the inner package of secondary lithium batteries or cells packed with the equipment does not exceed 5 kg (11 pounds).

In this NPRM special provision A103 is revised to clarify the weight limitations are net and not gross quantities. There are some combinations of authorized battery packagings that contribute significantly towards the gross weight of the finished package. The intent of this proposed change is to indicate that the quantity limits for secondary lithium battery shipments aboard passenger carry aircraft are to be based on the actual weight of the batteries in each individual package and not the weight of the completed package.

Special Provision A189

In this NPRM, we are proposing to add a new special provision, A189, which will be assigned to the HMT entry ''UN2209, Formaldehyde solutions, *with not less than 25 percent formaldehyde''* indicating how Formaldehyde solutions with more than 25% are to be classified. It was suggested at the ICAO DGP that the entry for ''UN2209, Formaldehyde solution *with not less than 25% formaldehyde''* implied that concentrations of less than 25% formaldehyde were not regulated. To clarify these requirements, the ICAO DGP adopted a new special provision detailing how differing percentage of formaldehyde solutions are regulated.

In this NPRM, we are proposing to add language detailing how differing percentage of Formaldehyde solutions are to be regulated in the new special provision A189. This special provision will be applied to UN3334, Aviation regulated liquid, n.o.s. and NA3082, Other regulated substances, liquid, n.o.s.

Special Provision A192

A new special provision, A192, is added noting that regardless of the Division 6.1 subsidiary hazard indicated in the HMT, the poison subsidiary risk label and an indication of this subsidiary risk on the shipping paper are not required for manufactured articles containing less than 0.45 kg (1 pound) of mercury. This provision aligns with the decision of the UN Sub-Committee to ensure that transport of such articles, particularly by air, is not impeded due to mercury's revised classification.

Special Provision A200

As previously discussed, a new special provision, A200, is added stating the entries assigned this special provision must be transported as cargo when transported by aircraft and cannot be carried onboard an aircraft by passengers or crewmembers either in or as carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10, ''Exceptions for Passengers, Crewmembers, and Air Operators.'' This special provision would be assigned to articles and will be applied to: UN3166, Engines, internal combustion *or* Engines, fuel cell, *flammable gas powered;* UN3166, Engines, internal combustion, *or* Engines, fuel cell, *flammable liquid powered;* UN3166, Vehicle, *flammable gas powered or* Vehicle, fuel cell, *flammable gas powered;* UN3166, Vehicle, *flammable liquid powered or* Vehicle, fuel cell, *flammable liquid powered;* UN0503, Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners; and, UN3268, Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.

Special Provision B120

A new special provision B120 is added to specify the use of FBCs conforming to the requirements in Subpart R and Subpart S of part 178 of this subchapter are permitted. The special provision is applicable to the following entries:

Proper shipping name	UN No.
Ammonium nitrate based fertilizer	UN2067
Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance*	UN1942
Calcium nitrate	UN1454
Environmentally hazardous substance, solid, n.o.s	UN3077
Magnesium nitrate	UN1474
Naphthalene, crude *or* Naphthalene, refined	UN1334
Paraformaldehyde	UN2213
Potassium nitrate	UN1486
Sodium carbonate peroxyhydrate	UN3378
Sodium nitrate	UN1498
Sodium nitrate and potassium nitrate mixtures	UN1499
Sodium perborate monohydrate	UN3377
Sulfur (domestic and international entries)	UN1350

FBCs must conform to the performance-oriented construction standards and testing criteria in new subparts R and S of part 178. In addition, shipments of FBCs must be prepared and otherwise conform to the general requirements for bulk packages in subpart B of part 173 and the proposed new § 173.37.

IBC Codes

In a final rule published in the **Federal Register** on January 19, 2011 (76 FR 3308; HM–215K), the Table 1 (IBC Codes) in paragraph (c)(4) were editorially revised to remove UN Specifications 31A, 31B and 31N from IBC Codes IB4 through IB8. The revision was consistent with amendments to international standards that removed the specifications from the indicated codes in the table because IBC Codes IB4 through IB8 are assigned to solids, whereas, UN Specifications 31A, 31B, and 31N are authorized for transportation of liquids in IBC Codes IB1 through IB3 and are assigned to liquid materials only. In the January 19, 2011 final rule, PHMSA inadvertently failed to also remove the remaining

liquid IBC specifications (31H1, 31H2, 31HZ1, and 31HZ2) from IB Codes IB4 through IB8. Therefore, in this NPRM, PHMSA is editorially correcting the IBC Code Table in § 172.102(c)(4).

Special Provision TP39

A new special provision, TP39, is added and assigned to HMT entry''UN2381, Dimethyl disulfide.'' This special provision indicates that portable tank instruction T4 may continue to be applied until December 31, 2018. This will provide more time for portable tank transporters to transition their current fleets.

Special Provision TP40

A new special provision TP40 is added and assigned to HMT entries ''UN3500, Chemical under pressure, n.o.s.; UN3501, Chemical under pressure, flammable, n.o.s.; UN3503, Chemical under pressure, corrosive, n.o.s., UN3503; UN3502, Chemical under pressure, toxic n.o.s.; UN3504, Chemical under pressure, flammable, toxic, n.o.s.; and UN3505, Chemical under pressure, flammable, corrosive, n.o.s.'' The special provision indicates that the portable tanks must not be transported when connected with spray application equipment. This will provide an additional measure preventing inadvertent release of hazardous materials in transport.

Special Provision TP41

A new Special provision TP41 is added and assigned to HMT entries ''UN3148, Water-reactive liquid, n.o.s.,'' indicating that the portable tank instruction T9 may continue to be applied until December 31, 2018.

Special Provision TP50

Special provision T50 is revised to note that this provision is applicable to chemicals under pressure as well as liquefied compressed gases. Special provision T50 would be assigned to HMT entries ''UN3500, Chemical under pressure, n.o.s.; UN3501, Chemical under pressure, flammable, n.o.s.; UN3503, Chemical under pressure, corrosive, n.o.s., UN3503; UN3502, Chemical under pressure, toxic n.o.s.; UN3504, Chemical under pressure, flammable, toxic, n.o.s.; and UN3505, Chemical under pressure, flammable, corrosive, n.o.s.''

Special Provision W10

A new special provision W10 is added and assigned to HMT entries ''UN3486 Calcium hypochlorite mixture, dry, corrosive *with more than 10% but not more than 39% available chlorine''* and to ''UN2208 Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine''* indicating that when offered for transportation by vessel, the use of Large Packagings is prohibited. This provision is being adopted to align with a recent IMO change forbidding these commodities from being transported by vessel in large packages.

Section 172.202

Section 172.202 establishes requirements for shipping descriptions on shipping papers. As part of these shipping paper requirements, in many situations a net or gross quantity of the hazardous materials transported must be included. At the 23rd meeting of the ICAO DGP, the issue of notation of quantities on shipping documents was raised. Specifically, it was noted that some confusion as to whether or not the net quantity or a gross mass is required on the shipping documents on particular shipments, such as limited quantities. At this meeting an amendment to the ICAO Technical Instructions was proposed and adopted designed to clarify what quantities (i.e. net or gross quantity) were required on the transport document for packages containing limited quantities where different hazardous materials are packed together in the same outer packaging.

In this NPRM, PHMSA proposes to adopt a similar provision to the one addressed by the ICAO DGP discussed above. Specifically, PHMSA proposes to add a new paragraph (a)(6)(vii) stating that for shipments containing hazardous materials in limited quantities with a ''30 Kg gross'' limit in Column (9A) or (9B) of the § 172.101 Hazardous Materials Table and different hazardous materials packed together in the same outer packaging, the net quantity of each hazardous material followed by the gross mass of the completed package should be shown on the shipping paper.

This clarification will address a transport scenario currently not addressed in the HMR thus alleviating confusion regarding the shipping paper requirements of such shipments. Furthermore, this will harmonize the HMR with the ICAO Technical Instructions and avoid shipping paper discrepancies for international shipments.

Section 172.301

This section details the general marking requirements for non-bulk packagings. Specifically, this section states what information (proper shipping name and identification number, technical names, consignee's or consignor's name, etc.) must be displayed on the outside of non-bulk packages. While the HMR requires that an identification number, preceded by ''UN'' or ''NA'' as appropriate, be marked on the outside of a non-bulk packaging a specific size of this marking is not specified.

In this NPRM PHMSA proposes to add specific size requirements for the ''UN'' or ''NA'' markings. As proposed these markings must be marked in characters at least 12 mm (0.47 inches) high, however, packages with a maximum capacity of 30 liters (7.92 gallons) or 30 kg (66 pounds) or less must be marked with characters at least 6 mm (0.2 inches) high and packages having a maximum capacity 5 liters (1.32 gallons) or 5 kg (11 pounds) or less must be marked in a size appropriate for the size of the package.

PHMSA proposes this minimum size marking for the ''UN'' or ''NA'' markings to align with newly adopted requirements in the 17th Revised Edition of the UN Model Regulations. PHMSA recognizes the importance of establishing a minimum size requirement for the internationally recognized ''UN'' identification number marking system. The HMR currently specifies size requirements for the package markings specified in § 178.3(a)(4). Specifically, for package markings, letters and numerals must be at least 12.0 mm (0.47 inches) in height except that for packagings of less than or equal to 30 L (7.9 gallons) capacity for liquids or 30 kg (66 pounds) capacity for solids the height must be at least 6.0 mm (0.2 inches). Without a minimum size requirement for hazard communication, shippers may mark packages in a format that makes it very hard for first responders to identify the commodity associated with a particular package. Therefore in this NPRM, PHMSA proposes to specify a marking size consistent with package marking sizes specified in § 178.3(a)(4) and those adopted in the 17th Revised Edition of the UN Model Regulations.

Section 172.312

Section 172.312 details the specific marking requirements for liquid hazardous materials in non-bulk packagings. Paragraph (a) of this section describes scenarios when package orientation arrows must be displayed on the outside of a package. Provided certain criteria are met, paragraph (c) excepts certain shipments from the requirements of paragraph (a) and thus, the requirement to display the package orientation arrows on the package. Currently § 173.312(c)(3) states that when offered or intended for transportation by aircraft, packages

containing flammable liquids in inner packagings of 120 mL (4 fluid oz.) or less prepared in accordance with § 173.150(b) or (c) of this subchapter when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents are not required to display the package orientation arrows on the outside of the package. The ICAO TI have been amended to extend this exception to the package orientation markings to all liquid hazardous materials in inner packagings of 120 mL (4 fluid oz.) when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents. In this NPRM, PHMSA is proposing to adopt this change, consistent with the amendment made to the ICAO TI to extend the exception for the display of the package orientation arrows to all liquid hazardous materials in inner packagings of 120 mL (4 fluid oz.) when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents.

Section 172.604

Section 172.604 prescribes emergency response telephone number requirements. Paragraph (d) of this section provides a listing of materials that are excepted from the requirement to provide an emergency response telephone number on a shipping document.

In this NPRM, PHMSA proposes to add ''Krill Meal, PGIII'' to the list of materials excepted from the emergency response telephone number requirements. Krill meal poses similar hazards to fish scrap and meal; therefore, in this NPRM we are providing Krill meal with the same exception from the emergency response telephone number requirements as fish scrap and meal.

Part 173

Part 173 of the HMR describes the general requirements for shipments and packagings of hazardous materials. Consistent with amendments adopted by the UN Model Regulations, PHMSA proposes to adopt changes throughout the Part 173 packaging requirements to authorize more flexibility when choosing packages for hazardous materials. Specifically PHMSA proposes to authorize the use of the following packaging types and materials:

The specific packaging requirements for Class 1 explosive materials are specified in § 173.62. In this NPRM PHMSA is proposing to revise § 173.62 to authorize wood as an appropriate material used to construct receptacles, inner and outer intermediate packagings, and intermediate packagings/dividing partitions for certain explosives. Furthermore, in this NPRM PHMSA is proposing to authorize the use of metals other than steel or aluminum in specification packagings, specifically drums (1N1 or 1N2) and boxes (4N), as appropriate. This authorization would not include chlorosilanes under § 173.206 because of corrosion concerns. Otherwise, it authorizes the use of closed head drums where open head drums are generally permitted. PHMSA believes these amendments would provide greater flexibility in packaging while maintaining an equivalent level of safety.

Consistent with amendments adopted by the ICAO Technical Instructions, PHMSA proposes to adopt changes in various sections on Part 173 where certain articles, items, and materials are excepted from the requirements of the subchapter. There is a potential for these excepted articles, items, and materials to be inappropriately carried aboard an aircraft by passengers or crewmembers. The proposed changes will address this concern by clarifying that certain excepted articles, items and materials, identified by ICAO as posing a safety risk, must be transported as cargo and cannot be carried onboard an aircraft by passengers or crewmembers as carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10, ''Exceptions for Passengers, Crewmembers, and Air Operators.'' The amended sections include §§ 173.21, 173.159a, 173.162, 173.164, 173.175, 173.219, and 173.306. For UN3166 and UN3268, Special Provision A200 will be created to communicate this requirement and a reference to special provision A200 would be placed in column 7 of the HMT for these entries.

Section 173.12

This section specifies the exceptions for shipment of waste materials including the requirements for waste packages known as ''lab packs.'' A lab pack, although not specifically defined in § 171.8, is considered a large outer packaging containing small inner packagings that are filled with various compatible laboratory hazardous wastes. Paragraph (b) of this section specifies the authorized inner and outer packagings for lab packs.

In this NPRM, PHMSA proposes to revise paragraph (b)(2)(ii)(a) of this section by adding 1N2 metal drums to the permitted outer packagings currently authorized for a lab pack.

Section 173.21

Section 173.21 prescribes materials and packages forbidden for transport. In this NPRM, PHMSA is proposing to correct the IMDG Code section reference to control temperature requirements in § 173.21(f)(3)(ii) from 7.7 to 7.3.7.

Section 173.37

Currently, the HMR does not include a section that prescribes general requirements for packaging hazardous materials in Flexible Bulk Containers (FBCs). In this NPRM, PHMSA is proposing such requirements in new § 173.37 in a similar format to the general requirements for other bulk and large packagings (e.g., portable tanks, IBCs, etc.) in subpart B of part 173. This section will include, but not be limited to, requirements addressing the initial use and reuse of FBCs, capacity requirements and general transport conditions. Consistent with the use and reuse requirements of other large and bulk packagings, the general requirements in part 173 complement the construction and manufacture specifications for such bulk packagings in part 178 of the HMR.

In this NPRM, PHMSA is proposing that FBCs may be reused, and must be given a visual examination prior to reuse. Furthermore, the general requirements for FBCs would specify that FBCs must be transported in a conveyance with rigid sides and ends that extend at least two-thirds the height of the FBC, must not be offered for transportation in freight containers, and may not exceed 15 cubic meters in capacity.

Section 173.50

Section 173.50 provides definitions for the various divisions of Class 1 (explosives) referenced in Subpart C of Part 173. Paragraph (b) of this section notes that Class 1 (explosives) are divided into six divisions. Division 1.6 is described as an explosive consisting ''of extremely insensitive articles that do not have a mass explosive hazard. This division is comprised of articles that contain only extremely insensitive detonating substances and that demonstrate a negligible probability of accidental initiation or propagation.''

In this NPRM PHMSA is proposing to remove the word ''detonating'' from this definition to align with the revised definition provided in the 17th Revised Edition of the UN Model Regulations.

Section 173.59

Section 173.59 provides definitions of explosive terms related to the transport and classification of explosives used throughout subpart C of part 173. These

definitions are intended for information only and are not to be used for purposes of classification or to replace proper shipping names prescribed in § 172.101. In the UN Model Regulations, Appendix B to Chapter 3 contains a similar list of explosive definitions which are also intended for information only and are not to be used for purposes of hazard classification.

In April 2010, the United States and the United Kingdom submitted a formal document regarding proposed modifications to the UN test series 7 for consideration by the UN Subcommittee of Experts on the Transport of Dangerous Goods. Test series 7 is used to classify explosives into the appropriate class.[2] This paper sought to modify the test series 7 to more accurately address the classification of Division 1.6. Specifically, Division 1.6 is for extremely insensitive detonating articles and the proposed changes in the US/UK paper are designed to ensure that the probability of accidental initiation or propagation of an article attaining this division remains negligible.

In the 17th Revised Edition of the UN Model Regulations, the proposals presented in the US/UK paper regarding the UN test series 7 were adopted. Among the adopted proposals was the addition of various explosive specific definitions referencing the modifications to the UN test series 7. In this NPRM, we are proposing to revise the various definitions prescribed in § 173.59. Specifically, we propose revising the definition for ''Articles, explosive, extremely insensitive (Articles, EEI)'' by removing the word ''detonating'' and adding the words ''tools'' after ''starter pistols'' in the definition for ''Cartridges, blank.'' We also propose to replace the definition for ''Explosive, extremely insensitive detonating substances (EIDS)'' with a new definition for ''Explosive, extremely insensitive substances (EIS).'' Lastly, we propose to add a definition for ''Auxiliary explosive component, isolated.'' The addition of and revisions to these definitions will provide consistency with international regulations and clarity when utilizing the UN test series 7 for explosive classification.

[2] The scientific data regarding the adoption of these modifications are presented in working paper ST/SG/AC.10/C.3/2010/40 entitled ''Proposed modifications to Test Series 7.'' This paper can be viewed at the following URL: *http://www.unece.org/fileadmin/DAM/trans/doc/2010/ac10c3/ST-SG-AC10-C3-2010-40e.pdf.*

Section 173.62

Section 173.62 prescribes the specific packaging requirements for explosives. These packaging requirements stipulate the permitted inner, intermediate, and outer packagings as well as any specific additional packaging information. These packaging requirements are generally aligned with the requirements stipulated in the UN Model Regulations.

In this NPRM, PHMSA is proposing to revise various packaging provisions in the ''Table of Packing Methods'' in this section to align with changes adopted in the 17th Revised Edition of the UN Model Regulations. The revisions to the authorized packaging methods provide greater flexibility when packaging explosives while retaining an appropriate level of safety. These changes include, but are not limited to, permitting various explosives to be transported in closed head drums in addition to the already permitted removable head drums and adding the option to utilize wooden inner and intermediate packagings in various packaging provisions.

Section 173.63

Section 173.63 provides packaging exceptions for specific types of low hazard explosive materials including certain detonators, small arms ammunition and detonating cord. Paragraph (b) of this section prescribes the limited quantity requirements for small arms ammunition and blank cartridges for tools. Specifically, § 173.63(b)(1)(i) authorizes Cartridges, small arms (UN0012), and Cartridges for tools, blank *used to project fastening devices* (UN0014), classed as Division 1.4S explosive articles, to be offered for transportation and transported as limited quantity material when packaged in accordance with § 173.63(b)(2) and marked as prescribed in § 172.315(a) or (b) for transportation by all modes.

Section 173.115

Section 173.115 prescribes the definitions for Class 2 materials. Paragraph (k) of this section specifies how the oxidizing ability of certain Division 2.2 gases is determined. Currently, the HMR references ISO standards that include test and calculations used to determine the oxidizing ability of certain Division 2.2 gases. The UN Model Regulations and the ICAO Technical Instructions replace references to ISO standards 10156:1996 and 10156–2:2005 with the updated version ISO 10156:2010.

Based on its technical review, PHMSA believes the updated standard provides an adequate level of safety and proposes to reference the standard in this section and add it to the list of IBR materials in § 171.7.

Section 173.121

Section 173.121 prescribes the requirements for selection of packing groups for Class 3 flammable liquids. Paragraph (b) of this section describes the criteria for inclusion of viscous Class 3 materials in Packing Group III.

ICAO adopted requirements in the Technical Instructions that increased the quantity of viscous Class 3 flammable liquids permitted reclassification from Packing Group II to Packing Group III from 30 L (7.9 gal) per package to 100 L (26.42 gal) per package when offered for transport by cargo aircraft.

In this NPRM, PHMSA proposes to expand the per package amounts of viscous Class 3 material meeting the requirements in § 173.121(b). The increase will facilitate multi-modal transportation by permitting shipments offered by highway, rail, and cargo-carrying aircraft to utilize the same 100 L criteria.

Section 173.134

Provisions contained in the UN Model Regulations, Chapter 2.6, Class 6—Toxic and Infectious Substances, relating to the transportation of medical devices and equipment, have been amended to except medical equipment which has been drained of free liquid from the requirements of the UN Model Regulations. In addition, except for medical devices or equipment being transported for disposal, or medical devices or equipment contaminated with or suspected of contamination with a Category A infectious substance, the UN Model Regulations have been amended to exempt medical devices or equipment potentially contaminated with or containing infectious substances which are being transported for disinfection, cleaning, sterilization, repair or equipment evaluation from all other requirements of the UN Model Regulations, provided they meet certain packaging requirements.

In this NPRM, PHMSA proposes to amend § 173.134, ''Class 6, Division 6.2—Definitions and Exceptions'' by adopting the additional exemptions for medical devices and equipment.

Section 173.158

Section 173.158 prescribes packaging requirements for nitric acid mixtures of varying concentrations. In this NPRM, PHMSA is proposing to revise the list of outer packagings permitted for nitric acid mixtures of varying concentrations.

Specifically, PHMSA proposes to revise paragraph (d)(2) by adding 1N2, 4A, 4B and 4N packagings to the list of authorized outer packagings of combination packages for nitric acid of 90 percent or greater concentration, when offered for transportation or transported by rail, highway, or water, in addition to the packaging options currently authorized.

PHMSA also proposes to revise paragraph (e) of this section pertaining to nitric acid of less than 90 percent concentration, when offered for transportation or transported by rail, highway, or water. Specifically, this paragraph is revised to permit packagings of specification 4A, 4B, or 4N metal boxes for certain nitric acid concentrations.

Further, PHMSA proposes to revise paragraphs (f)(3), (g) and (h) by adding specification 1N2, 4A, 4B and 4N packagings to the list of authorized outer packagings of combination packagings for nitric acid of the following concentrations: (1) Nitric acid of 70 percent or less concentration, when offered for transportation or transported by rail, highway, or water; (2) Nitric acid of more than 70 percent concentration, when offered for transportation or transported by cargo aircraft only; and (3) Nitric acid of less than 70 percent concentration, when offered for transportation in cargo aircraft only.

The addition of these packaging options will increase flexibility for shippers when determining the appropriate packaging for nitric acid mixtures, in addition to the packaging options currently authorized.

Section 173.159a

Section 173.159a provides exceptions for non-spillable batteries. Paragraph (d) of this section excepts non-spillable batteries from the requirements of the HMR provided certain criteria, including specific packaging requirements and the absence of free-flowing liquid in the battery, are met.

In this NPRM, PHMSA is proposing to clarify paragraph (d) of this section by adding a new subparagraph (b)(3) stating that ''for transport by aircraft, must be transported as cargo.'' This clarification will align the HMR with the previously discussed changes made to the ICAO TI with regard to the air transport of non-spillable batteries that are excepted from the HMR.

Section 173.160

Section 173.160 prescribes packaging requirements for ''Bombs, smoke, non-explosive'' when shipped without ignition devices. In this NPRM, PHMSA is proposing to revise the list of packagings permitted for ''Bombs, smoke, non-explosive'' shipped without ignition devices. Specifically, PHMSA proposes to add the authorization to use metal (4A, 4B, and 4N), fiberboard (4G) or solid plastic (4H2) boxes, or metal (1A2, 1B2, and 1N2), plastic (1H2), plywood (1D), or fiber (1G) drums.

Section 173.162

Section 173.162 prescribes the packaging requirements for ''UN2803, Gallium.'' In this NPRM, PHMSA proposes to revise paragraph (a)(1), which authorized combination packagings intended to contain liquids consisting of glass, earthenware, or rigid plastic inner packagings with a maximum net mass of 15 kg (33 pounds) each. Specifically, PHMSA proposes to revise these requirements to permit both open and closed steel, metal, other that steel and aluminium drums (1A1, 1N1, 1N2, 1H1, 3A2 or 3H2) in addition to the packaging options currently authorized.

Further, PHMSA proposes to revise paragraph (a)(2), which authorizes packagings intended to contain liquids consisting of semi-rigid plastic inner packagings of not more than 2.5 kg (5.5 pounds) net capacity each, individually enclosed in a sealed, leak-tight bag of strong puncture-resistant material. Specifically, PHMSA proposes to revise these requirements to permit metal, other than steel or aluminium (4N) boxes; metal, other than steel or aluminium drums (1N1, 1N2); and plastic drums (1H1 or 1H2) in addition to the packaging options currently authorized.

In addition, PHMSA is proposing to clarify paragraph (d) by adding a new subparagraph (b)(3) stating that ''for transport by aircraft, must be transported as cargo.'' This clarification will align the HMR with the previously discussed changes adopted in the ICAO Technical Instructions regarding the air transport of gallium otherwise excepted from the HMR.

Section 173.164

Section 173.164 prescribes the packaging requirements for mercury (metallic and articles containing mercury). In this NPRM, PHMSA proposes to revise paragraph (a)(1), which authorized inner packagings of earthenware, glass or plastic containing not more than 3.5 kg (7.7 pounds) of mercury, or inner packagings that are glass ampoules containing not more than 0.5 kg (1.1 pounds) of mercury, or iron or steel quicksilver flasks containing not more than 35 kg (77 pounds) of mercury. Specifically, PHMSA proposes to revise these requirements to permit steel drums; metal, other that steel and aluminum drums (1A1, 1N1, 1N2) and metal, other than steel or aluminum boxes (4N), in addition to the packaging options currently authorized in paragraphs (a), (b) and (c).

Paragraph (f) is added to provide an exception to the requirements of the HMR for vessel transport of manufactured articles or instruments containing less than 0.45 kg (1.0 pound) of mercury. This exception is inserted to mirror an existing IMDG Code provision and harmonize the requirements for vessel shipments of mercury contained in manufactured articles as much as possible.

In addition, PHMSA is proposing to clarify paragraphs (a)(5), (b), and (c)(2) of this section by adding the phrase ''when transported as cargo.'' This clarification will align the HMR with the previously discussed changes adopted in the ICAO Technical Instructions regarding the air transport of manufactured articles containing mercury otherwise excepted from the HMR.

Section 173.165

Section 173.165 prescribes the transport and packaging requirements for polyester resin kits. In this NPRM, PHMSA is proposing to revise § 173.165 to better align the packaging and other requirements for UN3269, Polyester resin kits with the various international modal standards. These proposed amendments are also intended to correct inconsistencies adopted in a final rule published in the **Federal Register** on January 19, 2011 (76 FR 3308; HM–215K).

Section 173.175

Section 173.175 prescribes the transport and packaging requirements for permeation devices. Currently, permeation devices containing hazardous materials that are used for calibrating air quality monitoring devices are not subject to the HMR provided they meet specific requirements that include packaging, quantity limitations, testing, and transport controls.

In this NPRM, PHMSA is proposing to add a new paragraph (g) stating that ''for transport by aircraft, must be transported as cargo.'' This clarification will align the HMR with changes adopted in the ICAO Technical Instructions regarding the air transport of permeation devices that are otherwise excepted from the HMR.

Section 173.176

Electric double layer capacitors are devices that store but do not produce electrical energy. They contribute to increased fuel efficiency in many alternative energy solutions such as hybrid vehicles. Some double layer capacitors contain flammable liquid absorbed in a solid with small amounts present as free liquid while others use a liquid electrolyte. Currently, the HMR do not contain specific requirements to address the transport of electric double layer capacitors.

New Section 173.176 addresses electric double layer capacitors and is proposed in this NPRM. If adopted, the section would prescribe the testing, marking, safety, and packaging requirements for electric double layer capacitors with an energy storage capacity greater than 0.3 Wh. PHMSA proposes to incorporate these requirements consistent with the 17th Revised Edition of the UN Model Regulations. The proposed amendments in this NPRM address potential electrical and other hazards arising from the release of hazardous materials during the transportation of these articles.

Section 173.181

Section 173.181 prescribes the non-bulk packaging requirements applicable to pyrophoric liquids. Paragraph (b) of this section specifies the specification boxes authorized to package these substances. In this NPRM, PHMSA proposes to revise paragraph (b) by adding packaging authorizations for steel boxes (4A), aluminum boxes (4B), metal boxes, other than steel or aluminum (4N), or fiberboard boxes (4G); steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), metal drums, other than steel or aluminum (1N1 or 1N2), plywood drums (1D), or fiber drums (1G); or steel jerricans (3A1 or 3A2) or aluminum jerricans (3B1 or 3B2).

Section 173.183

Section 173.183 prescribes the packaging requirements for nitrocellulose base film. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list currently permitted for nitrocellulose base film. Specifically, in this NPRM, PHMSA proposes to add other metal drums (4A2), aluminum jerricans (3B2), and steel, aluminum or other metal (4A, 4B, 4N) boxes, to the list of authorized packagings.

Section 173.184

Section 173.184 provides the definition and packaging requirements for highway or rail fusees. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for highway or rail fusee.

Specifically, in this NPRM, PHMSA proposes to add steel (1A2), aluminum (1B2) or other metal (1N2) drums; steel (3A2) or aluminum (3B2) jerricans; and steel (4A), aluminum (4B) or other metal (4N) boxes, to the list of authorized packagings.

Section 173.186

Section 173.186 provides definitions and packaging requirements for various types of matches. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for strike-anywhere matches specified in paragraph (f) of this section. Specifically, in this NPRM, PHMSA proposes to add steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), other metal drums (1N1, 1N2), steel jerricans (3A1, 3A2), aluminum jerricans (3B1, 3B2), steel (4A), aluminum (4N) and other metal (4N) boxes, to the list of authorized packagings.

Section 173.187

Section 173.187 prescribes the packaging requirements for pyrophoric solids, metals or alloys, n.o.s. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for pyrophoric solids, metals or alloys, n.o.s. specified in paragraph (a) and (d) of this section. Specifically, in this NPRM, PHMSA proposes to add steel, aluminum or other metal boxes (4A, 4B or 4N), to the list of authorized packagings in paragraph (a). In addition, PHMSA proposes to add steel, aluminum or other metal drums (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) to the list of authorized packagings in paragraph (d).

Section 173.188

Section 173.187 prescribes the packaging requirements for white and yellow phosphorus. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for white and yellow phosphorus specified in paragraphs (a)(1) and (a)(2) of this section. Specifically, in this NPRM, PHMSA proposes to add steel, aluminum or other metal boxes (4A, 4B or 4N), to the list of authorized packagings in paragraph (a)(1). In addition, PHMSA proposes to add steel, aluminum or other metal drums (1A1, 1B1 or 1N1) not over 250 L (66 gallons) capacity each and steel, aluminum or other metal drums (1A2, 1B2, or 1N2) not over 115 L (30 gallons) capacity each, to the list of authorized packagings in paragraph (a)(2).

Section 173.189

Section 173.189 prescribes the packaging and transport requirements for batteries containing sodium or cells containing sodium. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for batteries containing sodium or cells containing sodium specified in paragraph (b) of this section. Specifically, in this NPRM, PHMSA proposes to add 1N2, 4A, 4B, 4N, 4H1, 3A2, 3B3 and 3H2 outer packagings to the list of authorized outer packagings in paragraph (b).

Section 173.193

Section 173.193 prescribes the packaging requirements for bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to this list permitted for bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures specified in paragraph (a) of this section. Specifically, in this NPRM, PHMSA proposes to add metal boxes (4A, 4B or 4N) to the list of authorized outer packagings in paragraph (a).

Section 173.194

Section 173.194 prescribes the packaging requirements for gas identification sets. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for gas identification sets specified in paragraphs (b)(1) and (b)(2) of this section. Specifically, in this NPRM, PHMSA proposes to add metal boxes (4A, 4B or 4N) to the list of authorized outer packagings in paragraphs (b)(1) and (b)(2).

Section 173.196

Section 173.196 prescribes the packaging requirements for Category A infectious substances. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for category A infectious substances specified in paragraph (a)(3) of this section. Specifically, in this NPRM, PHMSA proposes to add drums (1A1, 1A2, 1B1, 1B2, 1N1, 1N2, 1H1, 1H2, 1D, 1G); boxes (4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2); or jerricans (3A1, 3A2, 3B1,

3B2, 3H1, 3H2) as examples of the types of authorized ''rigid outer packaging'' referenced in paragraph (a)(3).

Section 173.199

Section 173.199 prescribes the packaging requirements for category B infectious substances. Paragraph (d) of this section provides the requirements for refrigerated or frozen specimens in ice, dry ice or liquid nitrogen. These provisions include the requirement to secure secondary packages.

Consistent with an editorial amendment to Packing Instruction P650 in the 17th Revised Edition of the UN Model Regulations, in this NPRM, PHMSA proposes to remove the language ''position after the ice or dry ice has dissipated'' from the requirements to secure secondary packages.

Section 173.201

Section 173.201 prescribes the authorized non-bulk packagings for liquid hazardous materials in packing group I. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for non-bulk packagings used to package liquid hazardous materials in packing group I indicated in paragraph (b). Specifically, in this NPRM, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' to authorized outer packagings of combination packagings listed in paragraph (b) of this section.

Section 173.202

Section 173.202 prescribes the authorized non-bulk packagings for liquid hazardous materials in packing group II. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for non-bulk packagings used to package liquid hazardous materials in packing group II specified in paragraph (b). Specifically, in this NPRM, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b).

Section 173.203

Section 173.203 prescribes the authorized non-bulk packagings for liquid hazardous materials in packing group III. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for non-bulk packagings used to package liquid hazardous materials in packing group III specified in paragraph (b). Specifically, in this NPRM, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b).

Section 173.211

Section 173.211 prescribes the authorized non-bulk packagings for hazardous materials in packing group I. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for non-bulk packagings used to package hazardous materials in packing group I specified in paragraphs (b) and (c). Specifically, in this NPRM, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b) and the single packagings authorized in paragraph (c).

Section 173.212

Section 173.212 prescribes the authorized non-bulk packagings for hazardous materials in packing group II. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for non-bulk packagings used to package hazardous materials in packing group II specified in paragraphs (b) and (c). Specifically, in this NPRM, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' to authorized outer packagings of combination packagings indicated in paragraph (b). Further, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' and ''Metal box other than steel or aluminum with liner: 4N'' to authorized single packagings permitted in paragraph (c) of this section.

Section 173.213

Section 173.213 prescribes the authorized non-bulk packagings for hazardous materials in packing group III. To provide greater flexibility in packaging selection, PHMSA proposes to add packaging options to the list permitted for non-bulk packagings used to package hazardous materials in packing group III specified in paragraphs (b) and (c). Specifically, in this NPRM, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b). Further, PHMSA proposes to add ''Metal box other than steel or aluminum: 4N'' and ''Metal box other than steel or aluminum with liner: 4N'' to the single packagings authorized in paragraph (c).

Section 173.219

Section 173.219 prescribes the transport conditions and packaging requirements for life saving appliances. Paragraph (b) of this section provides a list of hazardous materials that a life-saving appliance is permitted to contain as well as other transport requirements. Currently, the transport conditions specified in paragraph (b)(1) of this section specify that Division 2.2 compressed gases, including oxygen are permitted; however, oxygen generators are not. In this NPRM, PHMSA proposes to broaden the materials permitted in life-saving appliances by modifying paragraph (b)(1) to include liquefied gases as well.

Paragraph (c) of this section prescribes the packaging requirements and exceptions provided for life saving appliances. Subsequent changes are proposed to paragraph (c)(1) of this section to reflect this inclusion of liquefied gases discussed previously. Furthermore, paragraph (c)(5) currently states that, for other than transportation by aircraft, life-saving appliances containing no hazardous materials other than carbon dioxide with a capacity not exceeding 100 cm^3 are not subject to the provisions of this subchapter provided they are overpacked in rigid outer packagings with a maximum gross mass of 40 kg. In this NPRM, PHMSA is proposing to revise the exception in (c)(5) by replacing the language ''carbon dioxide'' with ''cylinders of Division 2.2 compressed or liquefied gases with no subsidiary risk,'' and the quantity limit ''100 cm^3 with ''120 ml, installed solely for the purpose of activating the appliance.''

In addition, PHMSA proposes to further clarify paragraph (c)(5) of this section by adding the statement, ''For transportation by aircraft, such appliances must be transported as cargo.'' This clarification aligns the HMR with the recently adopted changes in the ICAO Technical Instructions regarding the air transport of life saving appliances that would otherwise be excepted from the HMR.

Section 173.221

Section 173.221 prescribes the non-bulk packaging requirements for Polymeric beads (or granules), expandable, *evolving flammable vapor* and Plastic molding compound *in dough, sheet or extruded rope form, evolving flammable vapor.* In this NPRM, PHMSA is proposing to add the following packaging authorizations; metal (4A, 4B, or 4N), and plastic (4H1 or 4H2) drums, and 1N1, 1N2 drums in vapor tight metal or plastic jerricans

(3A1, 3A2, 3B1, 3B2, 3H1, or 3H2). PHMSA is also proposing to add a paragraph to the section that will reference the reader to a newly created § 176.907 for cargo transport and hazard communication marking requirements for shipments of Polymeric beads expandable, *evolving flammable vapor* and Plastic molding compound *in dough, sheet or extruded rope form, evolving flammable vapor* when transported by vessel. These changes are proposed to address the safety hazard presented by shipments of polymeric beads or plastic molding compounds off-gassing flammable vapors during vessel transport. See *Section 176.907* for a detailed discussion of our proposed addition of these vessel cargo transport requirements.

Section 173.225

Section 173.225 prescribes the packaging requirements and other provisions for organic peroxides. Packaging requirements for organic peroxides are very specific and include requirements for the concentration by mass permitted, diluents percentage, water mass, temperature controls and organic peroxide specific packing methods.

Paragraph (c) of this section contains and describes the organic peroxide table and how specific organic peroxides are to be transported. In addition, paragraph (e) contains a separate table that prescribes the packaging requirements for organic peroxides packaged in IBCs. As self-insulating hazardous materials, organic peroxides can pose different risks when transported in larger quantities. Thus, a separate table unique to the transport of these substances in IBCs is contained in the HMR. The ''Organic Peroxide IBC Table'' includes maximum quantities permitted to be packaged and any temperature and emergency controls.

The organic peroxides tables in paragraphs (c) and (e) specify by technical name those organic peroxides that are authorized for transportation and not subject to the approval provisions of § 173.128. An organic peroxide identified by technical name is authorized for transportation only if it conforms to all applicable provisions of these tables. In this NPRM, we are proposing to amend the Organic Peroxides Tables in § 173.225 by adding new entries and revising current entries to account for new organic peroxides and formulations that are commercially available.

The following entries are added in the § 173.225(c) organic peroxides table:

UN3106, ''([3R-(3R,5aS,6S,8aS,9R,10R,12S,12aR**)]-Decahydro-10methoxy-3,6,9-trimethyl-3,12-epoxy-12H-pyrano[4,3-j]-1,2-benzodioxepin)''

UN3110, ''3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxonane''

UN3119, ''Di-(3,5,5-trimethylhexanoyl) peroxide''

The following current entries in the § 173.225(c) organic peroxides table are amended:

UN3115, ''Diisopropyl peroxydicarbonate''

UN3115, ''Di-(3,5,5-trimethylhexanoyl) peroxide''

The following entries are added to the § 173.225(e) Organic Peroxide IBC Table:

UN3119 ''Diisobutyryl peroxide, not more than 28% as a stable dispersion in water''

UN3119, ''Diisobutyryl peroxide, not more than 42% as a stable dispersion in water''

The following entries are amended in the § 173.225(e) Organic Peroxide IBC Table:

UN3119 ''Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 38% in diluent type A''

UN3119 ''1,1,3,3-Tetramethylbutyl peroxyneodecanoate, not more than 52%, stable dispersion, in water''

Section 173.226

Section 173.226 prescribes the packaging requirements for Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A. Specifically, this section authorizes the transport of Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A in specification cylinders, specification drums packaged further in specification drums and combination packages. In this NPRM, PHMSA proposes to revise the requirements of paragraph (c) by adding an authorization to package such materials in ''Metal box other than steel or aluminum: 4N'' drums. In addition, PHMSA is correcting an editorial error by replacing the incorrect wording ''Expanded plastic box: 4H2'' with the correct wording ''Expanded plastic box: 4H1.''

Section 173.230

Section 173.230 prescribes the transport requirements for fuel cell cartridges containing hazardous material. Paragraph (e) of this section prescribes the packaging requirements for fuel cell cartridges containing hazardous material. Furthermore, paragraph (e)(2)(ii) notes that ''Fuel cell cartridges contained in equipment must be protected against short circuits and the entire fuel cell system must be protected from unintentional activation. The equipment must be securely cushioned in the outer packaging.'' As currently stated in the HMR, this requirement may imply that only fuel cell cartridges contained in equipment, not the fuel cell system, would have to be protected against short circuits. This is not the intent of this requirement. Therefore, in this NPRM, PHMSA is proposing to clarify that the entire fuel cell system must be protected against short circuits and unintentional activation.

Section 173.240

Section 173.240 prescribes the bulk packagings authorized for certain low hazard solid materials. As discussed previously in this NPRM, PHMSA is proposing the adoption of flexible bulk container provisions throughout the HMR.

In this section, PHMSA proposes to add paragraph (f) that authorizes the use of FBCs for certain low hazard solid materials. Specifically, paragraph (f) will permit the use of FBCs if B120 is indicated in Column (7) of the specific entry in § 172.101 HMT and the FBC conforms to the requirements in subparts R and S of part 178 of the HMR. Furthermore, paragraph (f) notes that FBCs may not be used for Packing Group I or II hazardous materials. Only select low hazard solid materials are authorized for transport in FBCs. The use of FBCs for the transportation of an HMT entry not assigned special provision B120 is prohibited.

Section 173.306

Section 173.306 prescribes the exceptions for limited quantities of compressed gases including aerosols. Paragraph (a) of this section prescribes the general requirements for limited quantities of compressed gases while paragraph (j) specifically addresses aerosols and receptacles small, containing gas, with a capacity of less than 50 mL.

In this NPRM, PHMSA proposes to revise paragraph (j) to note that aerosols conforming to this paragraph, when offered for transportation by air, must be transported as cargo unless specifically authorized for transport in checked or carry-on baggage. This clarification will align the HMR with the previously discussed changes adopted in the ICAO Technical Instructions regarding the air transport of aerosols that are otherwise excepted from the HMR.

Section 173.313

Section 173.313 contains instructions for UN portable tanks and the table for

liquefied compressed gases. The UN Portable Tank Table for Liquefied Compressed Gases is referenced in § 172.102(c)(7)(iii) of the HMR for portable tanks used to transport liquefied compressed gases.

Chemical manufacturers throughout the world are currently supplying pressurized products contained and transported in gas cylinders. The products are liquids or solids such as adhesives, coatings and cleaners combined with a gas or gas mixtures in pressure receptacles under sufficient pressure to expel the contents. These mixtures are typically expelled from the pressurized receptacles as foams, streams or thick sprays. Under the current HMR these types of products are classified as liquefied gases and transported in accordance with the applicable sections for the liquefied gases in which they are classified. A typical product however is a combination of a propellant (gas phase) and a liquid or solid component, and therefore the term liquefied gas does not correctly reflect the contents. As they are not filled in aerosol dispensers and as the receptacles used exceed the volume limitations for aerosols, they may not be transported as aerosols. The United Nations Sub-Committee of experts on the Transportation of Dangerous goods agreed to create new entries (UN numbers) for these products to address their unique characteristics and corresponding regulations to address the safe transport of such materials.

In this NPRM we are proposing the adoption of entries in the HMT for various chemicals under pressure and the corresponding packaging provisions. In this NPRM, we propose to modify § 173.313 to include the packaging requirements for chemicals under pressure transported in portable tanks. Specifically, we propose to revise the section title, introductory test, and table name to reflect that chemicals under pressure are addressed in this section. We also propose to add table entries for identification numbers UN3500, UN3501, UN3502, UN3503, UN3504 and UN3505. Lastly, we propose to correct the maximum filling density for UN3220.

The addition of packaging requirements specific to chemicals under pressure will ensure that an appropriate level of safety is achieved for these unique materials. PHMSA participated in, and concurs with, the discussions and decisions regarding the packagings selected for these materials. The packagings adopted by the UN, ICAO and IMO provide an appropriate level of safety for these materials and, thus, PHMSA proposes adopting similar packagings in the HMR. Furthermore, aligning with international packaging standards will facilitate the movement of these materials both domestically and internationally.

Section 173.316

Section 173.316 provides the requirements for cryogenic liquids contained in cylinders. Specifically, the HMR requires each cylinder containing cryogenic liquids be equipped with one or more pressure relief devices.

PHMSA proposes to revise § 173.316, ''Cryogenic Liquids in Cylinders'' to include a requirement consistent with the UN Model Regulations that all pressure relief device inlets must under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices must be so arranged as to ensure that the escaping vapor is discharged unobstructed.

This requirement would enhance safety by assisting in the proper function of the pressure release devices. Further, it would prevent unsafe conditions in transport if the liquid form of the gas were released through the pressure release device. For instance, if the gas released is a Division 2.1 (flammable) gas or a Division 2.3 (poisonous) gas, it would reduce the opportunity for the released liquid form of the gas to create an asphyxiant environment through the rapid displacement of the normal concentration of oxygen in the breathable atmosphere. Finally, it would reduce the potential of released cryogenic oxygen in liquid form to create an oxygen enriched atmosphere that may explosively combust.

Section 173.318

Section 173.318 provides the requirements for cryogenic liquids contained in cargo tanks. Specifically, the HMR requires each cargo tanks containing cryogenic liquids be equipped with one or more pressure relief devices.

PHMSA proposes to revise § 173.318, ''Cryogenic Liquids in Cargo Tanks'' to include a requirement consistent with the UN Model Regulations that all pressure relief device inlets shall under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices shall be so arranged as to ensure that the escaping vapor is discharged unobstructed.

This requirement would enhance safety by assisting in the proper function of the pressure release devices. Further, it would prevent unsafe conditions in transport if the liquid form of the gas were released through the pressure release device. For instance, if the gas released is a Division 2.1 (flammable) gas or a Division 2.3 (poisonous) gas, it would reduce the opportunity for the released liquid form of the gas to create an asphyxiant environment through the rapid displacement of the normal concentration of oxygen in the breathable atmosphere. Finally it would reduce the chance of released cryogenic oxygen in liquid form creating an oxygen enriched atmosphere that may explosively combust.

Section 173.335

Section 173.335 is created to provide packaging requirements for new HMT entries ''Chemical under pressure n.o.s.'' Specifically, PHMSA is proposing the transport requirements, filling limits, minimum service pressure, and periodic inspection requirements for cylinders utilized for shipments of chemical under pressure n.o.s.

Cylinders used to ship chemical under pressure n.o.s. must be authorized UN or DOT cylinders for the propellant and otherwise conform to the applicable requirements of subpart G of part 173.

Section 173.340

Section 173.340 prescribes the packaging requirements for NA1693, tear gas devices. Paragraphs (c) and (d) prescribe the authorized packagings for tear gas devices. In this NPRM, PHMSA is proposing to revise the packaging requirements in paragraphs (c) and (d) by authorizing the use of 4A, 4B, or 4N metal boxes, and 1B2, 1N2, or 1H2 drums.

Part 175

Section 175.8

Section 175.8 provides exceptions from certain regulations for air carrier operator equipment and items of replacement, as well as for items used to provide customer service aboard an aircraft.

ICAO reviewed and revised the Technical Instructions applicable to exceptions from certain regulations for air carrier operator equipment and items of replacement, and to better reflect items that may be sold as part of duty free services. Consistent with the ICAO Technical Instructions, in this NPRM, PHMSA is proposing to revise paragraph (a)(3)(ii) to clarify that wet cell aircraft batteries up to 100 kg net mass per package may be transported. Additionally, lithium ion aircraft

batteries in packages containing a single aircraft battery with a net mass not exceeding 35 kg may be transported. Lastly, PHMSA proposes to revise paragraph (b)(2) of this section to add portable electronic devices containing lithium batteries to the list of items permitted aboard an aircraft for use or sale on that specific aircraft.

Section 175.10

Section 175.10 specifies the conditions for which passengers, crew members, or an operator may carry hazardous materials aboard an aircraft. Consistent with revisions to the ICAO Technical Instructions, in this NPRM, PHMSA is proposing to revise paragraph (a)(14), the conditions under which electrically powered heat-producing articles may be carried aboard an aircraft. The requirement that the heat–producing component, or the energy source, must be removed to prevent unintentional functioning during transport is being revised to permit the removal of another component, such as a fuse, to prevent unintentional functioning during transport. In addition the paragraph is being revised to specify procedures for protecting any removed battery from short circuit during transport. PHMSA is also proposing to add paragraphs (a)(20), (a)(21), (a)(22), (a)(23), and (a)(24) to specify conditions under which permeation devices for calibrating air quality monitoring equipment, internal combustion or fuel cell engines, non-infectious specimens, insulated packagings containing refrigerated liquid nitrogen, and small compressed gas cartridges fitted into devices, respectively, may be carried aboard an aircraft.

Part 176

Section 176.2

Section 176.2 provides definitions of terms specifically as they pertain to Part 176. In this NPRM, PHMSA is proposing various revisions to the vessel stowage and segregation requirements specified in Part 176. As part of these changes certain terminology must be defined.

The term ''Closed cargo transport unit for Class 1'' is defined by the IMDG Code as a freight container or transport vehicle that fully encloses the contents by permanent structures and can be secured to the ship's structure and are, except for the carriage of division 1.4 explosives, structurally serviceable (see § 176.172). Portable magazines conforming to § 176.137 are also considered closed cargo transport units for Class 1. Small compartments such as deck houses and mast lockers are included. Cargo transport units with fabric sides or tops are not closed cargo transport units. The floor of any closed cargo transport unit must either be constructed of wood, close-boarded or so arranged that goods are stowed on sparred gratings, wooden pallets or dunnage. The IMO adopted this new definition for ''closed cargo transport unit for Class 1'' to define the characteristics required for cargo transport units carrying explosives by vessel.

A new definition for ''potential or possible sources of ignition'' was adopted by the IMO for incorporation in the next published IMDG Code. The term ''Potential or possible sources of ignition'' as defined in the IMDG Code ''means but is not limited to, open fires, machinery exhausts, galley uptakes, electrical outlets and electrical equipment including those on refrigerated or heated cargo transport units unless they are of a type designed to operate in a hazardous environment. The text ''means but is not limited to'' indicates that the list of potential or possible sources of ignition is not all inclusive; as it is impossible to identify in a definition all potential or possible sources of ignition that may exist on a variety of vessels with various engineering designs and stowage configurations. Adoption of this definition will provide guidance to vessel stowage planners in determining safe stowage locations for cargo on board vessels.

The term ''Protected from sources of heat'' as defined by the IMDG Code means ''that packages and cargo transport units must be stowed at least 2.4 m from heated ship structures, where the surface temperature is liable to exceed 131 °F (55 °C). Examples of heated structures are steam pipes, heating coils, top or side walls of heated fuel and cargo tanks, and bulkheads of machinery spaces. In addition, packages not loaded inside a cargo transport unit and stowed on deck must be shaded from direct sunlight. The surface of a cargo transport unit can heat rapidly when in direct sunlight in nearly windless conditions and the cargo may also become heated. Depending on the nature of the goods in the cargo transport unit and the planned voyage precautions must be taken to ensure that exposure to direct sunlight is reduced''. This definition was adopted by the IMO for inclusion in the next IMDG Code to provide a list of possible sources of heat a cargo transport unit might encounter during vessel transport. This definition also includes requirements for break bulk packages stowed on deck that are required to be protected from sources of heat by means of a stowage provision or a general stowage requirement found in Part 176.

Therefore, in the NPRM PHMSA proposes to add definitions in this section for the terms, ''Closed cargo transport unit for Class 1,'' ''Potential or possible sources of ignition'' and ''Protected from sources of heat'' with additional text clarifying that a portable magazine conforming to § 176.137 is also considered ''closed cargo transport unit for Class 1.''

Section 176.63

Section 176.63 prescribes supplementary requirements with respect to the stowage of specific hazardous materials in addition to those authorized in the HMT in § 172.101. This section sets forth the basic physical requirements for the authorized vessel stowage locations.

In this NPRM PHMSA proposes to revise paragraph (b) of this section by replacing the phrase ''shade from radiant heat'' with the phrase ''protected from sources of heat.'' This revision of terminology is necessary to incorporate other proposed changes to the vessel stowage codes in Column 10 B of the HMT proposed in this NPRM.

In this NPRM PHMSA also proposes changes to paragraph (e) of this section, as the definition of ''closed cargo transport unit for Class 1'' was added to § 176.2 references to magazine stowage type A and C are no longer needed in this section.

Paragraph (e) also contains an exception for empty packages containing residue (excluding Class 2.3 empty packages containing residue and waste aerosols), including IBCs and large packages to be stowed on deck, or under deck if in a mechanically ventilated cargo space. This exception would apply regardless of the stowage provisions indicated in § 172.101(k). PHMSA believes the reduced hazard present in empty packages containing residue combined with the mechanically ventilated cargo space warrants a relaxation of stowage requirements for shipments of empty packages (excluding Class 2.3 and waste aerosols) that otherwise would require on deck stowage.

Section 176.76

Section 176.76 specifies the requirements for transport vehicles, freight containers, and portable tanks containing hazardous materials transported via vessel. Currently paragraph (a)(9) of this section states that when security devices, beacons or other tracking or monitoring equipment are used, they must be securely installed

and must be of a certified safe type for the hazardous materials that will be carried within the freight container or transport vehicle in which such as device or equipment is installed.

In this NPRM PHMSA proposes to replace the existing text in paragraph (a)(9) with new text requiring that banding or securing straps used to secure packages must not be over tightened to cause damage or deformation of the packages or the securing points within the freight container or transport vehicle. PHMSA proposes this change to harmonize cargo securement requirements in the HMR with recently adopted changes in the IMDG Code. This requirement is intended to prevent undue stress and potential damage to packages and tie down points during transport.

Section 176.83

Section 176.83 prescribes the general vessel segregation requirements. Paragraph (m) of this section specifies additional segregation requirements for certain groups of hazardous materials. Paragraph (m)(2) of this section prescribes segregation requirements for materials shipped under n.o.s. entries. Furthermore, paragraph (m)(3) discusses materials that fall outside the defining criteria for hazardous materials, but display chemical properties similar to hazardous materials listed in segregation groups.

In this NPRM PHMSA is proposing to revise paragraph (m)(2) to clarify that the offeror of hazardous materials is responsible for deciding if allocation of a segregation group is appropriate. PHMSA is also proposing to revise paragraph (m)(3) to clarify that the offer of hazardous materials for transportation or the person packing the cargo transport unit is responsible for identifying a relevant segregation group and applying the segregation requirements for that segregation group. These revisions will replace the current term ''shipper,'' which is not defined in § 171.8, with the terms ''offeror'' and ''person who offers'' which are defined terms in § 171.8.

Section 176.84

Section 176.84 prescribes the meanings and requirements for numbered or alpha-numeric stowage provisions for vessel shipments listed in column 10B of the § 172.101 Hazardous Materials Table. The provisions in § 176.84 are broken down into general stowage provisions whose meanings are defined in the ''table of provisions'' in paragraph (b), and the stowage provisions applicable to vessel shipments of Class 1 explosives defined in the table to paragraph (c)(2).

In this NPRM, PHMSA is proposing to revise stowage provisions 25 and 128 and delete stowage provisions 19, 48, and 50 from the table in paragraph (b). Stowage provision 25 is revised from ''Shade from radiant heat'' to read ''Protected from sources of heat.'' Stowage provision 128 is revised from ''Stow in accordance with the IMDG Code, Sub-section 7.1.10.3 (incorporated by reference; see § 171.7 of this subchapter)'' to read ''Stow in accordance with the IMDG Code, Sub-section 7.6.2.7.2 (incorporated by reference; see § 171.7 of this subchapter).'' Deleted stowage provision 19 previously read ''Protect from sparks and open flames.'' Deleted stowage provision 48 previously read ''Stow ''away from'' sources of heat''. Deleted stowage provision 50 previously read ''Stow ''away from'' sources of heat where temperatures in excess of 55 °C (131 °F) for a period of 24 hours or more will be encountered.''

The current stowage provision table in paragraph (b) contains three listings requiring shipments to be either shaded or stowed away from sources of heat. The addition of a standard definition for ''protected from sources of heat'' to the list of definitions in § 176.2 has rendered stowage provisions 19, 48, and 50 redundant and all HMT listings previously assigned stowage provisions 19 or 48 have been assigned the revised stowage provision 25. Furthermore, no listings in the current HMR are assigned stowage provision 50 therefore we are deleting it and all references to it. The change to stowage provision 128 is proposed to account for a citation change in the newest edition of the IMDG Code.

In this NPRM PHMSA is also proposing to revise explosive stowage provision 26E and delete explosive stowage provisions 7E, 8E, and 20E from the table in paragraph (c)(2). Deleted explosive stowage provision 7E previously read ''Stowage category ''04'' for projectiles or cartridges for guns, cannons or mortars; Stowage category ''08'' for other types.'' Deleted explosive stowage provision 8E previously read ''When under deck, special stowage is required.'' Deleted explosive stowage provision 20E previously read ''Stowage category ''03'' for projectiles or cartridges for guns, cannons or mortars; Stowage category ''07'' for other types; magazines must be of steel construction that prevents leakage.'' Changes to explosive stowage provisions 7E, 8E, and 20E are necessary to account for revisions to the stowage category definitions proposed in § 172.101(k). Additionally, as a result of the removal of stowage provisions 10 and 13 from § 172.101(k), PHMSA proposes to revise explosive stowage provision 26E in § 176.84. Please see section 172.101 for explosive stowage codes associated with HMT entries previously assigned these explosive stowage provisions and a list of entries these provisions have been removed from.

Section 176.116

Section 176.116 prescribes the general stowage conditions for Class 1 explosive materials. Paragraph (a) of this section prescribes explosive stowage requirements, which take into account heat and sources of ignition. Paragraph (f) of this section prescribes explosives stowage requirements for under deck storage. In this NPRM PHMSA is proposing to revise paragraph (a) to clarify the general stowage conditions for Class 1 materials on board vessels and delete and reserve paragraph (f).

PHMSA proposes to revise paragraph (a)(1) to require explosive materials to be stowed in a cool part of the ship, to be kept as cool as practicable while on board, and to be stowed as far away as practicable from any potential source of heat or ignition. This change is proposed due to the inclusion of a definition for ''potential source of heat or ignition'' in § 176.2. A new paragraph (a)(2) is proposed requiring Class 1 materials to be stowed away from the side of a ship's side at a distance at least equal to one eighth of the beam of the vessel or 2.4 m (8 feet), whichever is less.

This minimum distance for explosive shipment stowage from the ship's side is proposed to harmonize with a recent change in the IMDG Code and provides an increased level of safety by ensuring explosive shipments are not stowed adjacent to the ships internal structure.

Paragraph (f) previously indicated general stowage provisions for HMT explosive entries stowed under deck and assigned stowage category 09 or 10. The proposed removal of stowage category 09 and 10 make these provisions no longer applicable.

Section 176.128

Section 176.128 defines the varying levels of containment for explosives identified as magazine stowage types ''A'', ''C,'' and ''Special Stowage.'' The IMO has determined that a distinction between closed cargo transport units and magazines is no longer necessary. PHMSA concurs with the IMO on this issue and, thus, in this NPRM, proposes to delete § 176.128 and reserve it for future use. With the addition of a definition for ''closed cargo transport

unit for Class 1,'' and the requirement for all explosive shipments to be stored at a distance at least equal to one eighth of the beam of the vessel or 2.4 m (8 feet), whichever is less, specific requirements for type A, C, and special magazine stowage are now unnecessary. Note that portable magazines remain authorized by § 176.137 and the definition of ''closed cargo transport unit for Class 1.''

Section 176.130

Section 176.130 prescribes requirements for magazine stowage type A. The IMO determined that a distinction between closed cargo transport units and magazines is no longer necessary. PHMSA concurs with the IMO on this issue and thus in this NPRM proposes to delete § 176.130 and reserve it for future use. In general, a magazine is equivalent to a closed cargo transport unit with a wooden floor. Properly packaged and transported packages in a closed cargo transport unit will adequately address safety concerns presented by commodities previously required to be transported in magazine stowage type A.

Section 176.133

Section 176.133 prescribes requirements for magazine stowage type C. The IMO has determined that all explosive shipments must be stored at a distance at least equal to one eighth of the beam of the vessel or 2.4 m (8 feet), whichever is less, thus making the provisions for magazine stowage type C unnecessary. PHMSA concurs with the IMO on this issue and thus in this NPRM proposes to delete § 176.133 and reserve it for future use.

Section 176.134

Section 176.134 prescribes requirements for vehicles carrying Class 1 materials requiring magazine stowage. The removal of magazine stowage definitions and provisions make this section unnecessary. Therefore, in this NPRM PHMSA proposes to delete this section and reserve it for future use.

Section 176.136

Section 176.136 prescribes requirements for special stowage of Class 1 materials. Changes to vessel stowage location codes in § 172.101(k) and the assignment of vessel stowage codes requiring on deck stowage for entries previously authorized special stowage make this section unnecessary. Therefore, in this NPRM PHMSA proposes to delete this section and reserve it for future use.

Section 176.138

Section 176.138 prescribes general requirements for on deck stowage. Paragraph (b) provides general requirements for on deck stowage of explosives. In this NPRM PHMSA proposes to revise this section to require explosives to not be stowed within 6 m (20 feet) of the newly defined term ''any potential sources of heat or ignition.'' This change is proposed to incorporate a newly defined term in § 176.2.

Section 176.144

Section 176.144 prescribes segregation requirements for Class 1 materials transported by vessel. Paragraph (d) allows materials requiring ordinary stowage (non-magazine stowage) to be stowed in the same magazine as materials requiring magazine stowage. In this NPRM PHMSA proposes to revise paragraph (d) to state that if part of a shipment requires non-metallic lining of closed cargo transport units, Class 1 materials requiring ordinary stowage (stowage not requiring non-metallic lining of closed cargo transport units) may be stowed in the same closed cargo transport unit provided there are no exposed parts of any ferrous metal or aluminum alloy, unless separated by a partition. The removal of sections and requirements for magazine stowage necessitates a change in this section.

Section 176.146

Section 176.146 prescribes segregation requirements for Class 1 materials and non-hazardous goods transported by vessel. Paragraph (a) currently states that Class 1 material need not be segregated from non-hazardous materials except as provided in paragraphs (b) and (c). Paragraph (b) then goes on to state that certain cargo (mail, baggage, and personal effects) may not be stowed in the same compartment as, or in compartments immediately above or below, Class 1 (explosive) materials other than those in compatibility group S. Paragraph (c) states that where Class 1 (explosive) materials are stowed against an intervening bulkhead, any mail on the other side of the bulkhead must be stowed away from it.

In this NPRM, PHMSA proposes to revise paragraphs (a) and (b) and delete and reserve paragraph (c). Specifically, PHMSA proposes to revise paragraph (a) to remove a reference to the removed paragraph (c). PHMSA proposes to revise paragraph (b) to read ''readily combustible materials may not be stowed in the same compartment or hold as Class 1 (explosive) materials other than those in compatibility group S.'' This change incorporates the adoption by IMO of the defined term ''readily combustible material'' in 176.2. In this NPRM, PHMSA proposes removing and reserving paragraph (c) as the vast majority of mail is now sent by air and not vessel. A specific requirement for stowage of mail away from the intervening bulkhead between it and Class 1 materials is deemed unnecessary.

Section 176.170

Section 176.170 prescribes requirements for shipments of Class 1 materials in freight containers by vessel. Paragraph (a) states that when Class 1 materials are stowed in a freight container, the freight container, for the purposes of this subpart, may be regarded as a magazine but not as a separate compartment. Paragraph (c) states that freight containers used to transport Class 1 (explosive) materials for which magazine stowage type A is required must have a floor consisting of tightly fitted wooden boards, plywood or equivalent non-metallic material, and a non-metallic lining.

In this NPRM, PHMSA proposes to amend paragraph (a) and delete and reserve paragraph (c). Paragraph (a) would be revised to state that when Class 1 materials are stowed in a freight container, the freight container, for the purposes of this Subpart, may be regarded as a closed transport unit for Class 1 or a magazine but not a separate compartment. This change is being made to incorporate the proposed definition of ''closed cargo transport unit for Class 1'' and the removal of magazine stowage A, C, and Special Stowage. Paragraph (c) references freight containers used to transport Class 1 (explosive) materials for which magazine stowage type A is required. The removal of a definition for and requirements for magazine stowage type A make this paragraph unnecessary.

Section 176.200

Section 176.200 prescribes general stowage requirements for Class 2 materials transported by vessel. Paragraph (c) of this section prescribes the orientation and outer packaging requirements for cylinders transported by vessel.

In this NPRM, PHMSA proposes revisions to paragraph (c) to clarify that cylinders offered for transport by vessel in a vertical position must be stowed in either a block and cribbed or boxed-in with suitable sound lumber. PHMSA also proposes to replace the word movement with shifting in the requirement for the crib or box bracing

to prevent any movement. These revisions are to harmonize with vessel transportation requirements incorporated in the IMDG Code and clarify that cylinders stored in a vertical position must be adequately blocked and braced using sound lumber.

Section 176.210

Section 176.210 prescribes on deck stowage requirements for cylinders transported by vessel. This section currently requires cylinders of Class 2 materials being transported by vessel to be protected from radiant heat, including the direct rays of the sun, by structural erections or awnings.

In this NPRM PHMSA proposes to revise this section by replacing ''protected from radiant heat, including the direct rays of the sun, by structural erections or awnings'' with the newly defined term ''protected from sources of heat.''

Section 176.230

Section 176.230 prescribes stowage requirements for Division 2.1 materials transported by vessel. Currently the HMR requires Division 2.1 materials transported in Specification 106A or 110A multi-unit car tanks must be stowed on deck only, and must be shaded from radiant heat.

In this NPRM, PHMSA proposes to replace the phrase ''shaded from radiant heat'' with the newly defined ''protected from sources of heat.''

Section 176.305

Section 176.305 prescribes stowage requirements for Class 3 materials transported by vessel. Paragraph (a) states that Class 3 flammable or combustible liquids must be kept as cool as reasonably practicable and be stowed away from all sources of heat and ignition.

In this NPRM, PHMSA proposes to revise paragraph (a) to read ''a Class 3 (flammable) or combustible liquid must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.'' These changes incorporate the proposed definitions of ''protected from sources of heat'' and ''potential or possible sources of ignition.''

Section 176.400

Section 176.400 prescribes stowage requirements for Division 1.5, Class 4 (flammable solids) and Class 5 materials transported by vessel. Paragraph (a) requires Class 4 (flammable solid) material and Division 5.2 (organic peroxide) materials to be kept as cool as reasonably practicable and be stowed away from all sources of heat and ignition.

In this NPRM, PHMSA proposes to revise paragraph (a) to read ''Class 4 (flammable solid) material and Division 5.2 (organic peroxide) material must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.'' These changes incorporate the proposed definitions of ''protected from sources of heat'' and ''potential or possible sources of ignition.''

Paragraph (b) of this section requires Division 5.2 (organic peroxide) material to be stowed away from living quarters or access to them. Division 5.2 (organic peroxide) substances not requiring temperature control should be protected from radiant heat, which includes direct rays of the sun, and stowed in a cool, well-ventilated area.

In this NPRM, PHMSA proposes to amend paragraph (b) to replace ''should be protected from radiant heat, which includes direct rays of the sun, and stowed in a cool, well-ventilated area'' with ''must be protected from sources of heat, including radiant heat and strong sunlight, and must be stowed in a cool, well-ventilated area.'' These changes are being made to incorporate the proposed definitions of ''protected from sources of heat'' harmonize with the IMDG Code, and to emphasize that protecting shipments of organic peroxides not requiring temperature control from sources of heat is a requirement and not optional.

Section 176.600

Section 176.600 prescribes detailed requirements for Division 2.3 (Poisonous Gas) and Division 6.1 (Poisonous) materials transported by vessel. Paragraph (d) of this section requires each package of Division 2.3 (poisonous gas) material or Division 6.1 (poison) material that also bears a FLAMMABLE LIQUID or FLAMMABLE GAS label must be stowed in a mechanically ventilated space, kept as cool as reasonably practicable, and be stowed away from all sources of heat and ignition.

In this NPRM, PHMSA proposes to revise paragraph (d) to replace ''stowed away from all sources of heat and ignition'' with ''protected from sources of heat and stowed away from potential sources of ignition.'' These changes incorporate the proposed definitions of ''protected from sources of heat'' and ''potential or possible sources of ignition.''

Section 176.907

Section 176.907 is created to incorporate cargo transport requirements for shipments of UN2211, Polymeric Beads, Expandable *evolving flammable vapor* and UN3314, Plastics Molding Compound *in dough, sheet or extruded rope form, evolving flammable vapor.* Several cases of damage to cargo transport units were presented to the IMO with the root cause being identified as the release of flammable pentane gas during transportation of shipments UN2211 and UN3314. To address the concerns presented by off gassing of flammable vapors which lead to a rise in pressure that may damage cargo transport units, the IMO instituted measures to ensure an adequate exchange of air within the cargo transport unit is provided. PHMSA proposes to harmonize with recent changes to the IMDG as well as to address safety concerns presented by the off gassing of flammable vapors from shipments of UN2211 and UN3314 by requiring that when UN2211 or UN3314 are transported by vessel, the cargo transport unit must provide an adequate exchange of air. This adequate exchange of air may be accomplished by using a ventilated container, an open-top container, or a container in one door off operation. As an alternative to these methods of air exchange, shippers may transport these cargos under temperature control in refrigerated cargo transport units. Exceptions to the cargo transport unit providing an adequate exchange of air requirement are provided for shipments packed in hermetically sealed packagings, IBCs which conform to the packing group II performance level for liquid dangerous goods, and packagings or IBCs in which the total pressure in the package (i.e., the vapor pressure of the liquid plus the partial pressure of air or other inert gasses less 100 kPa (15 psia)) with a filling temperature of 15 °C (131 °F) does not exceed two-thirds of the marked test pressure. Cargo transport units containing shipments of UN2211 or UN3314 must be marked with a warning mark including the words ''CAUTION- MAY CONTAIN FLAMMABLE VAPOR'' or ''CAUTION- MAY CONTAIN FLAMMABLE VAPOUR'' with lettering not less than 25 mm high. This mark must be affixed at each access point in a location where it will be easily seen by persons prior to opening or entering the cargo transport unit and must remain on the cargo transport unit until the cargo transport unit has been completely ventilated to remove any hazardous concentration of vapor or gas, the immediate vicinity of the cargo transport unit is clear of any source of ignition, and the goods have been unloaded.

Part 178

Section 178.512

Section 178.512 prescribes the standards, packaging identification codes, and construction requirements for steel and aluminum boxes (4A and 4B boxes). To incorporate the authorization for use of 4N boxes (metal other than steel or aluminum), the title of the section would be revised to ''Standards for steel, aluminum or other metal boxes.'' Section 178.512 is also revised to include the authorized packaging identification code, 4N, for other metal boxes, and expand the construction requirements of the section to include these packagings. Subsequent changes will be made throughout the section to address the inclusion of 4N other metal boxes.

Section 178.603

Section 178.603 prescribes the drop test requirements for non-bulk packagings in the HMR. Section 178.603 provides that a drop test must be conducted for the qualification of all packaging design types, and further provides that exceptions for the number of steel and aluminum packaging samples used for conducting the drop test are subject to the approval of the Associate Administrator. Currently, paragraph (a) of this section contains a table that outlines specific types of packagings and the corresponding number of samples that should be tested and the drop orientation of those samples. In this NPRM, PHMSA is proposing to revise this table by including ''other metal boxes'' to the listed packagings. To incorporate the authorization for use of 4N boxes (metal other than steel or aluminum), § 178.603 is revised to require the drop test for other metal (4N) boxes, and authorize exceptions, subject to the approval of the Associate Administrator, for the number of samples used for conducting the drop test of these packagings.

Section 178.705

Section 178.705 prescribes standards for metal IBCs. Paragraph (a)(3) indicates that IBC specifications 31A, 31B, and 31N are authorized for both liquids and solids. PHMSA is proposing to revise this sentence editorially by removing the authorization to package solids in specification 31 IBCs as the specification is only assigned to liquid substances. This editorial change is consistent with the § 172.102 IBC Code Table revisions in paragraph (c)(4) and other IBC standards (e.g., § 178.707(a)(5)) prescribed in subpart N of part 178.

Section 178.910

Section 178.910 prescribes the marking requirements for specification Large Packaging design types. Paragraph (a)(1) of this describes the size specifications and format of the marking requirements. In this NPRM PHMSA is proposing to clarify these requirements by indicating that for large packages manufactured after January 1, 2014 the minimum marking size must be 12 mm in height.

Furthermore, paragraph (b) of this section is now reserved. However, we are proposing to add a paragraph (b) indicating that for all Large Packages manufactured, repaired or remanufactured after January 1, 2015 the large package must be marked with the symbol applicable to a Large Package designed for stacking or not designed for stacking, as appropriate. This language will be accompanied by an example of such a mark.

Section 178.980

Section 178.980 prescribes the procedures for conducting the stacking test for qualification of all Large Packaging design types. Paragraph (e)(1) describes the criterion a metal or rigid plastic Large Packaging must meet to be considered as successfully passing the stacking test. While paragraph (e) addresses metal or rigid plastic Large Packagings, the criterion that a fiberboard or wooden Large Packaging must meet to be considered as successfully passing the stacking test is omitted.

Therefore, in this NPRM, we propose to correct this omission, by adding a new paragraph (e)(2) that addresses the criterion for fiberboard or wooden Large Packagings to pass the test and redesignating the following paragraphs accordingly.

Subpart R

Currently, the HMR do not contain specifications for FBCs. In this NPRM, PHMSA is proposing to adopt the specification, construction, and testing requirements for FBCs. On February 2, 2010, PHMSA published a final rule in the **Federal Register** under Docket Number PHMSA–2006– 25736 (HM–231) [75 FR 4699] entitled ''Hazardous Materials; Miscellaneous Packaging Amendments.'' In HM–231, specification and testing requirements were adopted for Large Packagings. The specification and testing requirements for FBCs proposed in this NPRM are modeled on the regulatory structure adopted for Large Packagings in HM–231. Thus, new subpart R of part 178 entitled ''Subpart R—Flexible Bulk Container Standards'' is proposed.

Section 178.1000

PHMSA proposes to adopt new § 178.1000 entitled ''Purpose and scope.'' This section prescribes the packaging designs to which Subpart R applies and the location in the HMR where terms used in the subpart are defined.

Section 178.1005

In this NPRM, PHMSA proposes to add new § 178.1005 entitled ''Flexible Bulk Container Identification Code.'' This section provides the identification code (i.e. BK3) assigned to FBCs.

Section 178.1010

In this NPRM, PHMSA proposes to add new § 178.1010 entitled ''Marking of Flexible Bulk Containers.'' This section prescribes the markings the manufacturer of an FBC must mark on a package to indicate the FBC meets the specification. The proposed marking requirements for FBCs are based on the current marking requirements for IBCs prescribed in § 178.703.

Section 178.1015

In this NPRM, PHMSA proposes to add new § 178.1015 entitled ''General Flexible Bulk Container Standards.'' This section prescribes the general packaging integrity requirements an FBC design must meet.

Section 178.1020

In this NPRM, PHMSA proposes to add new § 178.1020 entitled ''Period of use for transportation of hazardous materials in Flexible Bulk Containers.'' This section prescribes the length of time an FBC may be used to package hazardous materials. Specifically, this section states that an FBC used to package hazardous materials may remain in service not to exceed two years from the date of manufacture.

Subpart S

Currently, the HMR do not prescribe testing criteria for FBCs. In this NPRM, PHMSA is proposing to adopt testing protocol for FBCs. On February 2, 2010, PHMSA published a final rule in the **Federal Register** under Docket Number PHMSA–2006–25736 (HM–231) [75 FR 4699] entitled ''Hazardous Materials; Miscellaneous Packaging Amendments.'' In HM–231, specification and testing requirements were adopted for Large Packagings. The test protocol proposed in this NPRM for FBCs is modeled on the regulatory structure adopted for Large Packagings in HM–231. Thus, new subpart S of part 178 entitled ''Subpart S—Testing of Flexible Bulk Container Standards'' is proposed.

Section 178.1030

In this NPRM, PHMSA proposes to adopt § 178.1030 entitled ''Purpose and scope.'' This section prescribes the applicability to which the Subpart S tests apply.

Section 178.1035

In this NPRM, PHMSA proposes to adopt § 178.1035 entitled ''General requirements.'' This section prescribes the general packaging requirements for FBCs and addresses the following topics: FBC-related definitions; defining responsibility for compliance with specification requirements; design qualification testing; periodic design testing; proof of compliance; and record retention.

Section 178.1040

In this NPRM, PHMSA is proposing to adopt test preparation requirements for FBCs in new § 178.1040 entitled ''Preparation of Flexible Bulk Containers for Testing.'' This section specifies the general test preparation requirements applicable to all tests an FBC is required to successfully pass.

Section 178.1045

In this NPRM, PHMSA is proposing to adopt requirements for drop tests conducted on FBCs. A drop test is used to measure a packaging's ability to withstand falls from specific heights and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA proposes to add a new § 178.1045 entitled ''Drop test.'' This section prescribes the preparation of test samples, test methods authorized, drop heights, and criteria for passing the drop test.

Section 178.1050

In this NPRM, PHMSA is proposing to adopt requirements for top lift tests conducted on FBCs. A top lift test measures a package's ability to be moved mechanically by lifting the package by its top end and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA proposes to add new § 178.1050 entitled ''Top lift test.'' This section prescribes requirements for the preparation of test samples, test methods authorized, and criteria for passing the top lift test.

Section 178.1055

In this NPRM, PHMSA is proposing to adopt requirements for stacking tests conducted on FBCs. A stacking test is used to measure a packaging's ability to withstand other packages placed on top of it and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA proposes to add new § 178.1055 entitled ''Stacking test.'' This section prescribes requirements for the preparation of test samples, test methods authorized, and criteria for passing the stacking test.

Section 178.1060

In this NPRM, PHMSA is proposing to adopt requirements for topple tests conducted on FBCs. A topple test is used to measure a packaging's ability to withstand tipping of the package and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA proposes to add new § 178.1060 entitled ''Topple test.'' This section prescribes the preparation of test samples, test methods authorized, topple height, and criteria for passing the topple test.

Section 178.1065

In this NPRM, PHMSA is proposing to adopt requirements for righting tests conducted on FBCs. A righting test is used to measure a packaging's ability to withstand lifting from a lying position at a given rate of speed and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA proposes to add new § 178.1065 entitled ''Righting test.'' This section prescribes the preparation of test samples, test methods authorized, and criteria for passing the righting test.

Section 178.1070

In this NPRM, PHMSA is proposing to adopt requirements for tear tests conducted on FBCs. A tear test is used to measure a packaging's ability to withstand shearing and tearing that may be encountered during transportation, such as loading and unloading, and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA proposes to add new § 178.1070 entitled ''Tear test.'' This section prescribes the preparation of test samples, test methods authorized, and criteria for passing the tear test.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This proposed rule amends regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. To this end, the proposed rule amends the HMR to more fully align them with the biennial updates of the UN Model Regulations, the IMDG Code and the ICAO Technical Instructions.

Harmonization serves to facilitate international commerce; at the same time, harmonization promotes the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated community. Thus, as explained in the corresponding sections above, we are not proposing harmonization with certain specific provisions of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions. Moreover, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community. Additionally, the following external agencies were consulted in the development of this rule: U.S. Coast Guard, U.S. Department of Agriculture (USDA), U.S. Department of Energy, U.S. Department of Interior, U.S. Department of Justice.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This rule proposes to amend the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail above, PHMSA proposes to incorporate changes into the HMR based on the 17th Revised Edition of the UN Model Regulations, Amendment 36–12 to the IMDG Code, and the 2013–2014 ICAO Technical Instructions, which become effective January 1, 2013. The large volume of hazardous materials transported in international commerce

warrants the harmonization of domestic and international requirements to the greatest extent possible.

B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This notice is not considered a significant regulatory action under section 3(f) of Executive Order 12866 (''Regulatory Planning and Review'') and, therefore, was not reviewed by the Office of Management and Budget. This notice is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, E.O. 13563 (''Improving Regulation and Regulatory Review'') supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

Benefits to Harmonization. In this NPRM, PHMSA is proposing to incorporate by reference the most recent versions of various international hazardous materials standards, including the 2013–2014 ICAO Technical Instructions, Amendment 36–12 to the IMDG Code, and the 17th Revised Edition of the UN Model Regulations. Additionally, PHMSA is proposing to update its incorporation by reference of the Canadian Transportation of Dangerous Goods Regulations to include Amendment 8 (SOR/2011–239) November 9, 2011; Amendment 9 (SOR/2011–60) March 16, 2011; and Amendment 10 (SOR/2011–210) October 12, 2011. Lastly, PHMSA is proposing to adopt updated International Standards Organization (ISO) standards.

The primary benefit of harmonizing the U.S. Hazardous Materials Regulations (HMR) with the international hazardous materials standards noted previously is that it will reduce the regulatory compliance costs faced by U.S. companies. Without harmonization, these companies will be forced to comply with dual systems of regulations, and as a result will incur higher compliance costs than would be encountered under a single regulatory scheme. The benefit of harmonization attributable to this proposed rulemaking is the difference in regulatory compliance costs faced by companies operating under a single regulatory framework instead of multiple regulatory frameworks.

If the U.S. regulations are not harmonized with the international standards mentioned above, we estimate that it will cost U.S. companies an additional $62 million per year to comply with both the HMR and the international standards. Harmonizing the HMR with the international standards, however, will avert these $62 million in additional costs, and these averted costs are therefore considered the primary benefit attributable to this rulemaking.

The $62 million estimate is based on the assumption that in the absence of harmonization both exporters and importers would have to adhere to two separate hazard communication systems, one used for the transportation of materials within the United States and one used for the transportation of materials outside the United States. Exporters would directly incur four different cost elements and would have to pay for (1) Dual labels and safety data sheets, (2) additional training, (3) additional management activities, and (4) additional packaging costs. Foreign producers who ship products to the United States would also incur these four cost elements, and we assume that the foreign producers would pass half of those incurred costs on to U.S. consumers in the form of higher prices.

To develop the $62 million estimate, we estimated the average hazard communication cost per dollar of hazardous materials produced in the United States and then multiplied that cost figure by an estimate of the value of U.S. imports and exports of hazardous materials. In other words, in the absence of harmonization, we assume that companies involved with U.S. foreign trade would have to pay for additional hazard communication requirements for international movements; these companies would have to comply with the HMR communication requirements during domestic legs of the movement and with international standards during legs of the movement outside of the United States.

A proxy for hazard communication costs was obtained from a recent OSHA study looking at the costs for industry to comply with the revised Hazard Communication Standard.[3] The study estimated the total compliance cost to be $201 million per year based on four cost elements: revisions to labels and safety data sheets, additional training, additional management activities, and printing of color packaging. The first three cost elements are relevant for our purposes and totaled $177 million.

To put the $177 million hazard communication cost estimate on a per unit basis, we divided the $177 million by an estimate of the total value of hazardous materials produced in the United States in 2010. The total value of hazardous materials produced in the United States was estimated to be $151 billion. To derive this $151 billion estimate, we summed relevant product values reported in the Census Bureau's Annual Survey of Manufactures: Value of Product Shipments, and then multiplied the result by 12.4 percent—the percentage of shipment values reported to be hazardous products (this parameter was obtained from Table 10 in the Census Bureau's 2007 Commodity Flow Survey for Hazardous Materials). The resulting hazard communication cost per dollar of hazardous materials output was estimated to be $0.001 (or $177 million ÷ $151 billion).

We were not able to identify any comprehensive source on hazardous materials imports and exports and therefore developed estimates for these figures using quarterly trade data from the Bureau of Economic Analysis[4] and data on the transportation of hazardous materials from the Census Bureau's 2007 Commodity Flow Survey. The quarterly trade data on the value of imports and exports—for fuels and lubricants, chemicals, and medicinal/dental/pharmaceutical products—were summed to produce a single annual trade value for 2010 for industries that produce hazardous materials. Before aggregating the import and export values, we reduced the import values by half to take into account the assumption mentioned previously that foreign producers would be able to pass on only half of the additional hazard communication costs to U.S. consumers. Total annual trade for industries that produce hazardous materials was computed to be just over $498 billion in 2010.

We then multiplied this $498 billion trade figure by 12.4 percent, the percentage of output in these industries reported to be hazardous products; this parameter was obtained from Table 10 in the 2007 Commodity Flow Survey for Hazardous Materials. The resulting estimate indicates that approximately $62 billion worth of hazardous materials were involved in international trade with the United States in 2010.

Multiplying the hazard communication cost per dollar of hazardous material output ($0.001) by the value of hazardous materials involved in international trade ($62

[3] *http://www.osha.gov/dsg/hazcom/hazcom-faq.html.*

[4] *http://www.bea.gov/international/detailed_trade_data.htm.*

billion) results in a hazard communication cost estimate of approximately $62 million per year that companies would have to pay to comply with different regulatory requirements applicable to international movements. Harmonizing the HMR with international standards would make these $62 million in hazard communications costs unnecessary, and therefore is the main benefit attributable to this rulemaking.

Cost of Harmonization. The potential costs of this rulemaking include private sector compliance costs and any costs that can be attributed to a possible reduction in public safety as a result of harmonizing the HMR with international standards. We expect that both of these costs will be negligible. Preliminary estimates suggest that private sector compliance costs associated with complying with the different amendments in the NPRM will be minimal. In terms of costs due to any reduction in public safety as a result of harmonizing the HMR with international standards, PHMSA believes that none of the proposed revisions to the HMR have material safety impacts. We therefore assume that the gross social costs of this NPRM are effectively zero.

Net Benefit. Based on the discussions of benefits and costs provided above the estimated net benefit associated with the international harmonization NPRM (2137–AE87) is nearly $62 million.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule preempts State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items (1), (2), (3), (4) and (5) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to incorporate changes adopted in international standards, effective January 1, 2013. If the changes in this proposed rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this proposed rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption be 90 days from publication of a final rule in this matter.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. This proposed rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users and suppliers, packaging manufacturers, distributors, and training companies. As discussed above, under *Executive Order 12866,* the majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this NPRM will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, we certify that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137–0018, ''Inspection and Testing of Portable Tanks and Intermediate Bulk Containers,'' and OMB Control Number 2137–0572, ''Testing Requirements for Non-Bulk Packages.'' This NPRM may result in an increase in the annual burden and costs of both OMB Control Numbers due to the proposed amendments to allow the use of metals other than steel or aluminum for drums and boxes as well as the proposed new Flexible Bulk Container package authorization, which will require package manufacturers to document and maintain package test results, should they elect to manufacture Flexible Bulk Containers.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code

of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule, and estimates the information collection and recordkeeping burden as proposed in this rule to be as follows:

OMB Control No	2137–0018
Annual Increase in Number of Respondents	25
Annual Increase in Annual Number of Responses	50
Annual Increase in Annual Burden Hours	200
Annual Increase in Annual Burden Costs	$5,000
OMB Control No	2137–0572
Annual Increase in Number of Respondents	100
Annual Increase in Annual Number of Responses	300
Annual Increase in Annual Burden Hours	600
Annual Increase in Annual Burden Costs	$15,000

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these proposed requirements. Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number 202–395–6974. Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone (202) 366–8553. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

Description of Action

Docket No. PHMSA–2012–0027 (HM–215L), NPRM. The transportation of hazardous materials in commerce is subject to the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 *et seq.* To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provides that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Purpose and Need

In this NPRM, PHMSA is proposing to amend the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize and align the HMR with recent amendments adopted in the UN Model Regulations, IMDG Code, and the ICAO Technical Instructions. The amendments proposed in this notice are intended to facilitate the safe and efficient transportation of hazardous materials in international commerce, provide clarity designed to encourage and increase regulatory compliance, and improve the efficacy of emergency response in the event a hazardous materials incident occurs.

Alternatives

In developing this proposed rule, we considered three alternatives:

(1) Do nothing.

(2) Adopt the international standards in their entirety.

(3) Adopt most of the international standards, with certain modifications based on safety or economic considerations.

Alternative 1:

Because our goal is to facilitate uniformity, compliance, commerce and safety in the transportation of hazardous materials, we rejected this alternative.

Alternative 2:

By adopting the international standards in their entirety, PHMSA could potentially adopt provisions that, in our view, do not provide an adequate level of transportation safety and environmental safety and protection. Further, because we provide for domestic exceptions and extended compliance periods to minimize the potential economic impact of any revisions on the regulated community, this alternative was also rejected.

Alternative 3:

Consistency between U.S. and international regulations helps to assure the safety of international hazardous materials transportation and the environment through better understanding of the regulations, an increased level of compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident. Under Alternative 3, we would harmonize the HMR with international standards to the extent consistent with U.S. safety, economic, and environmental protection goals.

Alternative 3 is the only alternative that addresses, in all respects, the purpose of this regulatory action, which is to facilitate the safe and efficient transportation of hazardous materials in international commerce and the protection of the environment. These actions will provide the greatest possible harmonization with

international requirements without posing an undue increased cost burden on the regulated community. For these reasons, alternative 3 is our recommended alternative.

Analysis of Environmental Impacts

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk-management system that is prevention-oriented and focused on identifying hazards and reducing the probability and quantity of a hazardous material release. Amending the HMR to maintain alignment with international standards enhances the safe transportation of hazardous materials in domestic and international commerce. When considering the adoption of international standards under the HMR, we review and consider each amendment on its own merit and assess the likely impact on transportation safety and the environment. It is our preliminary conclusion that the proposals in this notice will not have either a substantial positive or adverse effect on the environment. Consequently, PHMSA welcomes public comment on the matter.

In this NPRM, PHMSA is proposing the following noteworthy amendments to the HMR:

Chemicals under pressure. Manufacturers in the United Kingdom, the United States, Australia, Canada, and other countries are supplying pressurized products contained and transported in gas cylinders. The products are liquids or solids such as adhesives, coatings and cleaners combined with a gas or gas mixtures in pressure receptacles under sufficient pressure to expel the contents. These mixtures are typically expelled from the pressurized cylinders as foams, streams or thick sprays. Currently the HMR does not comprehensively address chemicals under pressure. Because of the substantial packaging integrity inherent in pressure vessel designs, PHMSA believes the proposed chemical under pressure amendments in this rule will result in a positive environmental impact.

Flexible Bulk Containers (FBCs). Incorporate a new packaging definition, operational controls, performance-oriented standards, and testing requirements for Flexible Bulk Containers (FBCs). FBCs are flexible bulk packages with a capacity over the currently authorized maximum volumetric capacity for flexible IBCs, but not exceeding 15 cubic meters. FBCs provide shippers the opportunity to utilize a reusable flexible packaging for bulk shipments of certain authorized low-hazard commodities, all of which are currently authorized in non-specification bulk bins. Because of the inherent integrity of a specification packaging design when compared to a non-specification packaging design, PHMSA believes the amendments in this proposal authorizing the construction and use of FBCs will result in a net positive environmental impact.

Packaging Authorizations. Part 173 of the HMR prescribes the general requirements for shipment preparation and packaging selection for hazardous materials. Consistent with amendments adopted in the various international standards, we are proposing to amend multiple part 173 packaging sections by authorizing additional packaging specifications used to package hazardous materials. These proposed amendments include, but are not limited to, the authorization to use wood as a material of package construction for certain explosives, the authorization to use metals other than steel or aluminum for boxes and drums for certain hazardous materials, and the incorporation of authorizations and specifications of FBCs. Because of the substantial integrity in the newly authorized packaging specifications, PHMSA believes the amendments in this proposal will result in a positive environmental impact. Higher integrity packaging designs can and do prevent the unintentional release of hazardous materials when transported in commerce.

Vessel Stowage Requirements. The requirements for vessel stowage are described and specified in § 172.101(k) and HMT entries are assigned appropriate vessel stowage codes and stowage special provisions in column 10 of the HMT. We propose to clarify these instructions by revising the vessel stowage location requirements for explosives and reducing the number of explosive stowage categories from 15 to 5 in column 10A of the HMT. Specifically, explosive stowage categories 6 through 15 will be eliminated, and stowage categories 1 through 5 will be retained and modified. We are also proposing modifications to the vessel stowage provisions indicated in column 10B of the HMT. In order to harmonize with the IMDG Code, PHMSA proposes to incorporate the addition of a new definition for protected from sources of heat and potential or possible sources of ignition (see Section 176.2 of this NPRM for definitions), and subsequently revise and delete various vessel stowage provisions.

Because the amendments proposed in this notice reducing and consolidating the number of vessel stowage codes for explosives result in greater clarity of the HMR and reduce the potential of incidents occurring, PHMSA believes they will have a positive impact on the environment.

Conclusion

In this NPRM, PHMSA proposes to amend the HMR in response to revisions adopted in the various international standards. Through this integrated and cooperative approach, we believe we can be most successful in reducing incidents, enhancing public safety, and protecting the environment. The proposed amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements and to provide greater flexibility in packaging selection suitable for the transportation of hazardous materials. PHMSA believes the net environmental impact of this rule will be positive. Additionally, we believe there will be little or no adverse environmental impacts associated with the amendments proposed in this rule. PHMSA solicits public comment on the conclusions made in this preliminary analysis.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html.*

K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. In fact, the rule is designed to facilitate international trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

2. In § 171.7, in the paragraph (a)(3) table, the following changes are made:

a. Under the entry ''International Civil Aviation Organization (ICAO),'' the entry ''Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions)'' is revised;

b. Under the entry ''International Maritime Organization (IMO)'' the entries ''International Maritime Dangerous Goods Code (IMDG Code)'' and ''International Convention for the Safety of Life at Sea (SOLAS) Amendments 2000'' are revised;

c. Under the entry ''International Organization for Standardization,'' the entries ''ISO 10156:1996, Gases and Gas Mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Second edition, May 2005 (E)'' and ''ISO 10156–2:2005, Gas cylinders—Gases and gas mixtures—Part 2: Determination of oxidizing ability of toxic and corrosive gases and gas mixtures, First edition, August 2005, (E)'' are replaced by ''ISO 10156:2010, Gases and Gas Mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets'' in appropriate numerical order. Additionally, the entry ''ISO 4126–1: Safety valves—Part 1: General requirements, December 15, 1991, First edition'' is revised as the entry ''ISO 4126–1: Safety valves—Part 1: General requirements/Cor 1, August 2, 2007, Second edition,'' the entry ''ISO 11117, Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders—Design, construction and tests, First edition, August 1998, (E)'' is revised as the entry ''ISO 11117:2008/Cor 1:2009 Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, May 5, 2009, Second edition'' and the entries ''ISO 4126–7: Safety valves—Part 7: Common data/Cor 1, October 23, 2006, First edition,'' ''ISO 13340 Transportable gas cylinders—Cylinders valves for non-refillable cylinders—Specification and prototype testing, April 5, 2001, First edition'' are added; and

d. Under the entry for ''Transport Canada,'' the entry ''Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations)'' is revised; and

e. Under the entry ''United Nations,'' the entry ''UN Recommendations on the Transport of Dangerous Goods, Model Regulations'' and ''UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria'' are revised.

The additions and revisions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Civil Aviation Organization (ICAO).	

Source and name of material	49 CFR reference
* * * * *	* *
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2013–2014 Edition.	171.8; 171.22; 171.23; 171.24; 172.101; 172.202; 172.401; 172.512; 172.519; 172.602; 172.704; 173.1; 173.56; 173.320; 175.10; 175.33; 178.3.
International Electrotechnical Commission (IEC) 3, rue de Varembé, P.O. Box 131, CH—1211, GENEVA 20, Switzerland:	
Fuel cell technologies—Part 6–100: Micro fuel cell power systems—Safety, IEC/PAS 62282–6–100:2010, Edition 1.0, March 2010 (E).	175.10; 173.230.
International Maritime Organization (IMO).	
* * * * *	* *
International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), Chapter II–2, Construction—Fire protection, fire detection and fire extinction, Regulation 19, Carriage of dangerous goods, Consolidated Edition 2009.	176.63, 176.84.
International Maritime Dangerous Goods Code (IMDG Code), 2014 Consolidated Edition, Incorporating Amendment 36–12 (English Edition), Volumes 1 and 2.	171.22; 171.23; 171.25; 172.101; 172.202; 172.203; 172.401; 172.502; 172.519; 172.602; 172.704; 173.1; 173.21; 173.56; 173.320; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 178.3; 178.274.
International Organization for Standardization.	
* * * * *	* *
ISO 4126–1: Safety valves—Part 1: General requirements/Cor 1, August 2, 2007, Second edition	178.274.
ISO 4126–7: Safety valves—Part 7: Common data/Cor 1, October 23, 2006, First edition ISO 4126–7:2004/Cor 1.	178.274.
* * * * *	* *
ISO 10156:2010, Gases and Gas Mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Third edition, March 2010.	173.115.
* * * * *	* *
ISO 11117:2008/Cor 1:2009 Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, May 5, 2009, Second edition.	173.301b.
* * * * *	* *
ISO 13340 Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, April 5, 2001, First edition.	178.71.
* * * * *	* *
Transport Canada.	
* * * * *	* *
Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), August 2001 including Clear Language Amendments SOR 2001–286; Amendment 1 SOR/2002–306 August 8, 2002; Amendment 2 SOR/2003–273 July 24, 2003; Amendment 3 SOR/2003–400 December 3, 2003; Amendment 4 SOR/2005–216 July 13, 2005; Amendment 5 SOR/2005–279 September 21, 2005; Amendment 6 SOR/2008–34 February 7, 2008; Amendment 7 SOR/2007–179 July 31, 2007, Amendment 8 (SOR/2011–239) November 9, 2011; Amendment 9 (SOR/2011–60) March 16, 2011; and Amendment 10 (SOR/2011–210) October 12, 2011.	171.12; 171.22; 171.23; 172.401; 172.502; 172.519; 172.602; 173.31; 173.32; 173.33.
* * * * *	* *
United Nations.	
* * * * *	* *
UN Recommendations on the Transport of Dangerous Goods, Model Regulations, 17th revised edition, Volumes I and II (2011).	171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 173.1; 173.3; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; 178.274; 178.500; 178.700; 178.900.
UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, fifth revised edition, amendment 1 (2011).	172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; 173.220; Part 173, appendix H; 178.274.
* * * * *	* *

* * * * *

3. In § 171.8, the definition of ''Flexible bulk container'' is added in the appropriate alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Flexible bulk container means a flexible container with a capacity not exceeding 15 cubic meters and includes liners and attached handling devices and service equipment.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

5. In § 172.101, paragraph (c)(10)(i), the first sentence in paragraph (c)(10)(iii) and paragraph (k) are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(10) *Mixtures and solutions.*

(i) A mixture or solution meeting the definition of one or more hazard class that is not identified specifically by name, comprised of a single predominant hazardous material identified in the Table by technical name and one or more hazardous and/or non-hazardous material, must be described using the proper shipping name of the hazardous material and the qualifying word ''mixture'' or ''solution'', as appropriate, unless—

* * * * *

(iii) A mixture or solution meeting the definition of one or more hazard class that is not identified in the Table specifically by name, comprised of two or more hazardous materials in the same hazard class, must be described using an appropriate shipping description (e.g., ''Flammable liquid, n.o.s.''). * * *

* * * * *

(k) Column 10: Vessel stowage requirements. Column 10A [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels. Column 10B [Other provisions] specifies codes for stowage requirements for specific hazardous materials. The meaning of each code in Column 10B is set forth in § 176.84 of this subchapter. Section 176.63 of this subchapter sets forth the physical requirements for each of the authorized locations listed in Column 10A. (For bulk transportation by vessel, see 46 CFR parts 30 to 40, 70, 98, 148, 151, 153 and 154.) The authorized stowage locations specified in Column 10A are defined as follows:

(1) Stowage category ''A'' means the material may be stowed ''on deck'' or ''under deck'' on a cargo vessel and on a passenger vessel.

(2) Stowage category ''B'' means—

(i) The material may be stowed ''on deck'' or ''under deck'' on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each 3 m of overall vessel length; and

(ii) ''On deck only'' on passenger vessels in which the number of passengers specified in paragraph (k)(2)(i) of this section is exceeded.

(3) Stowage category ''C'' means the material must be stowed ''on deck only'' on a cargo vessel and on a passenger vessel.

(4) Stowage category ''D'' means the material must be stowed ''on deck only'' on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers or one passenger per each 3 m of overall vessel length, but the material is prohibited on a passenger vessel in which the limiting number of passengers is exceeded.

(5) Stowage category ''E'' means the material may be stowed ''on deck'' or ''under deck'' on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each 3 m of overall vessel length, but is prohibited from carriage on a passenger vessel in which the limiting number of passengers is exceeded.

(6) Stowage category ''01'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) and on a passenger vessel.

(7) Stowage category ''02'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) and ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transport units on a passenger vessel.

(8) Stowage category ''03'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel.

(9) Stowage category ''04'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transports on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel.

(10) Stowage category ''05'' means the material may be stowed ''on deck'' in closed cargo transport units on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel.

* * * * *

6. In § 172.101, the Hazardous Materials Table is amended by removing the entries under ''[REMOVE]'', by adding the entries under ''[ADD]'' and revising entries under ''[REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE].												
	*		*		*	*	*		*	*			
	Amyl chlorides	3	UN1107	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Amyl mercaptans	3	UN1111	II	3	A3, A6, IB2, T4, TP1.	None	202	242	5 L	60 L	B	95, 102
	*		*		*	*	*		*	*			
	Amyl nitrites	3	UN1113	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	E	40
	*		*		*	*	*		*	*			
	Butyl mercaptans	3	UN2347	II	3	A3, A6, IB2, T4, TP1.	150	202	242	5 L	60 L	D	52, 95
	*		*		*	*	*		*	*			
	Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.4S	UN0014	II	None		63	62	None	25 kg	100 kg.		
	*		*		*	*	*		*	*			
Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde), *see* Aviation regulated liquid, n.o.s. *or* Other regulated substances, liquid, n.o.s.													
	*		*		*	*	*		*	*			
	Iodine monochloride	8	UN1792	II	8	B6, IB8, IP2, IP4, N41, T7, TP2.	None	212	240	Forbidden	50 kg	D	40, 66, 74, 89, 90
	*		*		*	*	*		*	*			
A	Mercury *contained in manufactured articles*.	8	UN2809	III	8		None	164	None	No limit	No limit	B	40, 97
	*		*		*	*	*		*	*			
G	Nitriles, toxic, liquid, n.o.s.	6.1	UN3276	I	6.1	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	52
				II	6.1	IB2, T11, TP2, TP27.	153	202	243	5 L	60 L	B	52
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A	52

*		*			*		*	*		*		*			
G	Nitriles, toxic, solid, n.o.s	6.1	UN3439	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	D	52
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	52
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	52
*		*			*		*	*		*		*			
G	Organophosphorus compound, toxic, liquid, n.o.s.	6.1	UN3278	I	6.1	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B.	
				II	6.1	IB2, T11, TP2, TP27.	153	202	243	5 L	60 L	B.	
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A.	
*		*			*		*	*		*		*			
G	Organophosphorus compound, toxic, solid, n.o.s.	6.1	UN3464	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B.	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B.	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A.	
*		*			*		*	*		*		*			
G	Organometallic compound, toxic, liquid, n.o.s.	6.1	UN3282	I	6.1	T14, TP2, TP13, TP27.	None	201	242	1 L	30 L	B.	
				II	6.1	IB2, T11, TP2, TP27.	153	202	242	5 L	60 L	B.	
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A.	
*		*			*		*	*		*		*			
G	Organometallic compound, toxic, solid, n.o.s.	6.1	UN3467	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B.	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B.	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A.	
*		*			*		*	*		*		*			
G	Toxic by inhalation liquid, corrosive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3492	I	6.1, 8, 3	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40, 125
*		*			*		*	*		*		*			
G	Toxic by inhalation liquid, corrosive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3493	I	6.1, 8, 3	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40, 125

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3488	I	6.1, 3, 8	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40, 125
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3489	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40, 125
G	Toxic by inhalation liquid, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3381	I	6.1	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3382	I	6.1	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3383	I	6.1, 3	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3384	I	6.1, 3	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40

G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3385	I	6.1, 4.3	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3386	I	6.1, 4.3	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3490	I	6.1, 4.3, 3	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	21, 28, 40, 49
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3491	I	6.1, 4.3, 3	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	21, 28, 40, 49
G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3387	I	6.1, 5.1	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3388	I	6.1, 5.1	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3389	I	6.1, 8	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Toxic by inhalation liquid, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3390	I	6.1, 8	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Vinyltrichlorosilane, stabilized.	3	UN1305	II	3, 8	A3, A7, B6, N34, T10, TP2, TP7, TP13.	None	206	243	1 L	5 L	B	40
	*		*		*	*	*		*	*			
	[ADD].												
	*		*		*	*	*		*	*			
	Amyl chloride	3	UN1107	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Amyl mercaptans	3	UN1111	II	3	A3, A6, IB2, T4, TP1.	None	202	242	5 L	60 L	B	95, 102
	*		*		*	*	*		*	*			
	Amyl nitrite	3	UN1113	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	E	40
	*		*		*	*	*		*	*			
	Butyl mercaptan	3	UN2347	II	3	A3, A6, IB2, T4, TP1.	150	202	242	5 L	60 L	D	52, 95
	*		*		*	*	*		*	*			
	Capacitor, *electric double layer (with an energy storage capacity greater than 0.3 Wh).*	9	UN3499		9	361	176	176	176	No limit	No limit	A.	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank or Cartridges for tools, blank.	1.4S	UN0014	II	None		63	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
D	Cartridges for tools, blank *(used to project fastening devices).*	1.4S	None		None		63	None	None	30 kg gross	30 kg gross	01	25
	*		*		*	*	*		*	*			
G	Chemical under pressure, corrosive, n.o.s.	2.2	UN3503		2.2, 8	362, T50, TP40	None	335	313	Forbidden	100 kg	D	40
	*		*		*	*	*		*	*			
G	Chemical under pressure, flammable, corrosive, n.o.s.	2.1	UN3505		2.1, 8	362, T50, TP40	None	335	313	Forbidden	75 kg	D	40

		*	*			*	*	*		*	*				
G	Chemical under pressure, flammable, n.o.s.	2.1	UN3501			2.1	362, T50, TP40	None	335	313	Forbidden	75 kg	D	40	
		*	*			*	*	*		*	*				
G	Chemical under pressure, flammable, toxic, n.o.s.	2.1	UN3504			2.1, 6.1	362, T50, TP40	None	335	313	Forbidden	75 kg	D	40	
		*	*			*	*	*		*	*				
G	Chemical under pressure, n.o.s.	2.2	UN3500			2.2	362, T50, TP40	None	335	313	75 kg	150 kg	B.		
		*	*			*	*	*		*	*				
G	Chemical under pressure, toxic, n.o.s.	2.2	UN3502			2.2, 6.1	362, T50, TP40	None	335	313	Forbidden	100 kg	D	40	
		*	*			*	*	*		*	*				
	Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde), see Aviation regulated liquid, n.o.s. *or* Other regulated substances, liquid, n.o.s.														
		*	*			*	*	*		*	*				
	Iodine monochloride, liquid.	8	UN3498	II		8	IB2, T7, TP2	154	202	242	1 L	30 L	D	40, 66, 74, 89, 90	
		*	*			*	*	*		*	*				
	Iodine monochloride, solid.	8	UN1792	II		8	B6, IB8, IP2, IP4, N41, T7, TP2.	None	212	240	Forbidden	50 kg	D	40, 66, 74, 89, 90	
		*	*			*	*	*		*	*				
	Krill meal	4.2	UN3497	II		4.2	155, IB6, IP2, T3, TP33.	None	212	242	No limit	No limit	B	88, 128	
				III		4.2	155, IB8, IP3, T1, TP33.	None	213	242	No limit	No limit	A	128	
		*	*			*	*	*		*	*				
A W	Mercury contained in manufactured articles.	8	UN3506	III		8, 6.1	A192	164	None	None	No limit	No limit	B	40, 97	
		*	*			*	*	*		*	*				
G	Nitriles, liquid, toxic, n.o.s.	6.1	UN3276	I		6.1	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	52	
				II		6.1	IB2, T11, TP2, TP27.	153	202	243	5 L	60 L	B	52	
				III		6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A	52	
		*	*			*	*	*		*	*				
G	Nitriles, solid, toxic, n.o.s	6.1	UN3439	I		6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	D	52	
				II		6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	52	
				III		6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	52	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
G	Organometallic compound, liquid, toxic, n.o.s.	6.1	UN3282	I	6.1	T14, TP2, TP13, TP27.	None	201	242	1 L	30 L	B.	
				II	6.1	IB2, T11, TP2, TP27.	153	202	242	5 L	60 L	B.	
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A.	
		*	*		*	*	*		*	*			
G	Organometallic compound, solid, toxic, n.o.s.	6.1	UN3467	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B.	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B.	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A.	
		*	*		*	*	*		*	*			
G	Organophosphorus compound, solid, toxic, n.o.s.	6.1	UN3464	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B.	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B.	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A.	
		*	*		*	*	*		*	*			
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3488	I	6.1, 3, 8	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40, 125
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3489	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40, 125
G	Toxic by inhalation liquid, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3381	I	6.1	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40

G	Toxic by inhalation liquid, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3382	I	6.1	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, flammable, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3383	I	6.1, 3	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, flammable, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3384	I	6.1, 3	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3385	I	6.1, 4.3	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3386	I	6.1, 4.3	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3490	I	6.1, 4.3, 3	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	21, 28, 40, 49
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an LC50 lower or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3491	I	6.1, 4.3, 3	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	21, 28, 40, 49

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3387	I	6.1, 5.1	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3388	I	6.1, 5.1	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, corrosive, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3389	I	6.1, 8	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, corrosive, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3390	I	6.1, 8	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Vinyltrichlorosilane	3	UN1305	II	3, 8	A3, A7, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	B	40
	*		*		*	*	*		*	*			
	[REVISE].												
	*		*		*	*	*		*	*			
	Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	25, 87, 126
	Aerosols, *flammable, (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	None	None	75 kg	150 kg	A	25, 87, 126
	Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	304	None	Forbidden	150 kg	A	25, 87, 126
	Aerosols, *non-flammable, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2		306	None	None	75 kg	150 kg	A	25, 87, 126

	Aerosols, *poison, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	25, 87, 126
	*	*		*	*	*	*	*					
I	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	1.4G	UN0503	II	1.4G	161, A200	None	62	None	Forbidden	75 kg	02	25
	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	9	UN3268	III	9	160, A200	166	166	166	25 kg	100 kg	A.	
	*	*		*	*	*	*	*					
	Ammonium nitrate based fertilizer.	5.1	UN2067	III	5.1	52, 150, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	B	25, 59, 60, 66, 117
	Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives.*	5.1	UN3375	II	5.1	147, 163	None	214	214	Forbidden	Forbidden	D	25, 59, 60, 66, 124
D	Ammonium nitrate-fuel oil mixture *containing only prilled ammonium nitrate and fuel oil.*	1.5D	NA0331	II	1.5D		None	62	None	Forbidden	Forbidden	03	25, 19E
	*	*		*	*	*	*	*					
	Ammonium nitrate, *with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	1.1D	UN0222	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance.*	5.1	UN1942	III	5.1	A1, A29, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	25, 59, 60, 116
	*	*		*	*	*	*	*					
	Ammonium perchlorate	1.1D	UN0402	II	1.1D	107	None	62	None	Forbidden	Forbidden	04	25, 19E
	*	*		*	*	*	*	*					
	Ammonium picrate, *dry or wetted with less than 10 percent water, by mass.*	1.1D	UN0004	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E, 19E
	*	*		*	*	*	*	*					
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.2G	UN0171	II	1.2G			62	62	Forbidden	Forbidden	03	25
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.3G	UN0254	II	1.3G			62	62	Forbidden	Forbidden	03	25

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.4G	UN0297	II	1.4G			62	62	Forbidden	75 kg	02	25
	Ammunition, incendiary *liquid or gel, with burster, expelling charge or propelling charge.*	1.3J	UN0247	II	1.3J			62	None	Forbidden	Forbidden	05	25, 23E
	*		*		*	*	*		*	*			
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge.*	1.2H	UN0243	II	1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge.*	1.3H	UN0244	II	1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, incendiary *with or without burster, expelling charge, or propelling charge.*	1.2G	UN0009	II	1.2G			62	62	Forbidden	Forbidden	03	25
	Ammunition, incendiary *with or without burster, expelling charge, or propelling charge.*	1.3G	UN0010	II	1.3G			62	62	Forbidden	Forbidden	03	25
	Ammunition, incendiary *with or without burster, expelling charge or propelling charge.*	1.4G	UN0300	II	1.4G			62	62	Forbidden	75 kg	02	25
	Ammunition, practice	1.4G	UN0362	II	1.4G			62	62	Forbidden	75 kg	02	25
	Ammunition, practice	1.3G	UN0488	II	1.3G			62	62	Forbidden	Forbidden	03	25
	Ammunition, proof	1.4G	UN0363	II	1.4G			62	62	Forbidden	75 kg	02	25
	*		*		*	*	*		*	*			
	Ammunition smoke, white phosphorus *with burster, expelling charge, or propelling charge.*	1.2H	UN0245	II	1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, smoke, white phosphorus *with burster, expelling charge, or propelling charge.*	1.3H	UN0246	II	1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.2G	UN0015	II	1.2G			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.3G	UN0016	II	1.3G			62	62	Forbidden	Forbidden	03	25, 17E

	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.4G	UN0303	II	1.4G			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
	*	*		*	*	*		*	*				
	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.2G	UN0018	II	1.2G, 8, 6.1.			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.3G	UN0019	II	1.3G, 8, 6.1.			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.4G	UN0301	II	1.4G, 8, 6.1.			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
	*	*		*	*	*		*	*				
G	Ammunition, toxic *with burster, expelling charge, or propelling charge.*	1.2K	UN0020	II	1.2K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
G	Ammunition, toxic *with burster, expelling charge, or propelling charge.*	1.3K	UN0021	II	1.3K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	*	*		*	*	*		*	*				
	Articles, explosive, extremely insensitive *or* Articles, EEI.	1.6N	UN0486	II	1.6N		None	62	None	Forbidden	Forbidden	03	25
G	Articles, explosive, n.o.s	1.4S	UN0349	II	1.4S	101	None	62	None	25 kg	100 kg	01	25
G	Articles, explosive, n.o.s	1.4B	UN0350	II	1.4B	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s	1.4C	UN0351	II	1.4C	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s	1.4D	UN0352	II	1.4D	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s	1.4G	UN0353	II	1.4G	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s	1.1L	UN0354	II	1.1L	101	None	62	None	Forbidden	Forbidden	02	25, 14E, 15E
G	Articles, explosive, n.o.s	1.2L	UN0355	II	1.2L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s	1.3L	UN0356	II	1.3L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s	1.1C	UN0462	II	1.1C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.1D	UN0463	II	1.1D	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.1E	UN0464	II	1.1E	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.1F	UN0465	II	1.1F	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s	1.2C	UN0466	II	1.2C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.2D	UN0467	II	1.2D	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.2E	UN0468	II	1.2E	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.2F	UN0469	II	1.2F	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s	1.3C	UN0470	II	1.3C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.4E	UN0471	II	1.4E	101	None	62	None	Forbidden	75 kg	03	25
G	Articles, explosive, n.o.s	1.4F	UN0472	II	1.4F	101	None	62	None	Forbidden	Forbidden	05	25
	*	*		*	*	*		*	*				
	Articles, pyrophoric	1.2L	UN0380	II	1.2L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Articles, pyrotechnic *for technical purposes.*	1.1G	UN0428	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic *for technical purposes.*	1.2G	UN0429	II	1.2G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic *for technical purposes.*	1.3G	UN0430	II	1.3G		None	62	None	Forbidden	Forbidden	03	25

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Articles, pyrotechnic *for technical purposes.*	1.4G	UN0431	II	1.4G		None	62	None	Forbidden	75 kg	02	25
	Articles, pyrotechnic *for technical purposes.*	1.4S	UN0432	II	1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
A, G	Aviation regulated liquid, n.o.s.	9	UN3334		9	A35, A189	155	204		450 L	450 L	A.	
	*		*		*	*	*		*	*			
A, G	Aviation regulated solid, n.o.s.	9	UN3335		9	A35	155	204		400 kg	400 kg	A.	
	*		*		*	*	*		*	*			
	Barium azide, *dry or wetted with less than 50 percent water, by mass.*	1.1A	UN0224	II	1.1A, 6.1	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*	*	*		*	*			
	Batteries, dry, containing potassium hydroxide solid, *electric, storage.*	8	UN3028	III	8	237, 304	None	213	None	25 kg	230 kg	A	52
	*		*		*	*	*		*	*			
W	Batteries, nickel-metal hydride see Batteries, dry, sealed, n.o.s. *for nickel-metal hydride batteries transported by modes other than vessel.*	9	UN3496		9	340						A	25
	*		*		*	*	*		*	*			
	Batteries, wet, filled with acid, *electric storage.*	8	UN2794	III	8		159	159	159	30 kg	No limit	A	146
	*		*		*	*	*		*	*			
	Batteries, wet, filled with alkali, *electric storage.*	8	UN2795	III	8		159	159	159	30 kg	No limit	A	52, 146
	*		*		*	*	*		*	*			
	Benzyldimethylamine	8	UN2619	II	8, 3	B2, IB2, T7, TP2	154	202	243	1 L	30 L	A	25, 40
	*		*		*	*	*		*	*			
	Black powder, compressed *or* Gunpowder, compressed *or* Black powder, in pellets *or* Gunpowder, in pellets.	1.1D	UN0028	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Black powder *or* Gunpowder, *granular or as a meal.*	1.1D	UN0027	II	1.1D		None	62	None	Forbidden	Forbidden	04	25

*	*		*	*	*	*	*						
Bombs, photo-flash	1.1F	UN0037	II	1.1F			62	None	Forbidden	Forbidden	05	25
Bombs, photo-flash	1.1D	UN0038	II	1.1D			62	62	Forbidden	Forbidden	04	25
Bombs, photo-flash	1.2G	UN0039	II	1.2G			62	62	Forbidden	Forbidden	03	25
Bombs, photo-flash	1.3G	UN0299	II	1.3G			62	62	Forbidden	Forbidden	03	25
*	*		*	*	*	*	*						
Bombs, *with bursting charge*.	1.1F	UN0033	II	1.1F			62	None	Forbidden	Forbidden	05	25
Bombs, *with bursting charge*.	1.1D	UN0034	II	1.1D			62	62	Forbidden	Forbidden	04	25
Bombs, *with bursting charge*.	1.2D	UN0035	II	1.2D			62	62	Forbidden	Forbidden	04	25
Bombs, *with bursting charge*.	1.2F	UN0291	II	1.2F			62	None	Forbidden	Forbidden	05	25
Bombs with flammable liquid, *with bursting charge*.	1.1J	UN0399	II	1.1J			62	None	Forbidden	Forbidden	05	25, 23E
Bombs with flammable liquid, *with bursting charge*.	1.2J	UN0400	II	1.2J			62	None	Forbidden	Forbidden	05	25, 23E
Boosters with detonator	1.1B	UN0225	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
Boosters with detonator	1.2B	UN0268	II	1.2B		None	62	None	Forbidden	Forbidden	05	25
Boosters, *without detonator*.	1.1D	UN0042	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
Boosters, *without detonator*.	1.2D	UN0283	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
Boron trifluoride	2.3	UN1008		2.3, 8	2, 238, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
*	*		*	*	*	*	*						
Boron trifluoride dimethyl etherate.	4.3	UN2965	I	4.3, 8, 3	A19, T10, TP2, TP7, TP13.	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
*	*		*	*	*	*	*						
Bursters, *explosive*	1.1D	UN0043	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene.	4.1	UN2956	III	4.1	159	None	223	None	Forbidden	Forbidden	D	12, 25, 127
*	*		*	*	*	*	*						
Calcium hypochlorite, dry, corrosive *or* Calcium hypochlorite mixtures, dry, corrosive *with more than 39% available chlorine (8.8% available oxygen)*.	5.1	UN3485	II	5.1, 8	165, 166, A7, A9, IB8, IP2, IP4, IP13, N34, W9.	152	212	None	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
Calcium hypochlorite, dry *or* Calcium hypochlorite mixtures dry *with more than 39 percent available chlorine (8.8 percent available oxygen)*.	5.1	UN1748	II	5.1	165, 166, A7, A9, IB8, IP2, IP4, IP13, N34, W9.	152	212	None	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
			III	5.1	165, 171, A7, A9, IB8, IP4, IP13, N34, W9.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Calcium hypochlorite, hydrated, corrosive *or* Calcium hypochlorite, hydrated mixture, corrosive *with not less than 5.5% but not more than 16% water.*	5.1	UN3487	II	5.1, 8	165, IB8, IP2, IP4, IP13, W9.	152	212	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
				III	5.1, 8	165, IB8, IP4, W9.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 16 percent water.*	5.1	UN2880	II	5.1	165, IB8, IP2, IP4, IP13, W9.	152	212	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
				III	5.1	165, 171, IB8, IP4, IP13, W9.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142
	Calcium hypochlorite mixture, dry, corrosive *with more than 10% but not more than 39% available chlorine.*	5.1	UN3486	III	5.1, 8	165, A1, A29, IB8, IP3, IP13, N34, W9, W10.	152	213	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
*	*		*		*	*	*		*	*			
	Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine.*	5.1	UN2208	III	5.1	165, A1, A29, IB8, IP3, IP13, N34, W9, W10.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142
*	*		*		*	*	*		*	*			
	Calcium nitrate	5.1	UN1454	III	5.1	34, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A.	
*	*		*		*	*	*		*	*			
	Cartridges, flash	1.1G	UN0049	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
	Cartridges, flash	1.3G	UN0050	II	1.3G		None	62	None	Forbidden	75 kg	03	25
	Cartridges for weapons, blank.	1.1C	UN0326	II	1.1C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, blank.	1.2C	UN0413	II	1.2C		None	62	None	Forbidden	Forbidden	04	25
*	*		*		*	*	*		*	*			
	Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.3C	UN0327	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.4C	UN0338	II	1.4C		None	62	None	Forbidden	75 kg	02	25
	Cartridges for weapons, inert projectile.	1.2C	UN0328	II	1.2C		None	62	62	Forbidden	Forbidden	04	25

	Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.4S	UN0012	II	None		63	62	None	25 kg	100 kg	01	25
	Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.4C	UN0339	II	1.4C		None	62	None	Forbidden	75 kg	02	25
	Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.3C	UN0417	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, *with bursting charge.*	1.1F	UN0005	II	1.1F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, *with bursting charge.*	1.1E	UN0006	II	1.1E		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, *with bursting charge.*	1.2F	UN0007	II	1.2F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, *with bursting charge.*	1.2E	UN0321	II	1.2E		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, *with bursting charge.*	1.4F	UN0348	II	1.4F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, *with bursting charge.*	1.4E	UN0412	II	1.4E		None	62	62	Forbidden	75 kg	03	25
	Cartridges, oil well	1.3C	UN0277	II	1.3C		None	62	62	Forbidden	Forbidden	04	25
	Cartridges, oil well	1.4C	UN0278	II	1.4C		None	62	62	Forbidden	75 kg	02	25
	Cartridges, power device	1.3C	UN0275	II	1.3C		None	62	62	Forbidden	75 kg	04	25
	Cartridges, power device	1.4C	UN0276	II	1.4C	110	None	62	62	Forbidden	75 kg	02	25
	Cartridges, power device	1.4S	UN0323	II	1.4S	110, 347	None	62	62	25 kg	100 kg	01	25
	Cartridges, power device	1.2C	UN0381	II	1.2C		None	62	62	Forbidden	Forbidden	04	25
	*	*		*	*	*	*	*					
	Cartridges, signal	1.3G	UN0054	II	1.3G		None	62	None	Forbidden	75 kg	03	25
	Cartridges, signal	1.4G	UN0312	II	1.4G		None	62	None	Forbidden	75 kg	02	25
	Cartridges, signal	1.4S	UN0405	II	1.4S		None	62	None	25 kg	100 kg	01	25
	*	*		*	*	*	*	*					
D	Cartridges, small arms	1.4S	None		None		63	None	None	30 kg gross	30 kg gross	A.	
	*	*		*	*	*	*	*					
	Cases, cartridge, empty with primer.	1.4S	UN0055	II	1.4S	50	None	62	None	25 kg	100 kg	01	25
	Cases, cartridges, empty with primer.	1.4C	UN0379	II	1.4C	50	None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer.	1.4C	UN0446	II	1.4C		None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer.	1.3C	UN0447	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	*	*		*	*	*	*	*					
	Cells, containing sodium	4.3	UN3292	II	4.3		189	189	189	25 kg	No limit	A.	
	*	*		*	*	*	*	*					
	Charges, bursting, plastics bonded.	1.1D	UN0457	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded.	1.2D	UN0458	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded.	1.4D	UN0459	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, bursting, plastics bonded.	1.4S	UN0460	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, demolition	1.1D	UN0048	II	1.1D		None	62	62	Forbidden	Forbidden	04	25
	Charges, depth	1.1D	UN0056	II	1.1D		None	62	62	Forbidden	Forbidden	04	25
	*	*		*	*	*	*	*					
	Charges, explosive, commercial *without detonator.*	1.1D	UN0442	II	1.1D		None	62	None	Forbidden	Forbidden	04	25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Charges, explosive, commercial *without detonator.*	1.2D	UN0443	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, explosive, commercial *without detonator.*	1.4D	UN0444	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, explosive, commercial *without detonator.*	1.4S	UN0445	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, propelling	1.1C	UN0271	II	1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.3C	UN0272	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.2C	UN0415	II	1.2C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.4C	UN0491	II	1.4C		None	62	None	Forbidden	75 kg	02	25
	Charges, propelling, for cannon.	1.3C	UN0242	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon.	1.1C	UN0279	II	1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon.	1.2C	UN0414	II	1.2C		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, flexible, linear.	1.4D	UN0237	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, shaped, flexible, linear.	1.1D	UN0288	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, *without detonator.*	1.1D	UN0059	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, *without detonator.*	1.2D	UN0439	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, *without detonator.*	1.4D	UN0440	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, shaped, *without detonator.*	1.4S	UN0441	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, supplementary explosive.	1.1D	UN0060	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
G	Chlorosilanes, flammable, corrosive, n.o.s.	3	UN2985	II	3, 8	T14, TP2, TP7, TP13, TP27.	None	206	243	Forbidden	5 L	B	40
	*		*		*	*	*		*	*			
G	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 8, 3	T14, TP2, TP7, TP13, TP27.	None	206	243	Forbidden	30 L	C	40, 125
	*		*		*	*	*		*	*			
G	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	T14, TP2, TP7, TP13, TP27.	None	206	243	Forbidden	30 L	C	40
	*		*		*	*	*		*	*			
G	Components, explosive train, n.o.s.	1.2B	UN0382	II	1.2B	101	None	62	None	Forbidden	Forbidden	05	25
G	Components, explosive train, n.o.s.	1.4B	UN0383	II	1.4B	101	None	62	None	Forbidden	75 kg	05	25
G	Components, explosive train, n.o.s.	1.4S	UN0384	II	1.4S	101	None	62	None	25 kg	100 kg	01	25
G	Components, explosive train, n.o.s.	1.1B	UN0461	II	1.1B	101	None	62	None	Forbidden	Forbidden	05	25

		*		*		*	*	*		*	*				
G	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*		1.2L	UN0248	II	1.2L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
G	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*		1.3L	UN0249	II	1.3L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
		*		*		*	*	*		*	*				
AW	Copra		4.2	UN1363	III	4.2	IB8, IP3, IP7	None	213	241	Forbidden	Forbidden	A	13, 25, 119
		*		*		*	*	*		*	*				
	Cord, detonating, *flexible*		1.1D	UN0065	II	1.1D	102	63(a)	62	None	Forbidden	Forbidden	04	25
	Cord, detonating, *flexible*		1.4D	UN0289	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Cord detonating *or* Fuse detonating *metal clad.*		1.2D	UN0102	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Cord, detonating *or* Fuse, detonating *metal clad.*		1.1D	UN0290	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cord, detonating, mild effect *or* Fuse, detonating, mild effect *metal clad.*		1.4D	UN0104	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Cord, igniter		1.4G	UN0066	II	1.4G		None	62	None	Forbidden	75 kg	02	25
		*		*		*	*	*		*	*				
	Cutters, cable, explosive		1.4S	UN0070	II	1.4S		None	62	62	25 kg	100 kg	01	25
		*		*		*	*	*		*	*				
	Cyclotetramethylenetetranitramine, desensitized *or* Octogen, desensitized *or* HMX, desensitized.		1.1D	UN0484	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotetramethylenetetranitramine, wetted *or* HMX, wetted *or* Octogen, wetted *with not less than 15 percent water, by mass.*		1.1D	UN0226	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
		*		*		*	*	*		*	*				
	Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized *or* Hexogen, desensitized *or* RDX, desensitized.		1.1D	UN0483	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotrimethylenetrinitramine, wetted *or* Cyclonite, wetted *or* Hexogen, wetted *or* RDX, wetted *with not less than 15 percent water by mass.*		1.1D	UN0072	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
		*		*		*	*	*		*	*				
	Deflagrating metal salts of aromatic nitroderivatives, n.o.s.		1.3C	UN0132	II	1.3C		None	62	None	Forbidden	Forbidden	04	25, 5E

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Detonator assemblies, non-electric *for blasting*.	1.1B	UN0360	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonator assemblies, non-electric, *for blasting*.	1.4B	UN0361	II	1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonator assemblies, non-electric, *for blasting*.	1.4S	UN0500	II	1.4S	347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators, electric, *for blasting*.	1.1B	UN0030	II	1.1B		63(f), 63(g)	62	None	Forbidden	Forbidden	05	25
	Detonators, electric, *for blasting*.	1.4B	UN0255	II	1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonators, electric *for blasting*.	1.4S	UN0456	II	1.4S	347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators for ammunition.	1.1B	UN0073	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition.	1.2B	UN0364	II	1.2B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition.	1.4B	UN0365	II	1.4B	103	None	62	None	Forbidden	75 kg	05	25
	Detonators for ammunition.	1.4S	UN0366	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
	Detonators, non-electric, *for blasting*.	1.1B	UN0029	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonators, non-electric, *for blasting*.	1.4B	UN0267	II	1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonators, non-electric *for blasting*.	1.4S	UN0455	II	1.4S	347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
	Diazodinitrophenol, wetted *with not less than 40 percent water or mixture of alcohol and water, by mass*.	1.1A	UN0074	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*	*	*		*	*			
	Dichlorophenyl isocyanates.	6.1	UN2250	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	25, 40
	*		*		*	*	*		*	*			
	Dicyclohexylammonium nitrite.	4.1	UN2687	III	4.1	IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A	25
	*		*		*	*	*		*	*			
D	Diesel fuel	3	NA1993	III	None	144, 363, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
I	Diesel fuel	3	UN1202	III	3	144, 363, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	

	*		*		*	*	*	*	*	*				
	Diethyleneglycol dinitrate, desensitized *with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass.*	1.1D	UN0075	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
	*		*		*	*	*	*	*	*				
	Dimethyl disulfide	3	UN2381	II	3, 6.1	IB2, T7, TP2, TP13, TP39.	150	202	242	Forbidden	Forbidden	B	40
	*		*		*	*	*	*	*	*				
	Dimethyldichlorosilane	3	UN1162	II	3, 8	B77, T10, TP2, TP7, TP13.	None	206	243	Forbidden	Forbidden	B	40
	*		*		*	*	*	*	*	*				
	Dinitroglycoluril *or* Dingu	1.1D	UN0489	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*	*	*	*				
	Dinitrophenol, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0076	II	1.1D, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*	*	*	*	*	*				
	Dinitrophenolates *alkali metals, dry or wetted with less than 15 percent water, by mass.*	1.3C	UN0077	II	1.3C, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*	*	*	*	*	*				
	Dinitroresorcinol, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0078	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*	*	*	*	*	*				
	Dinitrosobenzene	1.3C	UN0406	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*	*	*	*				
	Dipicryl sulfide, *dry or wetted with less than 10 percent water, by mass.*	1.1D	UN0401	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*	*	*	*				
	Engines, internal combustion, *or* Engines, fuel cell, *flammable gas powered.*	9	UN3166		9	135, A200	220	220	220	Forbidden	No limit	A.	
	Engines internal combustion, *or* Engines, fuel cell, *flammable liquid powered.*	9	UN3166		9	135, A200	220	220	220	No limit	No limit	A.	
	*		*		*	*	*	*	*	*				
G	Environmentally hazardous substance, solid, n.o.s.	9	UN3077	III	9	8, 146, 335, A112, B54, B120, IB8, IP3, N20, T1, TP33.	155	213	240	No limit	No limit	A.	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Ethanol and gasoline mixture *or* Ethanol and motor spirit mixture *or* Ethanol and petrol mixture, *with more than 10% ethanol*.	3	UN3475	II	3	144, 177, 363, IB2, T4, TP1.	150	202	242	5 L	60 L	E.	
	*		*		*	*	*		*	*			
	Ethyltrichlorosilane	3	UN1196	II	3, 8	A7, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	B	40
	*		*		*	*	*		*	*			
	Explosive, blasting, type A.	1.1D	UN0081	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E, 21E
	Explosive, blasting, type B.	1.1D	UN0082	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type B *or* Agent blasting, Type B.	1.5D	UN0331	II	1.5D	105, 106	None	62	None	Forbidden	Forbidden	03	25, 19E
	Explosive, blasting, type C.	1.1D	UN0083	II	1.1D	123	None	62	None	Forbidden	Forbidden	04	25, 22E
	Explosive, blasting, type D.	1.1D	UN0084	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Explosive, blasting, type E.	1.1D	UN0241	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type E *or* Agent blasting, Type E.	1.5D	UN0332	II	1.5D	105, 106	None	62	None	Forbidden	Forbidden	03	25, 19E
	*		*		*	*	*		*	*			
	Fireworks	1.1G	UN0333	II	1.1G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.2G	UN0334	II	1.2G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.3G	UN0335	II	1.3G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.4G	UN0336	II	1.4G	108	None	62	None	Forbidden	75 kg	02	25
	Fireworks	1.4S	UN0337	II	1.4S	108	None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
W	Fish meal, stabilized *or* Fish scrap, stabilized.	9	UN2216	III	None	155, IB8, IP3, T1, TP33.	155	218	218	No limit	No limit	B	25, 88, 122, 128
	*		*		*	*	*		*	*			
	Fish meal, unstablized *or* Fish scrap, unstabilized.	4.2	UN1374	II	4.2	155, A1, A19, IB8, IP2, IP4, T3, TP33.	None	212	241	15 kg	50 kg	B	18, 25, 128
	*		*		*	*	*		*	*			
	Flares, aerial	1.3G	UN0093	II	1.3G		None	62	None	Forbidden	75 kg	03	25
	Flares, aerial	1.4G	UN0403	II	1.4G		None	62	None	Forbidden	75 kg	02	25
	Flares, aerial	1.4S	UN0404	II	1.4S		None	62	None	25 kg	100 kg	01	25
	Flares, aerial	1.1G	UN0420	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
	Flares, aerial	1.2G	UN0421	II	1.2G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*	*	*		*	*			
	Flares, surface	1.3G	UN0092	II	1.3G		None	62	None	Forbidden	75 kg	03	25

Flares, surface	1.1G	UN0418	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
Flares, surface	1.2G	UN0419	II	1.2G		None	62	None	Forbidden	Forbidden	03	25
*	*		*	*	*	*	*	*				
Flash powder	1.1G	UN0094	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
Flash powder	1.3G	UN0305	II	1.3G		None	62	None	Forbidden	Forbidden	03	25
*	*		*	*	*	*	*	*				
Fracturing devices, explosive, *without detonators for oil wells*.	1.1D	UN0099	II	1.1D		None	62	62	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*	*				
Fuel, aviation, turbine engine.	3	UN1863	I	3	144, 363, T11, TP1, TP8, TP28.	150	201	243	1 L	30 L	E.	
			II	3	144, 363, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
			III	3	144, 363, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
*	*		*	*	*	*	*	*				
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing corrosive substances*.	8	UN3477		8	328	230	230	230	5 kg	50 kg	A.	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing flammable liquids*.	3	UN3473		3	328	230	230	230	5 kg	50 kg	A.	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing hydrogen in metal hydride*.	2.1	UN3479		2.1	328	230	230	230	1 kg	15 kg	B.	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing liquefied flammable gas*.	2.1	UN3478		2.1	328	230	230	230	1 kg	15 kg	B.	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing water-reactive substances*.	4.3	UN3476		4.3	328	230	230	230	5 kg	50 kg	A.	
*	*		*	*	*	*	*	*				
Fuse, igniter *tubular metal clad*.	1.4G	UN0103	II	1.4G		None	62	None	Forbidden	75 kg	02	25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Fuse, non-detonating *instantaneous or quickmatch.*	1.3G	UN0101	II	1.3G		None	62	None	Forbidden	Forbidden	03	25
	Fuse, safety	1.4S	UN0105	II	1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
	Fuzes, detonating	1.1B	UN0106	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.2B	UN0107	II	1.2B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.4B	UN0257	II	1.4B	116	None	62	None	Forbidden	75 kg	05	25
	Fuzes, detonating	1.4S	UN0367	II	1.4S	116	None	62	None	25 kg	100 kg	01	25
	Fuzes, detonating, *with protective features.*	1.1D	UN0408	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, *with protective features.*	1.2D	UN0409	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, *with protective features.*	1.4D	UN0410	II	1.4D	116	None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.3G	UN0316	II	1.3G		None	62	None	Forbidden	Forbidden	03	25
	Fuzes, igniting	1.4G	UN0317	II	1.4G		None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.4S	UN0368	II	1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
	Gallium	8	UN2803	III	8	T1, TP33	None	162	240	20 kg	20 kg	B	25
	*		*		*	*	*		*	*			
	Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	UN1203	II	3	144, 177, 363, B1, B33, IB2, T8.	150	202	242	5 L	60 L	E.	
	*		*		*	*	*		*	*			
	Grenades, *hand or rifle, with bursting charge.*	1.1D	UN0284	II	1.1D			62	None	Forbidden	Forbidden	04	25
	Grenades, *hand or rifle, with bursting charge.*	1.2D	UN0285	II	1.2D			62	None	Forbidden	Forbidden	04	25
	Grenades, *hand or rifle, with bursting charge.*	1.1F	UN0292	II	1.1F			62	None	Forbidden	Forbidden	05	25
	Grenades, *hand or rifle, with bursting charge.*	1.2F	UN0293	II	1.2F			62	None	Forbidden	Forbidden	05	25
	*		*		*	*	*		*	*			
	Grenades, practice, *hand or rifle.*	1.4S	UN0110	II	1.4S			62	None	25 kg	100 kg	01	25
	Grenades, practice, *hand or rifle.*	1.3G	UN0318	II	1.3G			62	None	Forbidden	Forbidden	03	25
	Grenades, practice, *hand or rifle.*	1.2G	UN0372	II	1.2G			62	None	Forbidden	Forbidden	03	25
	Grenades practice, *hand or rifle.*	1.4G	UN0452	II	1.4G			62	None	Forbidden	75 kg	02	25
	*		*		*	*	*		*	*			
	Guanyl nitrosaminoguanylidene hydrazine, wetted *with not less than 30 percent water, by mass.*	1.1A	UN0113	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25

	*		*		*	*	*		*	*				
	Guanyl nitrosaminoguanyltetrazene, wetted *or* Tetrazene, wetted *with not less than 30 percent water or mixture of alcohol and water, by mass.*	1.1A	UN0114	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25	
	*		*		*	*	*		*	*				
	Hexanitrodiphenylamine *or* Dipicrylamine *or* Hexyl.	1.1D	UN0079	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
	*		*		*	*	*		*	*				
	Hexanitrostilbene	1.1D	UN0392	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
	*		*		*	*	*		*	*				
	Hexolite, *or* Hexotol *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0118	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
	*		*		*	*	*		*	*				
	Hexotonal	1.1D	UN0393	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
	*		*		*	*	*		*	*				
	Hydrogen in a metal hydride storage system *or* Hydrogen in a metal hydride storage system contained in equipment *or* Hydrogen in a metal hydride storage system packed with equipment.	2.1	UN3468		2.1	167	None	311	None	Forbidden	100 kg	D.		
	*		*		*	*	*		*	*				
	1–Hydroxybenzotriazole, anhydrous, *dry or wetted with less than 20 percent water, by mass.*	1.3C	UN0508		1.3C		None	62	None	Forbidden	Forbidden	04	25	
	*		*		*	*	*		*	*				
G	Hypochlorites, inorganic, n.o.s.	5.1	UN3212	II	5.1	349, A9, IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 106, 116, 118	
	*		*		*	*	*		*	*				
	Igniters	1.1G	UN0121	II	1.1G		None	62	None	Forbidden	Forbidden	03	25	
	Igniters	1.2G	UN0314	II	1.2G		None	62	None	Forbidden	Forbidden	03	25	
	Igniters	1.3G	UN0315	II	1.3G		None	62	None	Forbidden	Forbidden	03	25	
	Igniters	1.4G	UN0325	II	1.4G		None	62	None	Forbidden	75 kg	02	25	
	Igniters	1.4S	UN0454	II	1.4S		None	62	None	25 kg	100 kg	01	25	

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
G	Isocyanates, toxic, flammable, n.o.s. *or* Isocyanate solutions, toxic, flammable, n.o.s., *flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C.*	6.1	UN3080	II	6.1, 3	IB2, T11, TP2, TP13, TP27.	153	202	243	5 L	60 L	B	25, 40
G	Isocyanates, toxic, n.o.s. *or* Isocyanate solutions, toxic, n.o.s., *flash point more than 61 degrees C and boiling point less than 300 degrees C.*	6.1	UN2206	II	6.1	IB2, T11, TP2, TP13, TP27.	153	202	243	5 L	60 L	E	25, 40
				III	6.1	IB3, T7, TP1, TP13, TP28.	153	203	241	60 L	220 L	E	25, 40
	Isocyanatobenzotrifluorides.	6.1	UN2285	II	6.1, 3	5, IB2, T7, TP2	153	202	243	5 L	60 L	D	25, 40
	*		*		*	*	*		*	*			
	Isosorbide-5-mononitrate	4.1	UN3251	III	4.1	66, 159, IB8	151	223	240	Forbidden	Forbidden	D	12, 25, 40, 84
	*		*		*	*	*		*	*			
D	Jet perforating guns, charged *oil well, with detonator.*	1.1D	NA0124	II	1.1D	55, 56	None	62	None	Forbidden	Forbidden	04	25
D	Jet perforating guns, charged *oil well, with detonator.*	1.4D	NA0494	II	1.4D	55, 56	None	62	None	Forbidden	Forbidden	02	25
	Jet perforating guns, charged, *oil well, without detonator.*	1.4D	UN0494	II	1.4D	55, 114	None	62	None	Forbidden	300 kg	02	25
	Jet perforating guns, charged *oil well, without detonator.*	1.1D	UN0124	II	1.1D	55	None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Kerosene	3	UN1223	III	3	144, 363, B1, IB3, T2, TP2.	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Lead azide, wetted *with not less than 20 percent water or mixture of alcohol and water, by mass.*	1.1A	UN0129	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25

	*		*		*	*	*		*	*				
	Lead styphnate, wetted *or* Lead trinitroresorcinate, wetted *with not less than 20 percent water or mixture of alcohol and water, by mass.*	1.1A	UN0130	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25	
	*		*		*	*	*		*	*				
	Lighters, fuse	1.4S	UN0131	II	1.4S		None	62	None	25 kg	100 kg	01	25	
	*		*		*	*	*		*	*				
	Lithium battery	9	UN3090	II	9	29, 188, 189, 190, A54, A55, A100..	185	185	None	See A100	35 kg	A.		
	*		*		*	*	*		*	*				
	Lithium batteries, contained in equipment.	9	UN3091	II	9	29, 188, 189, 190, 360, A54, A55, A101, A104.	185	185	None	See A101, A104.	35 kg	A.		
	*		*		*	*	*		*	*				
	Lithium batteries packed with equipment.	9	UN3091	II	9	29, 188, 189, 190, A54, A55, A101, A103.	185	185	None	See A101, A103.	35 kg	A.		
	*		*		*	*	*		*	*				
	Lithium hypochlorite, dry *or* Lithium hypochlorite mixture.	5.1	UN1471	II	5.1	A9, IB8, IP2, IP4, N34, T3, TP33.	152	212	240	5 kg	25 kg	A	4, 25, 52, 56, 58, 69, 106, 116	
				III	5.1	IB8, IP3, N34, T1, TP33.	152	213	240	25 kg	100 kg	A	4, 25, 52, 56, 58, 69, 106, 116	
	*		*		*	*	*		*	*				
	Magnesium nitrate	5.1	UN1474	III	5.1	332, A1, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A.		
	*		*		*	*	*		*	*				
	Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, or mixture of alcohol and water, by mass.*	1.1D	UN0133	II	1.1D	121	None	62	None	Forbidden	Forbidden	04	25	
	*		*		*	*	*		*	*				
	5–Mercaptotetrazol-1-acetic acid.	1.4C	UN0448	II	1.4C		None	62	None	Forbidden	75 kg	02	25	
	*		*		*	*	*		*	*				
A W	Mercury	8	UN2809	III	8, 6.1	365	164	164	240	35 kg	35 kg	B	40, 97	
	*		*		*	*	*		*	*				
	Mercury fulminate, wetted *with not less than 20 percent water, or mixture of alcohol and water, by mass.*	1.1A	UN0135	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25	

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Methacrylonitrile, stabilized.	6.1	UN3079	I	6.1, 3	2, B9, B14, B32, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	12, 25, 40
	*		*		*	*	*		*	*			
	Methyltrichlorosilane	3	UN1250	II	3, 8	A7, B6, B77, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	B	40
	*		*		*	*	*		*	*			
	Mines *with bursting charge.*	1.1F	UN0136	II	1.1F			62	None	Forbidden	Forbidden	05	25
	Mines *with bursting charge.*	1.1D	UN0137	II	1.1D			62	62	Forbidden	Forbidden	04	25
	Mines *with bursting charge.*	1.2D	UN0138	II	1.2D			62	62	Forbidden	Forbidden	04	25
	Mines *with bursting charge.*	1.2F	UN0294	II	1.2F			62	None	Forbidden	Forbidden	05	25
	*		*		*	*	*		*	*			
	Naphthalene, crude *or* Naphthalene, refined.	4.1	UN1334	III	4.1	A1, B120, IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A.	
	*		*		*	*	*		*	*			
	Nitro urea	1.1D	UN0147	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	5–Nitrobenzotriazol	1.1D	UN0385	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Nitrocellulose, *dry or wetted with less than 25 percent water (or alcohol), by mass.*	1.1D	UN0340	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 27E
	*		*		*	*	*		*	*			
	Nitrocellulose, plasticized *with not less than 18 percent plasticizing substance, by mass.*	1.3C	UN0343	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Nitrocellulose, *unmodified or plasticized with less than 18 percent plasticizing substance, by mass.*	1.1D	UN0341	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 27E
	Nitrocellulose, wetted *with not less than 25 percent alcohol, by mass.*	1.3C	UN0342	II	1.3C		None	62	None	Forbidden	Forbidden	04	25

*		*		*	*	*		*	*				
Nitroglycerin, desensitized *with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass.*	1.1D	UN0143	II	1.1D, 6.1	125	None	62	None	Forbidden	Forbidden	04	25, 21E
*		*		*	*	*		*	*				
Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 10 percent nitroglycerin.*	1.1D	UN0144	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
*		*		*	*	*		*	*				
Nitroguanidine *or* Picrite, *dry or wetted with less than 20 percent water, by mass.*	1.1D	UN0282	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*		*		*	*	*		*	*				
Nitrostarch, *dry or wetted with less than 20 percent water, by mass.*	1.1D	UN0146	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*		*		*	*	*		*	*				
Nitrotriazolone *or* NTO	1.1D	UN0490	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*		*		*	*	*		*	*				
Octolite *or* Octol, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0266	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
Octonal	1.1D	UN0496		1.1D		None	62	None	Forbidden	Forbidden	04	25
*		*		*	*	*		*	*				
Paraformaldehyde	4.1	UN2213	III	4.1	A1, B120, IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A.	
*		*		*	*	*		*	*				
Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, *with not less than 7 percent wax by mass.*	1.1D	UN0411	II	1.1D	120	None	62	None	Forbidden	Forbidden	04	25
Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass, or* Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass.*	1.1D	UN0150	II	1.1D	121	None	62	None	Forbidden	Forbidden	04	25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Pentolite, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0151	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
G	Petroleum distillates, n.o.s. *or* Petroleum products, n.o.s..	3	UN1268	I	3	144, 363, T11, TP1, TP8.	150	201	243	1 L	30 L	E.	
				II	3	144, 363, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B.	
				III	3	144, 363, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Phosgene	2.3	UN1076		2.3, 8	1, B7, B46, N86	None	192	314	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Phosphorous acid	8	UN2834	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	25
	*		*		*	*	*		*	*			
	Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*	9	UN3314	III	9	32, IB8, IP3, IP7	155	221	221	100 kg	200 kg	E	21, 25, 87, 144
	*		*		*	*	*		*	*			
	Polymeric beads expandable, *evolving flammable vapor.*	9	UN2211	III	9	32, IB8, IP3, IP7, T1, TP33.	155	221	221	100 kg	200 kg	E	21, 25, 87, 144
	*		*		*	*	*		*	*			
	Potassium nitrate	5.1	UN1486	III	5.1	A1, A29, B120 IB8, IP3, T1, TP33, W1.	152	213	240	25 kg	100 kg	A.	
	*		*		*	*	*		*	*			
	Powder cake, wetted *or* Powder paste, wetted *with not less than 17 percent alcohol by mass.*	1.1C	UN0433	II	1.1C		None	62	None	Forbidden	Forbidden	4	25
	Powder cake, wetted *or* Powder paste, wetted *with not less than 25 percent water, by mass.*	1.3C	UN0159	II	1.3C		None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Powder, smokeless	1.1C	UN0160	II	1.1C		None	62	None	Forbidden	Forbidden	4	25, 26E
	Powder, smokeless	1.3C	UN0161	II	1.3C		None	62	None	Forbidden	Forbidden	4	25, 26E
	Powder, smokeless	1.4C	UN0509		1.4C		None	62	None	Forbidden	75 kg	2	25

*		*		*	*	*		*	*				
Primers, cap type	1.4S	UN0044	II	None		None	62	None	25 kg	100 kg	1		25
Primers, cap type	1.1B	UN0377	II	1.1B		None	62	None	Forbidden	Forbidden	5		25
Primers, cap type	1.4B	UN0378	II	1.4B		None	62	None	Forbidden	75 kg	5		25
*		*		*	*	*		*	*				
Primers, tubular	1.3G	UN0319	II	1.3G		None	62	None	Forbidden	Forbidden	3		25
Primers, tubular	1.4G	UN0320	II	1.4G		None	62	None	Forbidden	75 kg	2		25
Primers, tubular	1.4S	UN0376	II	None		None	62	None	25 kg	100 kg	1		25
*		*		*	*	*		*	*				
Projectiles, *inert with tracer.*	1.4S	UN0345	II	1.4S			62	62	25 kg	100 kg	1		25
Projectiles, *inert, with tracer.*	1.3G	UN0424	II	1.3G			62	62	Forbidden	Forbidden	3		25
Projectiles, *inert, with tracer.*	1.4G	UN0425	II	1.4G			62	62	Forbidden	75 kg	2		25
Projectiles, *with burster or expelling charge.*	1.2D	UN0346	II	1.2D			62	62	Forbidden	Forbidden	4		25
Projectiles, *with burster or expelling charge.*	1.4D	UN0347	II	1.4D			62	62	Forbidden	75 kg	2		25
Projectiles, *with burster or expelling charge.*	1.2F	UN0426	II	1.2F			62	None	Forbidden	Forbidden	5		25
Projectiles, *with burster or expelling charge.*	1.4F	UN0427	II	1.4F			62	None	Forbidden	Forbidden	5		25
Projectiles, *with burster or expelling charge.*	1.2G	UN0434	II	1.2G			62	62	Forbidden	Forbidden	3		25
Projectiles, *with burster or expelling charge.*	1.4G	UN0435	II	1.4G			62	62	Forbidden	75 kg	2		25
Projectiles, *with bursting charge.*	1.1F	UN0167	II	1.1F			62	None	Forbidden	Forbidden	5		25
Projectiles, *with bursting charge.*	1.1D	UN0168	II	1.1D			62	62	Forbidden	Forbidden	4		25
Projectiles, *with bursting charge.*	1.2D	UN0169	II	1.2D			62	62	Forbidden	Forbidden	4		25
Projectiles, *with bursting charge.*	1.2F	UN0324	II	1.2F			62	None	Forbidden	Forbidden	5		25
Projectiles, *with bursting charge.*	1.4D	UN0344	II	1.4D			62	62	Forbidden	75 kg	2		25
*		*		*	*	*		*	*				
Propellant, liquid	1.3C	UN0495	II	1.3C	37	None	62	None	Forbidden	Forbidden	4		25
Propellant, liquid	1.1C	UN0497	II	1.1C	37	None	62	None	Forbidden	Forbidden	4		25
Propellant, solid	1.1C	UN0498	II	1.1C		None	62	None	Forbidden	Forbidden	4		25, 26E
Propellant, solid	1.3C	UN0499	II	1.3C		None	62	None	Forbidden	Forbidden	4		25, 26E
Propellant, solid	1.4C	UN0501		1.4C		None	62	None	Forbidden	Forbidden	2		25, 24E
*		*		*	*	*		*	*				
Propylene chlorohydrin	6.1	UN2611	II	6.1, 3	IB2, T7, TP2, TP13.	153	202	243	5 L	60 L	A		12, 25, 40
*		*		*	*	*		*	*				
RDX and HMX mixtures, wetted *with not less than 15 percent water by mass or* RDX and HMX mixtures, desensitized *with not less than 10 percent phlegmatizer by mass.*	1.1D	UN0391	II	1.1D		None	62	None	Forbidden	Forbidden	4		25
*		*		*	*	*		*	*				
Release devices, explosive.	1.4S	UN0173	II	1.4S		None	62	62	25 kg	100 kg	1		25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Rivets, explosive	1.4S	UN0174	II	1.4S		None	62	62	25 kg	100 kg	1	25
	*		*		*	*	*		*	*			
	Rocket motors	1.3C	UN0186	II	1.3C	109	None	62	62	Forbidden	220 kg	4	25
	Rocket motors	1.1C	UN0280	II	1.1C	109	None	62	62	Forbidden	Forbidden	4	25
	Rocket motors	1.2C	UN0281	II	1.2C	109	None	62	62	Forbidden	Forbidden	4	25
	Rocket motors, liquid fueled.	1.2J	UN0395	II	1.2J	109	None	62	None	Forbidden	Forbidden	5	25, 23E
	Rocket motors, liquid fueled.	1.3J	UN0396	II	1.3J	109	None	62	None	Forbidden	Forbidden	5	25, 23E
	Rocket motors with hypergolic liquids *with or without an expelling charge.*	1.3L	UN0250	II	1.3L	109	None	62	None	Forbidden	Forbidden	5	25, 14E, 15E
	Rocket motors with hypergolic liquids *with or without an expelling charge.*	1.2L	UN0322	II	1.2L	109	None	62	None	Forbidden	Forbidden	5	25, 14E, 15E
	Rockets, line-throwing	1.2G	UN0238	II	1.2G		None	62	None	Forbidden	Forbidden	3	25
	Rockets, line-throwing	1.3G	UN0240	II	1.3G		None	62	None	Forbidden	75 kg	3	25
	Rockets, line-throwing	1.4G	UN0453	II	1.4G		None	62	None	Forbidden	75 kg	2	25
	Rockets, liquid fueled *with bursting charge.*	1.1J	UN0397	II	1.1J		None	62	None	Forbidden	Forbidden	5	25, 23E
	Rockets, liquid fueled *with bursting charge.*	1.2J	UN0398	II	1.2J		None	62	None	Forbidden	Forbidden	5	25, 23E
	Rockets, *with bursting charge.*	1.1F	UN0180	II	1.1F		None	62	None	Forbidden	Forbidden	5	25
	Rockets, *with bursting charge.*	1.1E	UN0181	II	1.1E		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with bursting charge.*	1.2E	UN0182	II	1.2E		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with bursting charge.*	1.2F	UN0295	II	1.2F		None	62	None	Forbidden	Forbidden	5	25
	Rockets, *with expelling charge.*	1.2C	UN0436	II	1.2C		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with expelling charge.*	1.3C	UN0437	II	1.3C		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with expelling charge.*	1.4C	UN0438	II	1.4C		None	62	62	Forbidden	75 kg	2	25
	Rockets, *with inert head*	1.3C	UN0183	II	1.3C		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with inert head*	1.2C	UN0502		1.2C		None	62	62	Forbidden	Forbidden	2	25, 5E
	*		*		*	*	*		*	*			
G	Samples, explosive, *other than initiating explosives.*		UN0190	II		113	None	62	None	Forbidden	Forbidden	5	25

	*		*		*	*	*		*	*				
	Seed cake, *containing vegetable oil solvent extractions and expelled seeds, with not more than 10 percent of oil and when the amount of moisture is higher than 11 percent, with not more than 20 percent of oil and moisture combined.*	4.2	UN1386	III	None	IB8, IP3, IP7, N7	None	213	241	Forbidden	Forbidden	A	13, 25
I	Seed cake *with more than 1.5 percent oil and not more than 11 percent moisture.*	4.2	UN1386	III	None	IB8, IP3, IP7, N7	None	213	241	Forbidden	Forbidden	E	13, 25
I	Seed cake *with not more than 1.5 percent oil and not more than 11 percent moisture.*	4.2	UN2217	III	None	IB8, IP3, IP7, N7	None	213	241	Forbidden	Forbidden	A	13, 25
	Signal devices, hand	1.4G	UN0191	II	1.4G		None	62	None	Forbidden	75 kg	2	25
	Signal devices, hand	1.4S	UN0373	II	1.4S		None	62	None	25 kg	100 kg	1	25
	Signals, distress, *ship*	1.1G	UN0194	II	1.1G		None	62	None	Forbidden	Forbidden	3	25
	Signals, distress, *ship*	1.3G	UN0195	II	1.3G		None	62	None	Forbidden	75 kg	3	25
	Signals, distress, *ship*	1.4G	UN0505		1.4G		None	62	None	Forbidden	75 kg	2	25
	Signals, distress, *ship*	1.4S	UN0506		1.4S		None	62	None	25 kg	100 kg	1	25
	*		*		*	*	*		*	*				
	Signals, railway track, explosive.	1.1G	UN0192	II	1.1G		None	62	None	Forbidden	Forbidden	3	25
	Signals, railway track, explosive.	1.4S	UN0193	II	1.4S		None	62	None	25 kg	100 kg	1	25
	Signals, railway track, explosive.	1.3G	UN0492		1.3G		None	62	None	Forbidden	Forbidden	3	25
	Signals, railway track, explosive.	1.4G	UN0493		1.4G		None	62	None	Forbidden	75 kg	2	25
	*		*		*	*	*		*	*				
	Signals, smoke	1.1G	UN0196	II	1.1G		None	62	None	Forbidden	Forbidden	3	25
	Signals, smoke	1.4G	UN0197	II	1.4G		None	62	None	Forbidden	75 kg	2	25
	Signals, smoke	1.2G	UN0313	II	1.2G		None	62	None	Forbidden	Forbidden	3	25
	Signals, smoke	1.3G	UN0487	II	1.3G		None	62	None	Forbidden	Forbidden	3	25
	Signals, smoke	1.4S	UN0507		1.4S		None	62	None	25 kg	100 kg	1	25
	*		*		*	*	*		*	*				
	Sodium carbonate peroxyhydrate.	5.1	UN3378	II	5.1	B120, IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	A	13, 25, 75
				III	5.1	B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	13, 25, 75
	*		*		*	*	*		*	*				
	Sodium dinitro-o-cresolate, *dry or wetted with less than 15 percent water, by mass.*	1.3C	UN0234	II	1.3C		None	62	None	Forbidden	Forbidden	4	25, 5E
	*		*		*	*	*		*	*				
	Sodium nitrate	5.1	UN1498	III	5.1	A1, A29, B120, IB8, IP3, T1, TP33, W1.	152	213	240	25 kg	100 kg	A.	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Sodium nitrate and potassium nitrate mixtures.	5.1	UN1499	III	5.1	A1, A29, B120, IB8, IP3, T1, TP33, W1.	152	213	240	25 kg	100 kg	A.	
	*		*		*	*	*		*	*			
	Sodium perborate monohydrate.	5.1	UN3377	III	5.1	B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	13, 25, 75
	*		*		*	*	*		*	*			
	Sodium picramate, *dry or wetted with less than 20 percent water, by mass*.	1.3C	UN0235	II	1.3C		None	62	None	Forbidden	Forbidden	4	25, 5E
	*		*		*	*	*		*	*			
	Sounding devices, explosive.	1.2F	UN0204	II	1.2F		None	62	62	Forbidden	Forbidden	5	25
	Sounding devices, explosive.	1.1F	UN0296	II	1.1F		None	62	62	Forbidden	Forbidden	5	25
	Sounding devices, explosive.	1.1D	UN0374	II	1.1D		None	62	62	Forbidden	Forbidden	4	25
	Sounding devices, explosive.	1.2D	UN0375	II	1.2D		None	62	62	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
G	Substances, explosive, n.o.s.	1.1L	UN0357	II	1.1L		None	62	None	Forbidden	Forbidden	5	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.2L	UN0358	II	1.2L		None	62	None	Forbidden	Forbidden	5	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.3L	UN0359	II	1.3L		None	62	None	Forbidden	Forbidden	5	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.1A	UN0473	II	1.1A	101, 111	None	62	None	Forbidden	Forbidden	5	25
G	Substances, explosive, n.o.s.	1.1C	UN0474	II	1.1C	101	None	62	None	Forbidden	Forbidden	4	25
G	Substances, explosive, n.o.s.	1.1D	UN0475	II	1.1D	101	None	62	None	Forbidden	Forbidden	4	25
G	Substances, explosive, n.o.s.	1.1G	UN0476	II	1.1G	101	None	62	None	Forbidden	Forbidden	3	25
G	Substances, explosive, n.o.s.	1.3C	UN0477	II	1.3C	101	None	62	None	Forbidden	Forbidden	4	25
G	Substances, explosive, n.o.s.	1.3G	UN0478	II	1.3G	101	None	62	None	Forbidden	Forbidden	3	25
G	Substances, explosive, n.o.s.	1.4C	UN0479	II	1.4C	101	None	62	None	Forbidden	75 kg	2	25
G	Substances, explosive, n.o.s.	1.4D	UN0480	II	1.4D	101	None	62	None	Forbidden	75 kg	2	25
G	Substances, explosive, n.o.s.	1.4S	UN0481	II	1.4S	101	None	62	None	25 kg	75 kg	1	25
G	Substances, explosive, n.o.s.	1.4G	UN0485	II	1.4G	101	None	62	None	Forbidden	75 kg	2	25
G	Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s..	1.5D	UN0482	II	1.5D	101	None	62	None	Forbidden	Forbidden	3	25

		*		*		*	*	*		*	*\				
D	Sulfur		9	NA1350	III	9	30, B120, IB8, IP2.	None	None	240	No Limit	No Limit	A	25, 74
		*		*		*	*	*		*	*				
I	Sulfur		4.1	UN1350	III	4.1	30, B120, IB8, IP3, T1, TP33.	None	None	240	25 kg	100 kg	A	25, 74
		*		*		*	*	*		*	*				
	Tetranitroaniline		1.1D	UN0207	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
		*		*		*	*	*		*	*				
	Tetrazol-1-acetic acid		1.4C	UN0407	II	1.4C		None	62	None	Forbidden	75 kg	2	25
	1H–Tetrazole		1.1D	UN0504		1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
		*		*		*	*	*		*	*				
G	Thallium compounds, n.o.s.		6.1	UN1707	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	A.	
		*		*		*	*	*		*	*				
	Torpedoes, liquid fueled, *with inert head*.		1.3J	UN0450	II	1.3J			62	None	Forbidden	Forbidden	5	25, 23E
	Torpedoes, liquid fueled, *with or without bursting charge*.		1.1J	UN0449	II	1.1J			62	None	Forbidden	Forbidden	5	25, 23E
	Torpedoes *with bursting charge*.		1.1E	UN0329	II	1.1E			62	62	Forbidden	Forbidden	4	25
	Torpedoes *with bursting charge*.		1.1F	UN0330	II	1.1F			62	None	Forbidden	Forbidden	5	25
	Torpedoes *with bursting charge*.		1.1D	UN0451	II	1.1D			62	62	Forbidden	Forbidden	4	25
		*		*		*	*	*		*	*				
D	Toy Caps		1.4S	NA0337	II	1.4S		None	62	None	25 kg	100 kg	1	25
	Tracers for ammunition		1.3G	UN0212	II	1.3G		None	62	None	Forbidden	Forbidden	3	25
	Tracers for ammunition		1.4G	UN0306	II	1.4G		None	62	None	Forbidden	75 kg	2	25
		*		*		*	*	*		*	*				
	Trimethylchlorosilane		3	UN1298	II	3, 8	A3, A7, B77, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	E	40
		*		*		*	*	*		*	*				
	Trinitro-m-cresol		1.1D	UN0216	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
		*		*		*	*	*		*	*				
	Trinitroaniline *or* Picramide.		1.1D	UN0153	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	Trinitroanisole		1.1D	UN0213	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
		*		*		*	*	*		*	*				
	Trinitrobenzene, *dry or wetted with less than 30 percent water, by mass*.		1.1D	UN0214	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
		*		*		*	*	*		*	*				
	Trinitrobenzenesulfonic acid.		1.1D	UN0386	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
	Trinitrobenzoic acid, *dry or wetted with less than 30 percent water, by mass*.		1.1D	UN0215	II	1.1D		None	62	None	Forbidden	Forbidden	4	25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/trail	Cargo aircraft only	(10) Vessel stowage Location	Other
	*		*		*	*	*		*	*			
	Trinitrochlorobenzene *or* Picryl chloride.	1.1D	UN0155	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Trinitrofluorenone	1.1D	UN0387	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Trinitronaphthalene	1.1D	UN0217	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	Trinitrophenetole	1.1D	UN0218	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Trinitrophenol *or* Picric acid, *dry or wetted with less than 30 percent water, by mass.*	1.1D	UN0154	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
	*		*		*	*	*		*	*			
	Trinitrophenylmethylnitramine *or* Tetryl.	1.1D	UN0208	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	Trinitroresorcinol *or* Styphnic acid, *dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass.*	1.1D	UN0219	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass.*	1.1D	UN0394	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
	*		*		*	*	*		*	*			
	Trinitrotoluene and Trinitrobenzene mixtures *or* TNT and trinitrobenzene mixtures *or* TNT and hexanitrostilbene mixtures *or* Trinitrotoluene and hexanitrostilnene mixtures.	1.1D	UN0388	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene *or* TNT mixtures containing trinitrobenzene and hexanitrostilbene.	1.1D	UN0389	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	Trinitrotoluene *or* TNT, *dry or wetted with less than 30 percent water, by mass.*	1.1D	UN0209	II	1.1D		None	62	None	Forbidden	Forbidden	4	25

	*	*		*	*	*	*	*						
	Tritonal	1.1D	UN0390	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	*	*		*	*	*	*	*						
	Urea nitrate, *dry or wetted with less than 20 percent water, by mass.*	1.1D	UN0220	II	1.1D	119	None	62	None	Forbidden	Forbidden	4	25
	*	*		*	*	*	*	*						
	Vehicle, flammable gas powered *or* Vehicle, fuel cell, flammable gas powered.	9	UN3166		9	135, A200	220	220	220	Forbidden	No limit	A.	
	Vehicle, flammable liquid powered *or* Vehicle, fuel cell, flammable liquid powered.	9	UN3166		9	135, A200	220	220	220	No limit	No limit	A.	
	*	*		*	*	*	*	*						
	Vinyltrichlorosilane, stabilized.	3	UN1305	II	3, 8	A3, A7, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	B	40
	Warheads, rocket *with burster or expelling charge.*	1.4D	UN0370	II	1.4D		None	62	62	Forbidden	75 kg	2	25
	Warheads, rocket *with burster or expelling charge.*	1.4F	UN0371	II	1.4F		None	62	None	Forbidden	Forbidden	5	25
	Warheads, rocket *with bursting charge.*	1.1D	UN0286	II	1.1D		None	62	62	Forbidden	Forbidden	4	25
	Warheads, rocket *with bursting charge.*	1.2D	UN0287	II	1.2D		None	62	62	Forbidden	Forbidden	4	25
	Warheads, rocket *with bursting charge.*	1.1F	UN0369	II	1.1F		None	62	None	Forbidden	Forbidden	5	25
	Warheads, torpedo *with bursting charge.*	1.1D	UN0221	II	1.1D		None	62	62	Forbidden	Forbidden	4	25
G	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	4.3, 8	T14, TP2, TP7, TP13.	None	201	243	Forbidden	1 L	D.	
				II	4.3, 8	IB1, T11, TP2, TP7.	None	202	243	1 L	5 L	E	85
				III	4.3, 8	IB2, T7, TP2, TP7.	None	203	242	5 L	60 L	E.	
	*	*		*	*	*	*	*						
G	Water-reactive liquid, n.o.s.	4.3	UN3148	I	4.3	T13, TP2, TP7, TP41.	None	201	244	Forbidden	1 L	E	40
				II	4.3	IB1, T7, TP2, TP7.	None	202	243	1 L	5 L	E	40
				III	4.3	IB2, T7, TP2, TP7.	None	203	242	5 L	60 L	E	40
	*	*		*	*	*	*	*						
	Zirconium picramate, *dry or wetted with less than 20 percent water, by mass.*	1.3C	UN0236	II	1.3C		None	62	None	Forbidden	Forbidden	4	25, 5E
	*	*		*	*	*	*	*						

7. In § 172.102:

a. In paragraph (c)(1), special provisions 47, 48, 49, 118, 134, 155, and 237 are revised and special provisions 101, 238, 328, 360, 361, 362, 363 and 365 are added.

b. In paragraph (c)(2), special provisions A60, A100 and A103 are revised and special provisions A189, A192, and A200 is added.

c. In paragraph (c)(3), special provision B120 is added.

d. In paragraph (c)(4), Table 1 is revised.

e. Paragraph (c)(7)(iii) is revised.

f. In paragraph (c)(8)(ii), TP39, TP40 and TP41 are added in numerical sequence.

g. In paragraph (c)(9), W10 is added in numerical sequence.

The additions and revisions are to read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(1) * * *

47 Mixtures of solids that are not subject to this subchapter and flammable liquids may be transported under this entry without first applying the classification criteria of Division 4.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Except when the liquids are fully absorbed in solid material contained in sealed bags, for single packagings, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. Small inner packagings consisting of sealed packets and articles containing less than 10 mL of a Class 3 liquid in Packing Group II or III absorbed onto a solid material are not subject to this subchapter provided there is no free liquid in the packet or article.

48 Mixtures of solids that are not subject to this subchapter and toxic liquids may be transported under this entry without first applying the classification criteria of Division 6.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. For single packagings, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. This entry may not be used for solids containing a Packing Group I liquid.

49 Mixtures of solids that are not subject to this subchapter and corrosive liquids may be transported under this entry without first applying the classification criteria of Class 8, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. For single packagings, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level.

* * * * *

101 The name of the particular substance or article must be identified in parentheses in association with the basic description.

* * * * *

118 This substance may not be transported under the provisions of Division 4.1 unless specifically authorized by the Associate Administrator (see UN0143 or UN0150 as appropriate).

* * * * *

134 This entry only applies to vehicles powered by wet batteries, sodium batteries, or lithium batteries and equipment powered by wet batteries or sodium batteries that are transported with these batteries installed. For the purpose of this special provision, vehicles are self-propelled apparatus designed to carry one or more persons or goods. Examples of such vehicles are electrically-powered cars, motorcycles, scooters, three- and four-wheeled vehicles or motorcycles, battery-assisted bicycles, lawn tractors, boats, aircraft, wheelchairs and other mobility aids. Examples of equipment are lawnmowers, cleaning machines or model boats and model aircraft. Equipment powered by lithium batteries must be consigned under the entries ''Lithium batteries contained in equipment'' or ''Lithium batteries packed with equipment,'' as appropriate. Self-propelled vehicles that also contain an internal combustion engine must be consigned under the entry ''Engine, internal combustion, flammable gas powered'' or ''Engine, internal combustion, flammable liquid powered'' or ''Vehicle, flammable gas powered'' or ''Vehicle, flammable liquid powered,'' as appropriate. These entries include hybrid electric vehicles powered by both an internal combustion engine and batteries. Additionally, self-propelled vehicles or equipment that contain a fuel cell engine must be consigned under the entries ''Engine, fuel cell, flammable gas powered'' or ''Engine, fuel cell, flammable liquid powered'' or ''Vehicle, fuel cell, flammable gas powered'' or ''Vehicle, fuel cell, flammable liquid powered,'' as appropriate. These entries include hybrid electric vehicles powered by a fuel cell engine, an internal combustion engine, and batteries.

* * * * *

155 Fish meal, fish scrap and krill meal may not be transported if the temperature at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher.

* * * * *

237 ''Batteries, dry, containing potassium hydroxide solid, *electric storage''* must be prepared and packaged in accordance with the requirements of § 173.159(a) and (c). For transportation by aircraft, the provisions of § 173.159(b)(2) are applicable. This entry may only be used for the transport of non-activated batteries that contain dry potassium hydroxide and that are intended to be activated prior to use by the addition of an appropriate amount of water to the individual cells.

238 Neutron radiation detectors:

a. Neutron radiation detectors containing non-pressurized boron trifluoride gas in excess of 1 gram and radiation detection systems containing such neutron radiation detectors as components may be transported by highway, rail, vessel, or cargo aircraft in accordance with the following:

(1) The pressure in each neutron radiation detector must not exceed 105 kPa absolute at 20°C;

(2) The amount of gas must not exceed 12.8 grams per detector and the amount per outer packaging or per radiation detection system must not exceed 51.2 grams;

(3) Each neutron radiation detector must be of welded metal construction with brazed metal to ceramic feed through assemblies. They must have a minimum burst pressure of 1800 kPa; and

(4) Each neutron radiation detector must be packed in a sealed intermediate plastic liner with sufficient absorbent material to absorb the entire gas contents. Neutron radiation detectors must be packed in strong outer packagings that are capable of withstanding a 1.8 meter (6-foot) drop without leakage. Radiation detector systems containing neutron radiation detectors must also include absorbent material sufficient to absorb the entire gas contents of the neutron radiation detectors. Absorbent material must be surrounded by a liner or liners, as appropriate. They must be packed in strong outer packagings unless neutron radiation detectors are afforded equivalent protection by the radiation detection system.

b. Except for transportation by aircraft, neutron radiation detectors and radiation detection systems containing such detectors transported in accordance with paragraph (a) of this

special provision are not subject to the labeling and placarding requirements of part 172 of this subchapter.

c. When transported by highway, rail, vessel, or as cargo on an aircraft, neutron radiation detectors containing not more than 1 gram of boron trifluoride, including those with solder glass joints, and radiation detection systems containing such detectors, where the neutron radiation detectors meet and are packed in accordance with the requirements of paragraph (a) of this special provision, are not subject to any other requirements of this subchapter.

* * * * *

328 When lithium cells or batteries are contained in the fuel cell system, the item must be described under this entry and the entry ''Lithium batteries, contained in equipment''.

* * * * *

360 Vehicles only powered by lithium batteries must be assigned the identification number UN3171.

361 Capacitors with an energy storage capacity of 0.3 Wh or less are not subject to the requirements of this subchapter. Energy storage capacity means the energy held by a capacitor, as calculated using the nominal voltage and capacitance. This entry does not apply to capacitors that by design maintain a terminal voltage (e.g., asymmetrical capacitors.)

362 This entry applies to liquids, pastes or powders, pressurized with a propellant that meets the definition of a gas in § 173.115. A chemical under pressure packaged in an aerosol dispenser must be transported under UN1950. The chemical under pressure must be classed based on the hazard characteristics of the components in the propellant; the liquid; or the solid. The following provisions also apply:

(a) If one of the components, which can be a pure substance or a mixture, is classed as flammable, the chemical under pressure must be classed as flammable in Division 2.1. Flammable components are flammable liquids and liquid mixtures, flammable solids and solid mixtures or flammable gases and gas mixtures meeting the following criteria:

(i) A flammable liquid is a liquid having a flashpoint of not more than 93 °C (200 °F);

(ii) A flammable solid is a solid that meets the criteria in § 173.124 of this subchapter; or

(iii) A flammable gas is a gas that meets the criteria in § 173.115 of this subchapter.

(b) Gases of Division 2.3 and gases with a subsidiary risk of 5.1 must not be used as a propellant in a chemical under pressure.

(c) Where the liquid or solid components are classed as Division 6.1, packing groups II or III, or Class 8, packing groups II or III, the chemical under pressure must be assigned a subsidiary risk of Division 6.1 or Class 8 and the appropriate identification number must be assigned. Components classed as Division 6.1, packing group I, or Class 8, packing group I, must not be offered for transportation and transported under this description.

(d) A chemical under pressure with components meeting the properties of: Class 1 (explosives); Class 3 (liquid desensitized explosives); Division 4.1 (self-reactive substances and solid desensitized explosives); Division 4.2 (substances liable to spontaneous combustion); Division 4.3 (substances which, in contact with water, emit flammable gases or toxic gases); Division 5.1 (oxidizing substances); Division 5.2 (organic peroxides); Division 6.2 (Infectious substances); or, Class 7 (Radioactive material), must not be offered for transportation under this description.

(e) A description to which Special provision 170 or TP7 is assigned in Column 7 of the § 172.101 Hazardous Materials Table, and therefore requires air to be eliminated from the package vapor space by nitrogen or other means, must not be offered for transportation under this description.

363 For transportation by vessel, this description is applicable to hazardous materials above the authorized limited quantity amount in its means of containment (other than vehicles or means of containment shipped under special provision 136) integral to equipment or machinery (e.g., generators, compressors, heating units, etc.) as part of their original design type. Provided the equipment or machinery conforms to the following conditions, they are not subject to any additional requirements of this subchapter:

(b) Any valves or openings (e.g., venting devices) in its means of containment containing hazardous materials must be closed during transport;

(c) The machinery or equipment must be loaded in an orientation to prevent inadvertent leakage of hazardous materials and must be secured by means capable of restraining the machinery or equipment to prevent any movement during transport that would change the orientation or cause it to be damaged;

(d) Where its means of containment has a capacity of not more than 450 liters (119 gallons), the labeling requirements of subpart E of part 172 apply and where its capacity is greater than 450 liters (119 gallons) but not more than 1,500 liters (396.25 gallons) the machinery or equipment must be labeled on all four external sides in accordance with the labeling requirements of subpart E of part 172;

(e) Where its means of containment has a capacity greater than 1,500 liters (396 gallons), the machinery or equipment must be placarded on all four external sides in accordance with subpart F of part 172; and

(f) The shipping paper requirements of subpart C of part 172 apply.

365 For manufactured instruments and articles containing mercury, see UN3506.

(2) * * *

* * * * *

A60 Sterilization devices, when containing less than 30 mL per inner packaging with not more than 150 mL per outer packaging, may be transported in accordance with the provisions in § 173.4a, irrespective of § 173.4a(b), provided such packagings were first subjected to comparative fire testing. Comparative fire testing between a package as prepared for transport (including the substance to be transported) and an identical package filled with water must show that the maximum temperature measured inside the packages during testing does not differ by more than 200 °C (392 °F). Packagings may include a vent to permit the slow escape of gas (i.e. not more than 0.1 mL/hour per 30 mL inner packaging at 20°C (68 °F) produced from gradual decomposition.

* * * * *

A100 Primary (non-rechargeable) lithium batteries and cells are forbidden for transport aboard passenger-carrying aircraft. Secondary (rechargeable) lithium batteries and cells are authorized aboard passenger-carrying aircraft provided the net weight of lithium batteries does not exceed 5 kg (11 pounds) per package.

* * * * *

A103 Equipment is authorized aboard passenger-carrying aircraft provided the net weight of lithium batteries does not exceed 5 kg (11 pounds) per package.

* * * * *

A189 Except where the defining criteria of another class or division are met, concentrations of formaldehyde solution:

a. With less than 25 percent but not less than 10 percent formaldehyde, must be described as UN3334, Aviation regulated liquid, n.o.s.; and

b. With less than 10 percent formaldehyde, are not subject to this subchapter.

* * * * *

A192 Notwithstanding the Division 6.1 subsidiary risk for this description, the toxic subsidiary risk label and the requirement to indicate the subsidiary risk on the shipping paper are not required for manufactured articles containing less than 0.45 kg (1 pound) of mercury.

* * * * *

A200 These articles must be transported as cargo and may not be carried aboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically authorized in § 175.10.

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(3) * * *

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B120 The use of flexible bulk containers conforming to the requirements in subpart R and subpart S of part 178 of this subchapter is permitted.

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(4) * * *

TABLE 1—IB CODES (IBC CODES)

IBC Code	Authorized IBCs
IB1	*Authorized IBCs:* Metal (31A, 31B and 31N). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized.
IB2	*Authorized IBCs:* Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized.
IB3	*Authorized IBCs:* Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1 and 31HA2, 31HB2, 31HN2, 31HD2 and 31HH2). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized, except for UN2672 (also see Special provision IP8 in Table 2 for UN2672).

TABLE 1—IB CODES (IBC CODES)—Continued

IBC Code	Authorized IBCs
IB4	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N).
IB5	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1and 21HZ1).
IB6	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1, 11HZ2, 21HZ1, and 21HZ2). *Additional Requirement:* Composite IBCs 11HZ2 and 21HZ2 may not be used when the hazardous materials being transported may become liquid during transport.
IB7	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1, 11HZ2, 21HZ1, and 21HZ2); Wooden (11C, 11D and 11F).
	Additional Requirement: Liners of wooden IBCs must be sift- proof.
IB8	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1, 11HZ2, 21HZ1, and 21HZ2); Fiberboard (11G); Wooden (11C, 11D and 11F); Flexible (13H1, 13H2, 13H3, 13H4, 13H5, 13L1, 13L2, 13L3, 13L4, 13M1 or 13M2).
IB9	IBCs are only authorized if approved by the Associate Administrator.

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(7) * * *

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(iii) T50 When portable tank instruction T50 is indicated in Column (7) of the

§ 172.101 Hazardous Materials Table, the applicable liquefied compressed gas and chemical under pressure descriptions are authorized to be transported in portable tanks in accordance with the requirements of § 173.313 of this subchapter.

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(8) * * *

(ii) * * *

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TP39 The portable tank instruction T4 prescribed may continue to be applied until December 31, 2018.

TP40 The portable tank must not be transported when connected with spray application equipment.

TP41 The portable tank instruction T9 may continue to be applied until December 31, 2018.

* * * * *

(9) * * *

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W10 When offered for transportation by vessel, the use of Large Packagings (see § 171.8 of this subchapter) is prohibited.

* * * * *

8. In § 172.202, paragraph (a)(6)(iv) is revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(6) * * *

(vii) For hazardous materials in limited quantities with a 30 kg gross limit in Column (9A) or (9B) of the § 172.101 Hazardous Materials Table, where different hazardous materials are packed together in the same outer packaging, the net quantity of each hazardous material followed by the gross mass of the completed package is indicated and:

* * * * *

9. In § 172.301, paragraph (a)(1) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) Proper shipping name and identification number. (1) Except as otherwise provided by this subchapter, each person who offers a hazardous material for transportation in a non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by ''UN'', ''NA'' or ''ID,'' as appropriate) for the material as shown in the § 172.101 Hazardous Materials Table. Effective January 1, 2014 the identification number marking preceded by ''UN'', ''NA'', or ''ID'' as appropriate must be marked in characters at least 12 mm (0.47 inches) high. Packages with a maximum capacity of 30 liters (7.92 gallons) or 30 kg (66 pounds) capacity or less must be marked with characters at least 6 mm high. Packages having a maximum capacity 5 liters (1.32 gallons) or 5 kg (11 pounds) or less must be marked in a size appropriate for the size of the package.

* * * * *

10. In § 172.312, paragraph (c)(3) is revised to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packagings.

* * * * *

(c) * * *

(3) When offered or intended for transportation by aircraft, packages containing liquid hazardous materials in inner packagings of 120 mL (4 fluid oz.) or less when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents.

* * * * *

11. In § 172.604, paragraph (d)(2) is revised to read as follows.

§ 172.604 Emergency response telephone number.

* * * * *

(d) * * *

(2) Materials properly described under the following shipping names:
Battery powered equipment.
Battery powered vehicle.
Carbon dioxide, solid.
Castor bean.
Castor flake.
Castor meal.
Castor pomace.
Consumer commodity.
Dry ice.
Engines, internal combustion.
Fish meal, stabilized.
Fish scrap, stabilized.
Krill Meal, PG III.
Refrigerating machine.
Vehicle, flammable gas powered.
Vehicle, flammable liquid powered.
Wheelchair, electric.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

13. In § 173.12, paragraph (b)(2)(ii)(A) is revised to read as follows:

§ 173.12 Exceptions for shipments of waste materials.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) A UN 1A2, UN 1B2 or UN 1N2 metal drum, a UN 1D plywood drum, a UN 1G fiber drum, or a UN 1H2 plastic drum, tested and marked to at least the Packing Group III performance level for liquids or solids;

* * * * *

14. In § 173.21, paragraph (f)(3)(ii) is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) * * *

(ii) For transportation by vessel, shipments are authorized in accordance with the control temperature requirements in 7.3.7 of the IMDG Code (IBR, see § 171.7 of this subchapter).

* * * * *

15. Section § 173.37 is added to read as follows:

§ 173.37 Hazardous Materials in Flexible Bulk Containers.

(a) No person may offer or accept a hazardous material for transportation in a Flexible Bulk Container except as authorized by this subchapter. Each Flexible Bulk Container used for the transportation of hazardous materials must conform to the requirements of its specification and regulations for the transportation of the particular commodity.

(b) *Initial use and reuse of Flexible Bulk Containers.* A Flexible Bulk Container may be reused. Before a Flexible Bulk Container is filled and offered for transportation, the Flexible Bulk Container must be given an external visual inspection by the person filling the Flexible Bulk Container to ensure:

(1) The Flexible Bulk Container is free from corrosion, contamination, cracks, cuts, or other damage that would render it unable to pass the prescribed design type test to which it is certified and marked; and

(2) The Flexible Bulk Container is marked in accordance with requirements in § 178.1010 of this subchapter. Required markings that are missing, damaged or difficult to read must be restored or returned to original condition.

(3) The following components must be examined to determine structural serviceability:

(i) Textile slings;

(ii) Load-bearing structure straps;

(iii) Body fabric; and

(iv) Lock device parts including metal and textile parts are free from protrusions or damage.

(4) The use of Flexible Bulk Containers for the transport of hazardous materials is permitted for a period of time not to exceed two years from the date of manufacture of the Flexible Bulk Container.

(c) During transportation—

(1) No hazardous material may remain on the outside of the Flexible Bulk Container; and

(2) Each Flexible Bulk Container must be securely fastened to or contained within the transport unit.

(3) If restraints such as banding or straps are used, these straps must not be over-tightened to an extent that causes damage or deformation to the Flexible Bulk Container.

(4) Flexible Bulk Containers must be transported in a conveyance with rigid sides and ends that extend at least two-thirds of the height of the Flexible Bulk Container.

(5) Flexible Bulk Containers must not be stacked for highway or rail transportation.

(6) Flexible Bulk Containers must not be transported in cargo transport units when offered for transportation by vessel.

(7) Flexible Bulk Containers when transported by barge must be stowed in such a way that there are no void spaces between the Flexible Bulk Containers in the barge. If the Flexible Bulk Containers do not completely fill the barge, adequate measures must be taken to avoid shifting of cargo. The maximum permissible height of the stack of Flexible Bulk Containers must not exceed 3 high.

(d) A Flexible Bulk Container used to transport hazardous materials may not exceed 15 cubic meters capacity.

16. In § 173.50, paragraph (b)(6) is revised as follows.

§ 173.50 Class 1—Definitions.

* * * * *

(b) * * *

(6) Division 1.6 consists of extremely insensitive articles that do not have a mass explosive hazard. This division is comprised of articles that contain only extremely insensitive substances and that demonstrate a negligible probability of accidental initiation or propagation.

* * * * *

17. In § 173.52, in paragraph (b), in Table 1, the entry in the twelfth row is revised to read as follows:

§ 173.50 Class 1—Definitions.

* * * * *

(b) * * *

TABLE 1—CLASSIFICATION CODES

Description of substances or article to be classified	Compatibility group	Classification code
* * * * * * *		
Articles containing only extremely insensitive substances.	N	1.6N
* * * * * * *		

* * * * *

18. In § 173.59:

a. The word ''detonating'' is removed from the definition of *Articles, explosive, extremely insensitive (Articles, EEI).*

b. The definition of *Auxiliary explosive component, isolated* is added.

c. The definition of ''*Cartridges, blank''* is revised.

d. The definition of ''*Explosive, extremely insensitive detonating substance (EIDS)''* is removed.

e. The definition of ''*Explosive, extremely insensitive substance (EIS)''* is added.

The revision and additions are as follows:

§ 173.59 Description for explosive terms.

* * * * *

Articles, explosive, extremely insensitive (Articles, EEI). Articles that contain only extremely insensitive detonating substances and that demonstrate a negligible probability of accidental initiation or propagation under normal conditions of transport and that have passed Test Series 7.

* * * * *

Auxiliary explosive component, isolated. A small device that explosively performs an operation related to the article's functioning, other than its main explosive loads' performance. Functioning of the component does not cause any reaction of the main explosive loads contained within the article.

* * * * *

Cartridges, blank. Articles that consist of a cartridge case with a center or rim fire primer and a confined charge of smokeless or black powder, but no projectile. Used in training, saluting, or in starter pistols, tools, etc.

* * * * *

Explosive, extremely insensitive substance (EIS). A substance that has demonstrated through tests that it is so insensitive that there is very little probability of accidental initiation.

* * * * *

19. In § 173.62, in paragraph (c), in the Table of Packing Methods, Packing Instructions 110(a), 111, 112(a), 112(b), 112(c), 113, 114(a), 114(b), 115, 116, 117, 130, 131, 132(a), 132(b), 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143 and 144 are revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	*	* *	*
110(a)	Bags plastics, textile, plastic coated or lined rubber textile, rubberized textile Receptacles wood	Bags plastics, textile, plastic coated or lined rubber textile, rubberized Receptacles plastics metal wood	Drums. steel (1A1 or 1A2). other metal (1N1 or 1N2). plastics (1H1 or 1H2).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. The Intermediate packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning 2. Outer packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning. Outer packagings must be constructed and sealed to prevent evaporation of the wetting solution, except when 0224 is being carried dry			
* * *	*	* *	*
111	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0159, inner packagings are not required when metal (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) or plastics (1H1 or 1H2) drums are used as outer packagings	paper, waterproofed plastics textile, rubberized Sheets plastics textile, rubberized Receptacles wood		steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiberboard (1G). plastics (1H1 or 1H2).
112(a)	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN Nos. 0004, 0076, 0078, 0154, 0219 and 0394, packagings must be lead free 2. Intermediate packagings are not required if leakproof drums are used as the outer packaging 3. For UN0072 and UN0226, intermediate packagings are not required	paper, multiwall, water resistant plastics textile textile, rubberized woven plastics Receptacles metal plastics wood	plastics textile, plastic coated or lined Receptacles metal plastics wood	steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
112(b)	Bags	Bags	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
This packing instruction applies to dry solids other than powders PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free 2. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state and a maximum net mass of 30 kg. 3. For UN0222, inner packagings are not required	paper, Kraft paper, multiwall, water resistant plastics textile textile, rubberized plastics woven plastics	(for UN0150 only) plastics textile, plastic coated or lined	woven plastics sift-proof (5H2/3). plastics, film (5H4). textile, sift-proof (5L2). textile, water resistant (5L3). paper, multiwall, water resistant (5M2). Boxes steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D) reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel (1A1 or 1A2). aluminum (1B1 or 1B2). plywood (1D). other metal (1N1 or 1N2). fiber (1G). plastics (1H1 or 1H2).
112(c) This packing instruction applies to solid dry powders.	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free 2. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state. Bags must not exceed a maximum net mass of 30 kg. 3. Inner packagings are not required if drums are used as the outer packaging. 4. At least one of the packagings must be sift-proof	paper, multiwall, water resistant plastics woven plastics Receptacles fiberboard metal plastics wood	paper, multiwall, water resistant with inner lining plastics Receptacles metal plastics wood	steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G).
113	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN0094 and UN0305, no more than 50 g of substance must be packed in an inner packaging 2. For UN0027, inner packagings are not necessary when drums are used as the outer packaging 3. At least one of the packagings must be sift-proof 4. Sheets must only be used for UN0028	paper plastics textile, rubberized Receptacles fiberboard metal plastics wood Sheets paper, kraft paper, waxed		steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum-(1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G).
114(a) This packing instruction applies to wetted solids PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0234, 0235 and 0236, packagings must be lead free 2. For UN0342, inner packagings are not required when metal (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) or plastics (1H1 or 1H2) drums are used as outer packagings 3. Intermediate packagings are not required if leakproof removable head drums are used as the outer packaging	Bags plastics textile woven plastics Receptacles metal plastics wood	Bags plastics textile, plastic coated or lined Receptacles metal plastics Dividing partitions wood	Boxes steel (4A). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2) plywood (1D). fiber (1G). plastics (1H1 or 1H2).
114(b) PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN Nos. 0077, 0132, 0234, 0235 and 0236, packagings must be lead free 2. For UN0160 and UN0161, when metal drums (1A2, 1B2 or 1N2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes, is prevented 3. For UN0160, UN0161, and UN0508, inner packagings are not necessary if drums are used as the outer packaging 4. For UN0508 and UN0509, metal packagings must not be used	Bags paper, kraft plastics textile, sift-proof woven plastics, sift-proof. Receptacles fiberboard metal paper plastics wood woven plastics, sift-proof.	Not necessary	Boxes natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
115	Receptacles	Bags	Boxes

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For liquid explosives, inner packagings must be surrounded with non-combustible absorbent cushioning material in sufficient quantity to absorb the entire liquid content. Metal receptacles should be cushioned from each other. The net mass of explosive per package may not exceed 30 kg when boxes are used as outer packaging. The net volume of explosive in each package other than boxes must not exceed 120 liters 2. For UN 0075, 0143, 0495 and 0497 when boxes are used as the outer packaging, inner packagings must have taped screw cap closures and be not more than 5 liters capacity each. A composite packaging consisting of a plastic receptacle in a metal drum (6HA1) may be used in lieu of combination packagings. Liquid substances must not freeze at temperatures above −15 °C (+5 °F) 3. For UN0144, intermediate packagings are not necessary. Aluminum drums (1B1 and 1B2) and metal, other than steel or aluminum, drums (1N1 and 1N2) must not be used.	metal plastics wood	plastics in metal receptacles Drums ..... metal Receptacles ..... wood	natural wood, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). Specification MC–200 containers may be used for transport by motor vehicle.
116	Bags	Not Necessary	Bags
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0082, 0241, 0331 and 0332, inner packagings are not necessary if leakproof removable head drums are used as the outer packaging 2. For UN 0082, 0241, 0331 and 0332, inner packagings are not required when the explosive is contained in a material impervious to liquid 3. For UN0081, inner packagings are not required when contained in rigid plastic that is impervious to nitric esters 4. For UN0331, inner packagings are not required when bags (5H2), (5H3) or (5H4) are used as outer packagings 5. Bags (5H2 or 5H3) must be used only for UN0082, 0241, 0331 and 0332 6. For UN0081, bags must not be used as outer packagings	Bags paper, water and oil resistant plastics textile, plastic coated or lined woven plastics, sift-proof Receptacles fiberboard, water resistant metal plastics wood, sift-proof Sheets paper, water resistant paper, waxed plastics	Not necessary	Bags. woven plastics (5H1/2/3). paper, multiwall, water resistant (5M2). plastics, film (5H4). textile, sift-proof (5L2). textile, water resistant (5L3). Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2). Jerricans. steel (3A1 or 3A2). plastics (3H1 or 3H2).
117	Not necessary	Not necessary	IBCs.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. This packing instruction may only be used for explosives of UN0082 when they are mixtures of ammonium nitrate or other inorganic nitrates with other combustible substances that are not explosive ingredients. Such explosives must not contain nitroglycerin, similar liquid organic nitrates, liquid or solid nitrocarbons, or chlorates. 2. This packing instruction may only be used for explosives of UN0241 that consist of water as an essential ingredient and high proportions of ammonium nitrate or other oxidizers, some or all of which are in solution. The other constituents may include hydrocarbons or aluminum powder, but must not include nitro-derivatives such as trinitrotoluene. 3. Metal IBCs must not be used for UN0082 and UN 0241. 4. Flexible IBCs may only be used for solids.			metal (11A), (11B), (11N), (21A), (21B), (21N), (31A), (31B), (31N). flexible (13H2), (13H3), (13H4), (13L2), (13L3), (13L4), (13M2). rigid plastics (11H1), (11H2), (21H1), (21H2), (31H1), (31H2). composite (11HZ1), (11HZ2), (21HZ1), (21HZ2), (31HZ1), (31HZ2).
130	Not necessary	Not necessary	Boxes Steel (4A). Aluminum (4B). Other metal (4N). Wood natural, ordinary (4C1). Wood natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). Drums. Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Large Packagings. Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid plastics (50H). Natural wood (50C). Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G).
Particular Packaging Requirements: 1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices. 2. Subject to approval by the Associate Administrator, large explosive articles, as part of their operational safety and suitability tests, subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, may be offered for transportation in accordance with the requirements of this subchapter.			
131	Bags	Not Necessary	Boxes

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0029, 0267 and 0455, bags and reels may not be used as inner packagings 2. For UN 0030, 0255 and 0456, inner packagings are not required when detonators are packed in pasteboard tubes, or when their leg wires are wound on spools with the caps either placed inside the spool or securely taped to the wire on the spool, so as to restrict free moving of the caps and to protect them from impact forces 3. For UN 0360, 0361 and 0500, detonators are not required to be attached to the safety fuse, metal-clad mild detonating cord, detonating cord, or shock tube. Inner packagings are not required if the packing configuration restricts free moving of the caps and protects them from impact forces	paper plastics Receptacles fiberboard metal plastics wood Reels		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2). Aluminum (1B1 or 1B2). other metal (1N1 or 1N2). Plywood (1D). fiber (1G). plastics (1H1 or 1H2).
132(a) For articles consisting of closed metal, plastic or fiberboard casings that contain detonating explosives, or consisting of plastics-bonded detonating explosives	Not necessary	Not necessary	Boxes steel (4A). aluminum (4B). other metal (4N). wood, natural; ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2).
132(b) For articles without closed casings	Receptacles fiberboard metal plastics wood Sheets paper plastics	Not necessary	Boxes steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2).
133 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0043, 0212, 0225, 0268 and 0306 trays are not authorized as inner packagings	Receptacles fiberboard metal plastics wood Trays, fitted with dividing partitions fiberboard plastics wood	Intermediate packagings are only required when trays are used as inner packagings. Receptacles fiberboard metal plastics wood	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2).
134	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
	water resistant Receptacles fiberboard metal plastics wood Sheets fiberboard, corrugated Tubes fiberboard		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums. fiberboard (1G). plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D).
135	Bags paper plastics Receptacles fiberboard metal plastics wood Sheets paper plastics	Not necessary	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2) plywood (1D). fiber (1G). plastics (1H1 or 1H2).
136	Bags plastics textile Boxes. fiberboard plastics wood Dividing partitions in the outer packagings	Not necessary	Boxes. steel (4A). aluminum (4B) other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
137	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0059, 0439, 0440 and 0441, when the shaped charges are packed singly, the conical cavity must face downwards and the package marked "THIS SIDE UP". When the shaped charges are packed in pairs, the conical cavities must face inwards to minimize the jetting effect in the event of accidental initiation	plastics Boxes fiberboard wood Tubes fiberboard metal plastics Dividing partitions in the outer packagings		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
138	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: If the ends of the articles are sealed, inner packagings are not necessary	Plastics		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. fiberboard (1G). plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2).
139	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0065, 0102, 0104, 0289 and 0290, the ends of the detonating cord must be sealed, for example, by a plug firmly fixed so that the explosive cannot escape. The ends of CORD DETONATING flexible must be fastened securely 2. For UN0065 and UN0289, inner packagings are not required when they are fastened securely in coils	plastics Receptacles fiberboard metal plastics wood Reels Sheets paper plastics		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
140	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. If the ends of UN0105 are sealed, no inner packagings are required 2. For UN0101, the packaging must be sift-proof except when the fuse is covered by a paper tube and both ends of the tube are covered with removable caps 3. For UN0101, steel or aluminum boxes or drums must not be used	plastics Reels Sheets paper, kraft plastics Receptacles wood		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G).
141	Receptacles fiberboard metal plastics wood Trays, fitted with dividing partitions plastics wood Dividing partitions in the outer packagings	Not necessary	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
142	Bags paper plastics Receptacles fiberboard metal plastics wood Sheets paper Trays, fitted with dividing partitions plastics	Not necessary	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
143	Bag	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0271, 0272, 0415 and 0491 when metal packagings are used, metal packagings must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes is prevented 2. Composite packagings (6HH2) (plastic receptacle with outer solid box) may be used in lieu of combination packagings	paper, kraft plastics textile textile, rubberized Receptacles fiberboard metal plastics wood Trays, fitted with dividing partitions plastics wood		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
144	Receptacles	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0248 and UN 0249, packagings must be protected against the ingress of water. When CONTRIVANCES, WATER ACTIVATED are transported unpackaged, they must be provided with at least two independent protective features that prevent the ingress of water	fiberboard metal plastics wood Dividing partitions in the outer packagings		steel (4A). aluminum (4B) other metal (4N). wood, natural, ordinary (4C1) with metal liner. plywood (4D) with metal liner. reconstituted wood (4F) with metal liner. plastics, expanded (4H1). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plastics (1H1 or 1H2). plywood (1D).

* * * * * * *

20. In § 173.63, paragraph (b) is revised to read as follows:

§ 173.63 Packaging exceptions.

* * * * *

(b) *Limited quantities of Cartridges, small arms, and cartridges for tools, blank (used to project fastening devices).* (1)(i) Cartridges, small arms *and* Cartridges for tools, blank (used to project fastening devices) that have been classed as Division 1.4S explosive may be offered for transportation and transported as limited quantities when packaged in accordance with paragraph (b)(2) of this section. For transportation by aircraft, the package must conform to the applicable requirements of § 173.27. Packages containing such articles may be marked with either the marking prescribed in § 172.315(a)(1) or 172.315(b)(1) of this subchapter. In addition, packages containing such articles offered for transportation by aircraft must be marked with the proper shipping name as prescribed in the § 172.101 Hazardous Materials Table of this subchapter. Packages containing such articles are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel. Additionally, packages containing such articles are excepted from the requirements of subparts E (Labeling) and F (Placarding) of part 172 of this subchapter.

(ii) Until December 31, 2012, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges for tools, blank *(used to project fastening devices)*'' and reclassed as ''ORM–D–AIR'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010. Until December 31, 2015, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges for tools, blank *(used to project fastening devices)''* and reclassed as ''ORM–D'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010.

(iii) Cartridges, small arms and Cartridges for tools, blank (used to project fastening devices) that may be shipped as a limited quantity or ORM–D material are as follows:

(A) Ammunition for rifle, pistol or shotgun;

(B) Ammunition with inert projectiles or blank ammunition;

(C) Ammunition having no tear gas, incendiary, or detonating explosive projectiles;

(D) Ammunition not exceeding 12.7 mm (50 caliber or 0.5 inch) for rifle or pistol, cartridges or 8 gauge for shotshells; and

(E) Cartridges for tools, blank that are used to project fastening devices.

(2) Packaging for Cartridges, small arms and Cartridges for tools, blank (used to project fastening devices) as limited quantity or ORM–D material must be as follows:

(i) Ammunition must be packed in inside boxes, or in partitions that fit snugly in the outside packaging, or in metal clips;

(ii) Primers must be protected from accidental initiation;

(iii) Inside boxes, partitions or metal clips must be packed in securely-closed strong outside packagings;

(iv) Maximum gross weight is limited to 30 kg (66 pounds) per package; and

(v) Cartridges for tools, blank that are used to project fastening devices and 22 caliber rim-fire cartridges may be packaged loose in strong outside packagings.

* * * * *

§ 173.115 [Amended]

21. In § 173.115, in paragraph (k), the wording ''ISO 10156:1996 and ISO 10156–2:2005'' is removed and replaced with the wording ''ISO 10156:2010''.

22. In § 173.121, paragraph (b)(iii) is revised to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(b) * * *

(iii) The capacity of the packaging is not more than 30 L (7.9 gallons); except that for transportation by highway, rail or cargo aircraft, the capacity of the package is not more than 100 L (26.3 gallons); and

* * * * *

23. In § 173.134, paragraph (b)(12) is revised to read as follows.

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

* * * * *

(b) * * *

(12) * * *

(i) Medical equipment which has been drained of free liquid.

(ii) Laundry or medical equipment conforming to the regulations of the Occupational Safety and Health Administration of the Department of Labor in 29 CFR 1910.1030. This exception includes medical equipment intended for use, cleaning, or refurbishment, such as reusable surgical equipment, or equipment used for testing where the components within which the equipment is contained essentially function as packaging. This exception does not apply to medical equipment being transported for disposal.

(iii) Medical devices or equipment potentially contaminated with or containing infectious substances which are being transported for disinfection, cleaning, sterilization, repair or equipment evaluation if packed in a leakproof packaging designed and constructed to assure that it remains intact under conditions normally incident to transportation. This exception does not apply to medical devices or equipment being transported for disposal, or to medical devices or equipment contaminated with or suspected of contamination with a Category A infectious substance.

(A) As applicable, packagings must be designed to meet the construction requirements of subpart L or subpart P of part 178 of this subchapter except for §§ 178.503 and 178.910. In addition, these packagings must meet the general packaging requirements of § 173.24(a), (b), and (e), and be capable of retaining the medical devices and equipment when dropped from a height of 1.2 m (4 feet).

(B) The packagings may be marked ''USED MEDICAL DEVICE'' or ''USED MEDICAL EQUIPMENT''. When an overpack is used, the overpack may be marked ''USED MEDICAL DEVICE'' or ''USED MEDICAL EQUIPMENT''.

(iv) Used health care products not conforming to the requirements in 29 CFR 1910.1030 and being returned to the manufacturer or the manufacturer's designee are excepted from the requirements of this subchapter when offered for transportation or transported in accordance with this paragraph (b)(12). For purposes of this paragraph, a health care product is used when it has been removed from its original packaging. Used health care products contaminated with or suspected of contamination with a Category A infectious substance may not be transported under the provisions of this paragraph.

* * * * *

24. In § 173.158, paragraphs (d)(2), (e), (f)(3), (g) and (h) are revised to read as follows:

§ 173.158 Nitric Acid.

* * * * *

(d) * * *

(2) In combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4A, 4B, 4N or 4G outer packagings with inner glass packagings of 2.5 L (0.66 gallons) or less capacity cushioned with a non-reactive, absorbent material and packed within a tightly closed intermediate packaging of metal or plastic.

(e) Nitric acid of less than 90 percent concentration, when offered for transportation or transported by rail, highway, or water may be packaged in 4A, 4B, or 4N metal boxes, 4G fiberboard boxes or 4C1, 4C2, 4D or 4F wooden boxes with inside glass packagings of not over 2.5 L (0.66 gallon) capacity each.

(f) * * *

(3) In combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4C1, 4C2, 4D, 4F, 4G, 4A, 4B or 4N outer packagings and plastic inner packagings not over 2.5 L (0.66 gallon) capacity further individually overpacked in tightly closed metal packagings.

(g) Nitric acid of more than 70 percent concentration, when offered for transportation or transported by cargo aircraft only, must be packaged in combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4C1, 4C2, 4D, 4F, 4G, 4A, 4B or 4N outer packagings with glass or earthenware inner packagings of not over 1 L (0.3 gallon) or glass ampoules of not over 0.5 L (0.1 gallon).

(h) Nitric acid of less than 70 percent concentration, when offered for transportation in cargo aircraft only must be packaged in combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4C1, 4C2, 4D, 4F, 4G, 4A, 4B or 4N outer packagings with inner packagings of—

* * * * *

25. In § 173.159a:

a. In paragraph (d)(1), the last word ''and'' is removed.

b. In paragraph (d)(2), the period is removed at the end of the sentence and the wording ''; and'' is added in its place.

c. New paragraph (d)(3) is added to read as follows:

§ 173.159a Exceptions for non-spillable batteries.

* * * * *

(d) * * *

(3) For transport by aircraft, must be transported as cargo.

26. Section 173.160 is revised to read as follows:

§ 173.160 Bombs, smoke, non-explosive (corrosive).

Bombs, smoke, non-explosive may be shipped provided they are without ignition elements, bursting charges, detonating fuses or other explosive components. They must be packaged in metal (4A, 4B, 4N), wooden (4C1, 4C2),

plywood (4D), or reconstituted wood (4F), fiberboard (4G) or solid plastic (4H2) boxes, or metal (1A2, 1B2, 1N2), plastic (1H2), plywood drums (1D), or fiber (1G) drums that meet Packing Group II requirements.

27. In § 173.162, paragraphs (a) and (c) are revised to read as follows:

§ 173.162 Gallium.

(a) * * *

(1) In combination packagings intended to contain liquids consisting of glass, earthenware or rigid plastic inner packagings with a maximum net mass of 15 kg (33 pounds) each. The inner packagings must be packed in wood boxes (4C1, 4C2, 4D, 4F), fiberboard boxes (4G), plastic boxes (4H1, 4H2), fiber drums (1G) or steel, metal, other than steel or aluminum, and plastic drums or jerricans (1A1, 1A2, 1N1, 1N2, 1H1, 1H2, 3A2 or 3H2) with sufficient cushioning materials to prevent breakage. Either the inner packagings or the outer packagings must have an inner liner that is leakproof or bags of strong leakproof and puncture-resistant material impervious to the contents and completely surrounding the contents to prevent it from escaping from the package, irrespective of its position.

(2) In packagings intended to contain liquids consisting of semi-rigid plastic inner packagings of not more than 2.5 kg (5.5 pounds) net capacity each, individually enclosed in a sealed, leak-tight bag of strong puncture-resistant material. The sealed bags must be packed in wooden (4C1, 4C2), plywood (4D), reconstituted wood (4F), fiberboard (4G), plastic (4H1, 4H2) or metal, other than steel or aluminum (4N) boxes or in fiber (1G), steel (1A1, 1A2), metal, other than steel or aluminum (1N1, 1N2), or plastic (1H1 or 1H2) drums, that are lined with leak-tight, puncture-resistant material. Bags and liner material must be chemically resistant to gallium.

* * * * *

(c) Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of gallium and packaged so that the quantity of gallium per package does not exceed 1 g (0.35 ounce) are not subject to the requirements of this subchapter. For transportation by aircraft, such articles and apparatuses must be transported as cargo.

28. In § 173.164, paragraphs (a)(1), (a)(5), (b), and (c)(2) are revised and paragraph (f) is added to read as follows:

§ 173.164 Mercury (metallic and articles containing mercury).

(a) * * *

(1) In inner packagings of earthenware, glass or plastic containing not more than 3.5 kg (7.7 pounds) of mercury, or inner packagings that are glass ampoules containing not more than 0.5 kg (1.1 pounds) of mercury, or iron or steel quicksilver flasks containing not more than 35 kg (77 pounds) of mercury. The inner packagings or flasks must be packed in steel drums (1A1, 1A2), metal, other than steel or aluminum drums (1N1, 1N2), steel jerricans (3A2), wooden boxes (4C1, 4C2), plywood boxes (4D), reconstituted wood boxes (4F), fiberboard boxes (4G), metal, other than steel or aluminum boxes (4N), plastic boxes (4H2), plywood drums (1D) or fiber drums (1G).

* * * * *

(5) When transported as cargo, lamps are excepted from the requirements of this subchapter provided, each lamp contains not more than 1 g of mercury and is packaged so that there is not more than 30 g of mercury per package. Packages must be so designed and constructed such that when dropped from a height of not less than 0.5 meter (1.5 feet) the packages must still be fit for transport and there must be no damage to the contents.

(b) When transported as cargo, manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of mercury and packaged so that the quantity of mercury per package does not exceed 1 g (0.035 ounce) are not subject to the requirements of this subchapter.

(c) * * *

(2) When transported as cargo, thermometers, switches and relays, each containing a total quantity of not more than 15 g (0.53 ounces) of mercury, are excepted from the requirements of this subchapter if installed as an integral part of a machine or apparatus and so fitted that shock of impact damage, leading to leakage of mercury, is unlikely to occur under conditions normally incident to transport.

* * * * *

(f) For vessel transport, manufactured articles or instruments containing less than 0.45 kg (1.0 pound) of mercury are not subject to the requirements of this subchapter.

* * * * *

29. Section 173.165 is revised to read as follows:

§ 173.165 Polyester resin kits.

(a) Polyester resin kits consisting of a base material component (Class 3, Packing Group II or III) and an activator component (Type D, E, or F organic peroxide that does not require temperature control)—

(1) The organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids.

(2)(i) Except for transportation by aircraft, the flammable liquid component must be packaged in suitable inner packagings.

(ii) For transportation by aircraft, a Packing Group II base material is limited to a quantity of 5 L (1.3 gallons) in metal or plastic inner packagings and 1 L (0.3 gallons) in glass inner packagings. A Packing Group III base material is limited to a quantity of 10 L (2.6 gallons) in metal or plastic inner packagings and 2.5 L (0.66 gallons) in glass inner packagings.

(3) If the flammable liquid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(4) The Packing Group assigned will be II or III, according to the criteria for Class 3, applied to the base material. Additionally, polyester resin kits must be packaged in specification combination packagings, based on the performance level required of the base material (II or III) contained within the kit, as prescribed in §§ 173.202 or 173.203 of this subchapter, as appropriate.

(5) For transportation by aircraft, the following additional requirements apply:

(i) Closures on inner packagings containing liquids must be secured by secondary means;

(ii) Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c); and

(iii) The total quantity of activator and base material may not exceed 5 kg (11 lbs) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 10 kg (22 lbs) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (i.e., 1 L equals 1 kg).

(b) Polyester resin kits are eligible for the Small Quantity exceptions in § 173.4 and the Excepted Quantity exceptions in § 173.4a, as applicable.

(c) *Limited quantities.* Limited quantity packages of polyester resin kits are excepted from labeling requirements, unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by

aircraft, only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel, and is eligible for the exceptions provided in § 173.156 of this part. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the general packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight.

(1) For other than transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids. For transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 30 mL (4.22 fluid ounces) net capacity each for liquids or 100 g (17.64 ounces) net capacity each for solids.

(2) Except for transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 5 L (1.3 gallons) net capacity each for a Packing Group II and Packing Group III liquid. For transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 1 L (0.26 gallons) net capacity each for a Packing Group II material. The flammable liquid component must be packed in metal or plastic inner packagings not over 5.0 L (1.3 gallons) net capacity each or glass inner packagings not over 2.5 L (0.66 gallons) net capacity each for a Packing Group III material.

(3) If the flammable liquid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(4) For transportation by aircraft, the following additional requirements apply:

(i) Closures on inner packagings containing liquids must be secured by secondary means as prescribed in § 173.27(d);

(ii) Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c);

(iii) The total quantity of activator and base material may not exceed 1 kg (2.2 lbs) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 5 kg (11 lbs) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (i.e., 1 L equals 1 kg);

(iv) *Drop test capability.* Fragile inner packagings must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities must be capable of withstanding a 1.2 m drop on solid concrete in the position most likely to cause damage; and

(v) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface for a duration of 24 hours equivalent to the total weight of identical packages if stacked to a height of 3.0 m (including the test sample).

(d) *Consumer commodities.* Until December 31, 2015, a limited quantity package of polyester resin kits that are also consumer commodities as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

30. In § 173.175, paragraph (g) is added to read as follows:

§ 173.175 Permeation devices.

* * * * *

(g) For transportation by aircraft, permeation devices must be transported as cargo.

* * * * *

31. Section 173.176 is added to read as follows:

§ 173.176 Capacitors.

(a) Capacitors, including capacitors containing an electrolyte that does not meet the definition of any hazard class or division as defined in this part, must conform to the following requirements:

(1) Capacitors not installed in equipment must be transported in an uncharged state;

(2) Each capacitor must be protected against a potential short circuit hazard in transport as follows:

(i) Except for transport by air, when a capacitor's energy storage capacity is less than or equal to 10 Wh or when the energy storage capacity of each capacitor in a module is less than or equal to 10 Wh, the capacitor or module must be protected against short circuit or be fitted with a metal strap connecting the terminals; and

(ii) For transport by air, or when the energy storage capacity of a capacitor or a capacitor in a module is more than 10 Wh, the capacitor or module must be fitted with a metal strap connecting the terminals;

(3) Capacitors containing an electrolyte that meets the definition of one or more hazard class or division as defined in this part, must be designed to withstand a 95 kPa (0.95 bar, 14 psi) pressure differential;

(4) Capacitors must be designed and constructed to safely relieve pressure that may build up in use, through a vent or a weak point in the capacitor casing. Any liquid that is released upon venting must be contained by the packaging or by the equipment in which a capacitor is installed; and

(5) Capacitors must be marked with the energy storage capacity in Wh.

(b) Capacitors must be packed in strong outer packagings. For transport by air, capacitors must be securely cushioned within the outer packagings. Capacitors installed in equipment may be offered for transport unpackaged or on pallets, when the capacitors are afforded equivalent protection by the equipment in which they are contained.

(c) Capacitors containing an electrolyte not meeting the definition of any hazard class or division as defined in this part, including when installed in equipment, are not subject to any other requirements of this subchapter.

(d) Capacitors containing an electrolyte that meets the definition of one or more hazard class or division as defined in this part, with an energy storage capacity of 10 Wh or less are not subject to any other requirements of this subchapter, when they are capable of withstanding a 1.2 m (3.9 feet) drop test unpackaged onto a rigid, non-resilient, flat and horizontal surface without loss of contents.

(e) Capacitors containing an electrolyte meeting the definition of one or more hazard class or division as defined in this part, that are not installed in equipment, and with an energy storage capacity of more than 10 Wh are subject to the requirements of this subchapter.

(f) Capacitors installed in equipment and containing an electrolyte meeting the definition of one or more hazard class or division as defined in this part, are not subject to any other requirements of this subchapter, provided the equipment is packaged in a strong outer packaging and in such a manner as to prevent accidental functioning of the capacitors during transport. Large, robust equipment

containing capacitors may be offered for transport unpackaged or on pallets when the capacitors are afforded equivalent protection by the equipment in which they are contained.

32. In § 173.181, paragraphs (b) and (c) are revised to read as follows:

§ 173.181 Pyrophoric materials (liquids).

* * * * *

(b) Steel boxes (4A), aluminum boxes (4B), metal boxes, other than steel or aluminum (4N), wooden boxes (4C1, 4C2, 4D, or 4F) or fiberboard boxes (4G); steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), metal drums, other than steel or aluminum (1N1 or 1N2), plywood drums (1D), or fiber drums (1G); or steel jerricans (3A1 or 3A2) or aluminum jerricans (3B1 or 3B2) enclosing not more than four strong, tight metal cans with inner receptacles of glass or metal, not over 1 L (0.3 gallon) capacity each, having positive screwcap closures adequately gasketed. Inner packagings must be cushioned on all sides with dry, absorbent, incombustible material in a quantity sufficient to absorb the entire contents. The strong, tight metal cans must be closed by positive means, not by friction.

(c) Steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), metal drums, other than steel or aluminum(1N1 or 1N2) or fiber drums (1G); steel jerricans (3A1 or 3A2) or aluminum jerricans (3B1 or 3B2); or steel boxes (4A), aluminum boxes (4B) or metal boxes, other than steel or aluminum (4N) not exceeding 220 L (58 gallons) capacity each with strong, tight inner metal cans not over 4.0 L (1 gallon) capacity each. The strong, tight metal cans must be closed by positive means, not friction.

33. In § 173.183, paragraph (a) is revised to read as follows:

§ 173.183 Nitrocellulose base film.

* * * * *

(a) In steel drums (1A2), aluminum drums (1B2), other metal drums (4A2), steel jerricans (3A2), aluminum jerricans (3B2), steel, aluminum or other metal (4A, 4B, 4N) boxes, wooden (4C1, 4C2), plywood (4D) or reconstituted wood (4F) boxes or plywood drums (1D) with each reel in a tightly closed metal can, polypropylene canister, or strong cardboard or fiberboard inner packaging with cover held in place by adhesive tape or paper; or

* * * * *

34. In § 173.184, paragraph (b) is revised to read as follows:

§ 173.184 Highway or rail fuse.

* * * * *

(b) Fusees (highway and railway) must be packaged in steel (1A2), aluminum (1B2) or other metal (1N2) drums, steel (3A2) or aluminum (3B2) jerricans, steel (4A), aluminum (4B) or other metal (4N) boxes, wooden (4C1, 4C2), plywood (4D) or reconstituted wood (4F) boxes or in fiberboard boxes (4G), plywood (1D) or fiber (1G) drums. If the fusees are equipped with spikes packagings must have reinforced ends to prevent penetration of spikes through the outer packagings; packages must be capable of passing drop test requirements (§ 178.603 of this subchapter), including at least one drop with spike in a downward position, and other requirements of part 178 of this subchapter, at the Packing Group II performance level.

35. In § 173.186, paragraph (e) is revised to read as follows:

§ 173.186 Matches.

* * * * *

(e) Packagings. Strike-anywhere matches must be tightly packed in securely closed chipboard, fiberboard, wooden, or metal inner packagings to prevent accidental ignition under conditions normally incident to transportation. Each inner packaging may contain no more than 700 strike-anywhere matches and must be packed in outer steel drums (1A1, 1A2), aluminum drums (1B1, 1B2), other metal drums (1N1, 1N2), steel jerricans (3A1, 3A2), aluminum jerricans (3B1, 3B2), steel (4A), aluminum (4N), other metal (4N) boxes, wooden (4C1, 4C2), plywood (4D), reconstituted wood (4F) or fiberboard (4G) boxes, plywood (1D) or fiber (1G) drums. Gross weight of fiberboard boxes (4G) must not exceed 30 kg (66 pounds). Gross weight of other outer packagings must not exceed 45 kg (100 pounds).

36. In § 173.187, paragraphs (a) and (d) are revised to read as follows:

§ 173.187 Pyrophoric solids, metals or alloys, n.o.s.

* * * * *

(a) In steel, aluminum or other metal boxes (4A, 4B or 4N) and contain no more than 15 kg (33 pounds) each.

* * * * *

(d) In steel, aluminum or other metal drums (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) with a gross mass not exceeding 150 kg (331 pounds) per drum.

* * * * *

37. In § 173.188, paragraphs (a)(1), (a)(2), and (b)(1) are revised to read as follows:

§ 173.188 White or yellow phosphorus.

* * * * *

(a) * * *

(1) Steel, aluminum or other metal boxes (4A, 4B or 4N) or wooden boxes (4C1, 4C2, 4D, or 4F) with:

* * * * *

(2) Steel, aluminum or other metal drums (1A1, 1B1 or 1N1) not over 250 L (66 gallons) capacity each or steel, aluminum or other metal drums (1A2, 1B2, or 1N2) not over 115 L (30 gallons) capacity each.

* * * * *

(b) * * *

(1) Steel, aluminum or other metal drums (1A2, 1B2 or 1N2) not over 115 L (30 gallons) capacity each, or

* * * * *

38. In § 173.189, paragraph (b) is revised to read as follows:

§ 173.189 Batteries containing sodium or cells containing sodium.

* * * * *

(b) Cells must be protected against short circuit and must consist of hermetically sealed metal casings that fully enclose the hazardous materials and that are so constructed and closed as to prevent the release of the hazardous materials under normal conditions of transport. Cells must be placed in suitable outer packagings with sufficient cushioning material to prevent contact between cells and between cells and the internal surfaces of the outer packaging, and to ensure that no dangerous shifting of the cells within the outer packaging occurs in transport. Cells must be packaged in 1A2, 1B2, 1N2, 1D, 1G, 1H2, 4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2, 3A2, 3B2 or 3H2) outer packagings that meet the requirements of part 178 of this subchapter at the Packing Group II performance level.

* * * * *

39. In § 173.193, in paragraph (a), the first sentence is revised to read as follows:

§ 173.193 Bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures, etc.

(a) Bromoacetone must be packaged as follows in metal boxes (4A, 4B or 4N) or wooden boxes (4C1, 4C2, 4D or 4F) with inner glass receptacles or tubes in hermetically sealed metal receptacles in corrugated fiberboard cartons. * * *

* * * * *

40. In § 173.194, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 173.194 Gas identification sets.

* * * * *

(b) * * *

(1) If the poisonous material does not exceed 5 mL (0.2 fluid ounce) if a liquid or 5 g (0.2 ounce) if a solid, it may be packed in glass inner receptacles of not

over 120 mL (4.1 fluid ounces) each. Each glass receptacle, cushioned with absorbent material must be packed in a hermetically sealed metal can of not less than 0.30 mm (0.012 inch) wall thickness. Metal cans, surrounded on all sides by at least 25 mm (1 inch) of dry sawdust, must be packed in 4A, 4B or 4N metal boxes or 4C1, 4C2, 4D or 4F wooden boxes. Not more than 100 mL (3.4 fluid ounces) or 100 g (3.5 ounces) of poisonous materials may be packed in one outer box.

(2) If the poisonous material does not exceed 5 mL (0.2 fluid ounce) if a liquid or 20 g (0.7 ounce) if a solid, it may be packed in glass inner receptacles with screw-top closures of not less than 60 mL (2 fluid ounces), hermetically sealed. Twelve bottles containing poisonous material, not to exceed 100 mL (3.4 fluid ounces) or 100 g (3.5 ounces), or both, may be placed in a plastic carrying case, each glass receptacle surrounded by absorbent cushioning and each separated from the other by sponge rubber partitions. The plastic carrying case must be placed in a tightly fitting fiberboard box which in turn must be placed in a tightly fitting 4A, 4B or 4N metal box or 4C1, 4C2, 4D or 4F wooden box.

* * * * *

41. In § 173.196, paragraph (a)(3) is revised to read as follows:

§ 173.196 Category A infectious substances.

(a) * * *

(3) A rigid outer packaging of adequate strength for its capacity, mass and intended use; including, drums (1A1, 1A2, 1B1, 1B2, 1N1, 1N2, 1H1, 1H2, 1D, 1G); boxes (4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2); or jerricans (3A1, 3A2, 3B1, 3B2, 3H1, 3H2). The outer packaging must measure not less than 100 mm (3.9 inches) at its smallest overall external dimension.

* * * * *

42. In § 173.199, paragraph (d)(1) is revised to read as follows:

§ 173.199 Category B infectious substances.

* * * * *

(d) * * *

(1) Ice or dry ice must be placed outside the secondary packaging or in an overpack. Interior supports must be provided to secure the secondary packagings in the original position. If ice is used, the outside packaging must be leakproof or must have a leakproof liner. If dry ice is used, the outside packaging must permit the release of carbon dioxide gas and otherwise meet the provisions in § 173.217. The primary receptacle and secondary packaging must maintain their integrity at the temperature of the refrigerant used, as well as the temperatures and pressures of transport by aircraft they could be subjected to if refrigeration were lost, and sufficient absorbent material must be provided to absorb all liquid, including melted ice.

* * * * *

§ 173.201 [Amended]

43. In § 173.201, in the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

§ 173.202 [Amended]

44. In § 173.202, in the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

§ 173.203 [Amended]

45. In § 173.203, in the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

§ 173.211 [Amended]

46. Section 173.211 is amended as follows:

a. In the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

b. In the paragraph (c) list, the wording ''Metal box other than steel or aluminum with liner: 4N'' is added between the entry ''Aluminum box with liner: 4B'' and the entry ''Natural wood box, sift proof: 4C2''.

§ 173.212 [Amended]

47. Section 173.212 is amended as follows:

a. In the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

b. In the paragraph (c) list, the wording ''Metal box other than steel or aluminum with liner: 4N'' is added between the entry ''Aluminum box with liner: 4B'' and the entry ''Natural wood box, sift proof: 4C2''.

§ 173.213 [Amended]

48. Section 173.213 is amended as follows:

a. In the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

b. In the paragraph (c) list, the wording ''Metal box other than steel or aluminum with liner: 4N'' is added between the entry ''Aluminum box with liner: 4B'' and the entry ''Natural wood box, sift proof: 4C2''.

49. In § 173.219, paragraphs (b)(1), (c)(1), and (c)(5) are revised to read as follows:

§ 173.219 Life-saving appliances.

* * * * *

(b) * * *

(1) Division 2.2 compressed or liquefied gases must be packaged in cylinders in accordance with the requirements of this subchapter;

* * * * *

(c) * * *

(1) Division 2.2 compressed or liquefied gases must be packaged in cylinders in accordance with the requirements of this subchapter;

* * * * *

(5) Life-saving appliances containing no hazardous materials other than cylinders of Division 2.2 compressed or liquefied gases with no subsidiary risk, with a capacity not exceeding 120 ml, installed solely for the purpose of activating the appliance, are not subject to the provisions of this subchapter provided they are overpacked in rigid outer packagings with a maximum gross mass of 40 kg. For transportation by aircraft, such appliances must be transported as cargo.

50. In § 173.221, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 173.221 Polymeric beads, expandable and Plastic molding compound.

(a) Non-bulk shipments of Polymeric beads (or granules), expandable *evolving flammable vapor* and Plastic molding compound *in dough, sheet or extruded rope form, evolving flammable vapor* must be packed in: metal (4A, 4B, or 4N), wooden (4C1 or 4C2), plywood (4D), fiberboard (4G), reconstituted wood (4F), plastic (4H1 or 4H2) boxes, plywood drums (1D) or fiber drums (1G) with sealed inner plastic liners; in vapor tight metal or plastic drums (1A1, 1A2, 1B1, 1B2, 1N1, 1N2, 1H1 or 1H2); in vapor tight metal or plastic jerricans (3A1, 3A2, 3B1, 3B2, 3H1, or 3H2); or packed in non-specification packagings when transported in dedicated vehicles or freight containers. The packagings need not conform to the requirements for package testing in part 178 of this subchapter, but must be capable of containing any evolving gases from the contents during normal conditions of transportation.

* * * * *

(c) For transportation by vessel, the provisions of § 176.907 must be met.

51. In § 173.225, the paragraph (c) ''Organic Peroxide Table'' and the paragraph (e) ''Organic Peroxide IBC Table'' are amended by adding the entries under ''[ADD]'' and revising entries under ''[REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(c) * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %) A	Diluent (mass %) B	Diluent (mass %) I	Water (mass %)	Packing method	Temperature (°C) Control	Temperature (°C) Emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
[ADD]										
* *		*		*	*		*		*	
([3R- (3R, 5aS, 6S, 8aS, 9R, 10R, 12S, 12aR**)]-Decahydro-10-methoxy-3, 6, 9-trimethyl-3, 12-epoxy-12H-pyrano [4, 3-j]-1, 2-benzodioxepin)	UN3106	≤100	.....	.....	.....	.....	OP7			
* *		*		*	*		*		*	
3, 6, 9–Triethyl-3, 6, 9-trimethyl-1, 4, 7-triperoxonane	UN3110	≤17	≥18	.....	≥65	.....	OP8			
* *		*		*	*		*		*	
Di-(3, 5, 5-trimethylhexanoyl) peroxide	UN3119	>38–52	≥48	.....	.....	.....	OP8	+10	+15	
* *		*		*	*		*		*	
[REVISE]										
* *		*		*	*		*		*	
Diisopropyl peroxydicarbonate	UN3115	≤32	≥68	.....	.....	.....	OP7	−15	−5	
* *		*		*	*		*		*	
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3115	>52–82	≥18	.....	.....	.....	OP7	0	+10	
* *		*		*	*		*		*	

* * * * *

(e) * * *

ORGANIC PEROXIDE IBC TABLE

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
[ADD]					
*	* * *	*		*	*
	Diisobutyryl peroxide, not more than 28% as a stable dispersion in water.	31HA1	1000	−20 °C	−10 °C
		31A	1250	−20 °C	−10 °C
	Diisobutyryl peroxide, not more than 42% as a stable dispersion in water.	31HA1	1000	−25 °C	−15 °C
		31A	1250	−25 °C	−15 °C
*	* * *	*		*	*
[REVISE]					
*	* * *	*		*	*
	Di-(3, 5, 5-trimethylhexanoyl) peroxide, not more than 52% in diluent type A.	31HA1	1000	+10 °C	+15 °C
*	* * *	*		*	*
	1, 1, 3, 3–Tetramethylbutyl peroxyneodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−5 °C	+5 °C
		31HA1	1000	−5 °C	+5 °C
*	* * *	*		*	*

* * * * *

§ 173.226 [Amended]

52. In section 173.226:

a. In the paragraph (c)(1) list, the wording ''Expanded plastic box: 4H2'' is

removed and the wording ''Expanded plastic box: 4H1'' is added in its place.

b. In the paragraph (c)(1) list, the wording ''Metal box other than steel or aluminum: 4N'' is added after the entry ''Solid plastic box: 4H2''.

53. In § 173.230, paragraphs (e)(2)(ii) and (f)(3) are revised to read as follows:

§ 173.230 Fuel cell cartridges containing hazardous material.

* * * * *

(e) * * *

(2) * * *

(ii) For fuel cell cartridges contained in equipment, the entire fuel cell system must be protected against short circuits and unintentional activation. The equipment must be securely cushioned in the outer packaging.

(f) * * *

(3) For transportation aboard passenger aircraft, for fuel cell cartridges contained in equipment, each fuel cell system and fuel cell cartridge must conform to IEC PAS 62282–6–100 Ed. 1 [and Amendment 1] (IBR, see § 171.7 of this subchapter) or a standard approved by the Associate Administrator;

* * * * *

54. In § 173.240, paragraph (f) is added to read as follows:

§ 173.240 Bulk packaging for certain low hazard solid materials.

* * * * *

(f) *Flexible Bulk Containers.* Flexible Bulk Containers are authorized subject to the conditions and limitations of this section provided the use of a Flexible Bulk Container is authorized by the inclusion of bulk packaging code B120 in Column (7) of the § 172.101 Hazardous Materials Table of this subchapter and the Flexible Bulk Container conforms to the requirements in subpart S of part 178 of this subchapter. Flexible Bulk Containers may not be used for Packing Group I or II hazardous materials.

55. In § 173.306, paragraph (j) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(j) *Aerosols and receptacles small, containing gas with a capacity of less than 50 mL.* Aerosols, as defined in § 171.8 of this subchapter, and receptacles, small, containing gas, with a capacity not exceeding 50 mL (1.7 fluid oz.) and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter except that for transport by aircraft, such aerosols and receptacles must be transported as cargo. The pressure limit may be increased to 2,000 kPa (290 psig) at 55 °C (131 °F) provided the aerosols are transported in outer packages that conform to the packaging requirements of Subpart B of this part. This paragraph (j) does not apply to a self-defense spray (e.g., pepper spray).

* * * * *

56. In § 173.313:

a. The section heading is revised;

b. The introductory text is revised;

c. The table name is revised;

d. In the table, the value listed for the maximum filling ratio for UN3220 of ''0.95'' is replaced with ''0.87''; and

e. Entries are added for UN3500, UN3501, UN3502, UN3503, UN3504 and UN3505.

The revisions and additions read as follows:

§ 173.313 UN Portable Tank Table for Liquefied Compressed Gases and Chemical Under Pressure.

The UN Portable Tank Table for Liquefied Compressed Gases and chemical under pressure is referenced in § 172.102(c)(7)(iii) of this subchapter for portable tanks that are used to transport liquefied compressed gases and chemicals under pressure. The table applies to each liquefied compressed gas and chemical under pressure that are identified with Special Provision T50 in Column (7) of the § 172.101 Hazardous Materials Table. In addition to providing the UN identification number and proper shipping name, the table provides maximum allowable working pressures, bottom opening requirements, pressure relief device requirements, and degree of filling requirements for liquefied compressed gas and chemical under pressure permitted for transportation in a T50 portable tank. In the minimum test pressure column, ''small'' means a portable tank with a diameter of 1.5 meters or less when measured at the widest part of the shell, ''sunshield'' means a portable tank with a shield covering at least the upper third of the shell, ''bare'' means no sunshield or insulation is provided, and ''insulated'' means a complete cladding of sufficient thickness of insulating material necessary to provide a minimum conductance of not more than 0.67 w/m²/k. In the pressure relief requirements column, the word ''Normal'' denotes that a frangible disc as specified in § 178.276(e)(3) of this subchapter is not required.

UN PORTABLE TANK TABLE FOR LIQUEFIED COMPRESSED GASES AND CHEMICALS UNDER PRESSURE

UN No.	Non-refrigerated liquefied compressed gases	Minimum design pressure (bar) small; bare; sunshield; insulated	Openings below liquid level	Pressure relief requirements (*See* § 178.276(e))	Maximum filling density (kg/l)
*	*	*	*	*	*
3220	Pentafluoroethane or Refrigerant gas R 125.	34.4 30.8 27.5 24.5	Allowed	Normal	0.87.
*	*	*	*	*	*
3500	Chemical under pressure, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c).
3501	Chemical under pressure, flammable, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c).
3502	Chemical under pressure, toxic, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c).
3503	Chemical under pressure, corrosive, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c).

UN PORTABLE TANK TABLE FOR LIQUEFIED COMPRESSED GASES AND CHEMICALS UNDER PRESSURE—Continued

UN No.	Non-refrigerated liquefied compressed gases	Minimum design pressure (bar) small; bare; sunshield; insulated	Openings below liquid level	Pressure relief requirements (*See* § 178.276(e))	Maximum filling density (kg/l)
3504	Chemical under pressure, flammable, toxic, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c).
3506	Chemical under pressure, flammable, corrosive, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c).

57. In § 173.316, paragraph (a)(8) is redesignated as paragraph (a)(9) and paragraph (a)(8) is added to read as follows

§ 173.316 Cryogenic liquids in cylinders.

(a) * * *

(8) All pressure relief device inlets must under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices must be arranged to ensure that the escaping vapor is discharged unobstructed.

* * * * *

58. In § 173.318, paragraph (b)(7)(vi) is added to read as follows.

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(b) * * *

(7) * * *

(vi) All pressure relief device inlets must under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices must be arranged to ensure that the escaping vapor is discharged unobstructed.

* * * * *

59. Section 173.335 is added to read as follows:

§ 173.335 Chemical under pressure n.o.s.

(a) *General requirements.* A cylinder filled with a chemical under pressure must be offered for transportation in accordance with the requirements of this section and § 172.301. In addition, a DOT specification cylinder must meet the requirements in §§ 173.301a, 173.302, 173.302a and 173.305, as applicable. UN pressure receptacles must meet the requirements in §§ 173.301b and 173.302b, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

(b) *Filling limits.* Cylinders must be filled so that at 50° C (122 °F) the non-gaseous phase does not exceed 95% of their water capacity and they are not completely filled at 60° C (140 °F). When filled, the internal pressure at 65° C (149 °F) must not exceed the test pressure of the cylinder. The vapor pressures and volumetric expansion of all substances in the cylinders must be taken into account.

(c) *Minimum service pressure.* The minimum service pressure must be in accordance with the design specifications of part 178 of this subchapter for the propellant. In any case the minimum test pressure must not be less than 20 bar.

(d) *Periodic inspection.* The maximum requalification test period for cylinders transporting chemical under pressure n.o.s. is 5 years.

60. In § 173.340, paragraphs (c)(1), (c)(2), and (d) are revised to read as follows:

§ 173.340 Tear Gas Devices.

* * * * *

(c) * * *

(1) In UN 4A, 4B, or 4N metal boxes or UN 4C1, 4C2, 4D, or 4F metal-strapped wooden boxes. Functioning elements not assembled in grenades or devices must be in a separate compartment of these boxes, or in inner or separate outer boxes, UN 4C1, 4C2, 4D, or 4F, and must be packed and cushioned so that they may not come in contact with each other or with the walls of the box during transportation. Not more than 50 tear gas devices and 50 functioning elements must be packed in one box, and the gross weight of the outer box may not exceed 35 kg (77 pounds).

(2) In UN 1A2, 1B2, 1N2 or 1H2 drums. Functioning elements must be packed in a separate inner packaging or compartment. Not more than 24 tear gas devices and 24 functioning elements must be packed in one outer drum, and the gross weight of the drum may not exceed 35 kg (77 pounds).

* * * * *

(d) Tear gas devices may be shipped completely assembled when offered by or consigned to the U.S. Department of Defense, provided the functioning elements are packed so that they cannot accidentally function. Outer packagings must be UN 4A, 4B, or 4N metal boxes or UN 4C1, 4C2, 4D, or 4F metal-strapped wooden boxes.

PART 175—CARRIAGE BY AIRCRAFT

61. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.45 and 1.53.

62. In § 175.8, paragraphs (a)(3)(ii) and (b)(3) are revised to read as follows:

§ 175.8 Exceptions for operator equipment and items of replacement.

(a) * * *

(3) * * *

(ii) Irrespective of quantity limitations such as those provided in § 172.101 or § 175.75(c) of this subchapter, aircraft batteries may be transported on passenger aircraft as follows:

(A) ''Batteries, wet, filled with acid'' or ''Batteries, wet, filled with alkali,'' up to 100 kg net mass per package; and

(B) Lithium ion batteries, in packages containing a single aircraft battery with a net mass not exceeding 35 kg.

(b) * * *

(3) Aerosols of Division 2.2 only (for dispensing of food products), alcoholic beverages, colognes, liquefied gas lighters, perfumes, and portable electronic devices containing lithium cells or batteries that meet the requirements of § 175.10(a)(18) carried aboard a passenger-carrying aircraft by the operator for use or sale on that specific aircraft. A liquefied gas lighter design must be examined and successfully tested by a person or agency authorized by the Associate Administrator.

* * * * *

63. In § 175.10, paragraphs (a)(14), (a)(15), (a)(18), (a)(18)(iii) (a)(19)(vii), and (a)(19)(viii) are revised and paragraphs (a)(20), (a)(21), (a)(22), (a)(23), and (a)(24) are added to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(14) Electrically powered heat-producing articles (e.g., battery-operated equipment such as diving lamps and

soldering equipment) as checked or carry-on baggage only and with the approval of the operator of the aircraft. The heat-producing component, the energy source, or other component (e.g., fuse) must be removed to prevent unintentional functioning during transport. Any battery that is removed must be protected against short circuit by placement in original retail packaging or by otherwise insulating terminals (e.g., by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch).

(15) A wheelchair or other battery-powered mobility aid equipped with a nonspillable battery or a dry sealed battery when carried as checked baggage, provided—

(i) The battery conforms to the requirements of § 173.159a(d) of this subchapter for non-spillable batteries;

(ii) The battery conforms to the requirements of § 172.102(c)(1), Special provision 130 of this subchapter for dry sealed batteries, as applicable;

(iii) Visual inspection including removal of the battery, where necessary, reveals no obvious defects (removal of the battery from the housing should be performed by qualified airline personnel only);

(iv) The battery is disconnected and the battery terminals are protected to prevent short circuits, unless the wheelchair or mobility aid design provides an effective means of preventing unintentional activation, and

(v) The battery is—

(A) Securely attached to the wheelchair or mobility aid;

(B) Is removed and placed in a strong, rigid packaging marked ''NONSPILLABLE BATTERY'' (unless fully enclosed in a rigid housing that is properly marked);

(C) Is removed and placed in a strong, rigid packaging marked with the words ''not restricted'' in accordance with paragraph (c)(2) of § 172.102(c)(1), Special provision 130, of this subchapter; or

(D) Is handled in accordance with paragraph (a)(16)(iv) of this section.

* * * * *

(18) Except as provided in § 173.21 of this subchapter, portable electronic devices (for example, watches, calculating machines, cameras, cellular phones, lap-top and notebook computers, camcorders, etc.) containing cells or batteries (including lithium cells or batteries) and spare batteries and cells for these devices, when carried by passengers or crew members for personal use. Each spare battery must be individually protected so as to prevent short circuits (by placement in original retail packaging or by otherwise insulating terminals, e.g., by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch) and carried in carry-on baggage only. In addition, each installed or spare battery must comply with the following:

* * * * *

(iii) For a non-spillable battery, the battery and equipment must conform to § 173.159(d). Each battery must not exceed a voltage greater than 12 volts and a watt-hour rating of not more than 100 Wh. No more than two individually protected spare batteries may be carried. Such equipment and spare batteries must be carried in checked or carry-on baggage.

(19) * * *

(vii) Each fuel cell and fuel cell cartridge must conform to IEC/PAS 62282–6–100 [and Amendment 1] (IBR; see § 171.7 of this subchapter) and must be marked with a manufacturer's certification that it conforms to the specification. In addition, each fuel cell cartridge must be marked with the maximum quantity and type of fuel in the cartridge;

(viii) Interaction between fuel cells and integrated batteries in a device must conform to IEC/PAS 62282–6–100 [and Amendment 1] (IBR, see § 171.7 of this subchapter). Fuel cells whose sole function is to charge a battery in the device are not permitted; and

* * * * *

(20) Permeation devices for calibrating air quality monitoring equipment when carried in checked baggage provided the devices are constructed and packaged in accordance with § 173.175.

(21) An internal combustion or fuel cell engine or a machine or apparatus containing an internal combustion or fuel cell engine when carried as checked baggage, provided—

(1) The engine contains no liquid or gaseous fuel. An engine may be considered as not containing fuel when the engine components and any fuel lines have been completed drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard and the engine when held in any orientation will not release any liquid fuel;

(2) The fuel tank contains no liquid or gaseous fuel. A fuel tank may be considered as not containing fuel when the fuel tank and the fuel lines have been completed drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard;

(3) It is not equipped with a wet battery (including a non-spillable battery), a sodium battery or a lithium battery; and

(4) It contains no other hazardous materials subject to the requirements of this subchapter.

(22) Non-infectious specimens transported in accordance with § 173.4b(b).

(23) Insulated packagings containing refrigerated liquid nitrogen when carried in checked or carry-on baggage in accordance with the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter), Packing Instruction 202, the packaging specifications in part 6, chapter 5, and special provision A152.

(24) Small cartridges fitted into devices with no more than four small cylinders of carbon dioxide or other suitable gas in Division 2.2. The water capacity of each cylinder must not exceed 50 ml (equivalent to a 2.8 g carbon dioxide cartridge), with the approval of the operator.

* * * * *

PART 176—CARRIAGE BY VESSEL

64. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR § 1.53.

65. In § 176.2, the following definition for ''*Closed cargo transport unit for Class 1 (explosive) materials*'', ''*Potential or possible sources of ignition*'', and ''*Protected from sources of heat*'' are added in alphabetical order as follows:

§ 176.2 Definitions.

* * * * *

Closed cargo transport unit for Class 1 (explosive) materials means a freight container or transport vehicle that fully encloses the contents by permanent structures and can be secured to the ship's structure and are, except for the carriage of division 1.4 explosives, structurally serviceable (see § 176.172). Portable magazines conforming to § 176.137 are also considered closed cargo transport units for Class 1. Small compartments such as deck houses and mast lockers are included. Cargo transport units with fabric sides or tops are not closed cargo transport units. The floor of any closed cargo transport unit must either be constructed of wood, close-boarded or so arranged that goods are stowed on sparred gratings, wooden pallets or dunnage.

* * * * *

Potential or possible sources of ignition means, but is not limited to, open fires, machinery exhausts, galley uptakes, electrical outlets and electrical equipment including those on

refrigerated or heated cargo transport units unless they are of a type designed to operate in a hazardous environment.

* * * * *

Protected from sources of heat means that packages and cargo transport units must be stowed at least 2.4 m from heated ship structures, where the surface temperature is liable to exceed 131 °F (55 °C). Examples of heated structures are steam pipes, heating coils, top or side walls of heated fuel and cargo tanks, and bulkheads of machinery spaces. In addition, packages not loaded inside a cargo transport unit and stowed on deck must be shaded from direct sunlight. The surface of a cargo transport unit can heat rapidly when in direct sunlight in nearly windless conditions and the cargo may also become heated. Depending on the nature of the goods in the cargo transport unit, and the planned voyage, precautions must be taken to ensure that exposure to direct sunlight is reduced.

* * * * *

66. In § 176.63, paragraphs (b) and (e) are revised to read as follows:

§ 176.63 Stowage locations.

* * * * *

(b) To qualify as ''on deck'' stowage, the location must be on the weather deck. If the location is in a house on the weather deck, the location must have a permanent structural opening to the atmosphere, such as a door, hatch, companionway or manhole, and must be vented to the atmosphere. The location may not have any structural opening to any living quarters, cargo, or other compartment unless the opening has means for being closed off and secured. Any deck house containing living quarters, a steering engine, a refrigerating unit, a refrigerated stowage box, or a heating unit may not be used unless that area is isolated from the cargo stowage area by a permanent, and tight, metallic bulkhead. Stowage in a shelter or 'tween deck is not considered to be ''on deck''. A barge that is vented to the atmosphere and is stowed on deck on a barge-carrying ship is considered to be ''on deck''. When an entry in § 172.101 of this subchapter requires ''on-deck'' stowage and is qualified by the requirement ''protected from sources of heat'', the stowage must be protected from the direct rays of the sun by means of structural erections or awnings except that such protection is not required for shipment in portable tanks.

* * * * *

(e) Notwithstanding the stowage provisions given in the table in § 172.101 of this subchapter, empty packages containing residue, including IBCs and large packages, may be stowed ''on deck'' or ''under deck'' in a mechanically ventilated cargo space. However, empty pressure receptacles containing residue that carry a label of class 2.3 must be stowed ''on deck'' and waste aerosols must be stowed in accordance with the table in § 172.101 of this subchapter.

* * * * *

67. In § 176.76, paragraph (a)(9) is revised to read as follows:

§ 176.76 Transport vehicles, freight containers, and portable tanks containing hazardous materials.

(a) * * *

(9) When packages are secured with banding or straps, these restraints must not be over-tightened to cause damage or deformation of the packages or the securing points (such as D-rings) within the freight container or transport vehicle;

* * * * *

68. In § 176.83 paragraphs (m)(2) and (m)(3) are revised to read as follows:

§ 176.83 Segregation.

* * * * *

(m) * * *

(2) Not all hazardous materials falling within a segregation group are listed by name in the regulations. These materials are shipped under ''n.o.s.'' entries. Although these ''n.o.s.'' entries are not listed themselves in the above groups, the person who offers a hazardous material for transportation must decide whether allocation under a segregation group is appropriate.

(3) The segregation groups described above do not address materials that fall outside the classification criteria of the hazardous materials regulations, although it is recognized that some non-hazardous materials have certain chemical properties similar to hazardous materials listed in the segregation groups. A person who offers a hazardous material for transportation or the person responsible for packing the materials into a cargo transport unit who does have knowledge of the chemical properties of such non-hazardous materials may identify a relevant segregation group and apply the segregation requirements for that segregation group.

69. In § 176.84, in the table of provisions in paragraph (b), Stowage provisions 19, 48, and 50 are deleted and Stowage provisions 25 and 128 are revised and, in paragraph (c)(2), stowage provisions 7E, 8E and 20E are deleted, and Stowage provision 26E is revised to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) Table of provisions:

Code	Provisions
*	* * * *
25	Protected from sources of heat.
*	* * * *
128	Stow in accordance with the IMDG Code, Sub-section 7.6.2.7.2 (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

(c) * * *

Code	Provisions
*	* * * *
26E	For closed cargo transport units, a non-metallic lining is required when not in effectively sealed, sift-proof packages.
*	* * * *

70. In § 176.116, paragraph(a) is revised and paragraph (f) is removed and reserved to read as follows:

§ 176.116 General stowage conditions for class 1 (explosive) materials.

(a) *Stowage Location:*

(1) Class 1 (explosive) materials must be stowed in a cool part of the ship and must be kept as cool as practicable while on board. Class 1 (explosives) must be stowed as far away as practicable from any potential source of heat or ignition.

(2) Class 1 (explosive) materials may not be positioned closer to the ship's side than a distance equal to one eighth of the beam or 2.4 m (8 feet), whichever is less.

(3) Except where the consignment of Class 1 (explosive) materials consists only of explosive articles, the wearing of shoes or boots with unprotected metal nails, heels, or tips of any kind is prohibited.

* * * * *

(f) [Reserved]

* * * * *

§ 176.128 [Removed]

71. Remove and reserve § 176.128.

§ 176.130 [Removed]

72. Remove and reserve § 176.130.

§ 176.133 [Removed]

73. Remove and reserve § 176.133.

§ 176.134 [Removed]

74. Remove and reserve § 176.134.

§ 176.136 [Removed]

75. Remove and reserve § 176.136.

76. In § 176.138, paragraph (b) is revised to read as follows:

§ 176.138 Deck stowage.

* * * * *

(b) Class 1 (explosives) may not be stowed within a horizontal distance of 6 m (20 feet) from any potential source of heat or ignition. With the exception of division 1.4 (explosive) materials, class 1 (explosives) may not be stowed within a horizontal distance of 12 m (39 feet) from the bridge, accommodation areas, and lifesaving appliances.

* * * * *

77. In § 176.144, paragraph (d) is revised to read as follows:

§ 176.144 Segregation of Class 1 (explosive) materials.

* * * * *

(d) If some of the Class 1 (explosive) materials in a stowage mixture require non-metallic lining of the closed cargo transport unit, Class 1 (explosive) materials requiring ordinary stowage may be stowed in the same closed cargo transport. When a closed cargo transport unit is used for such substances that require non-metallic lining of the closed cargo transport unit, the other Class 1 (explosive) materials stowed therein must have no exposed parts of any ferrous metal or aluminum alloy, unless separated by a partition.

* * * * *

78. In § 176.146, paragraphs (a) and (b) are revised, and paragraph (c) is removed and reserved, to reads as follows:

§ 176.146 Segregation from non-hazardous materials.

(a) Except as required by paragraph (b) of this section, Class 1 (explosive) materials need not be segregated from other cargo of a non-dangerous nature.

(b) Readily combustible materials may not be stowed in the same compartment or hold as Class 1 (explosive) materials other than those in compatibility group S.

(c) [Reserved]

* * * * *

79. In § 176.170, paragraph (c) is reserved and paragraph (a) is revised to read as follows:

§ 176.170 Transport of Class 1 (explosive) materials in freight containers.

(a) When Class 1 (explosive) materials are stowed in a freight container, the freight container, for the purposes of this subpart, may be regarded as a closed transport unit for class 1 or a magazine but not a separate compartment.

* * * * *

(c) [Reserved]

* * * * *

80. In § 176.200, paragraph (c) is revised to read as follows:

§ 176.200 General stowage requirements.

* * * * *

(c) When cylinders of Class 2 (compressed gas) materials being transported by vessel are stowed in a vertical position they must be stowed in a block and cribbed or boxed-in with suitable sound lumber and the box or crib dunnaged to provide clearance from a steel deck at least 10 cm (3.9 inches) off any metal deck. Pressure receptacles in the box or crib must be braced to prevent any shifting of the pressure receptacles. The box or crib (gas rack) must be securely chocked and lashed to prevent movement in any direction.

* * * * *

81. Section 176.210 is revised to read as follows:

§ 176.210 On deck stowage requirements.

Cylinders of Class 2 (compressed gas) materials being transported by vessel must be protected from sources of heat. A tarpaulin covering the cylinders is not acceptable if it comes in contact with them.

82. Section 176.230 is revised to read as follows:

§ 176.230 Stowage of Division 2.1 (flammable gas) materials.

Division 2.1 (flammable gas) materials transported in Specification 106A or 110A multi-unit car tanks must be stowed on deck only, and shall be protected from sources of heat.

83. In § 176.305, paragraph (a) is revised to read as follows:

§ 176.305 General stowage requirements.

(a) A Class 3 (flammable) or combustible liquid must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.

* * * * *

84. In § 176.400, paragraphs (a) and (b) are revised to read as follows:

§ 176.400 Stowage of Division 1.5, Class 4 (flammable solids) and Class 5 (oxidizers and organic peroxides) materials.

(a) Class 4 (flammable solid) material and Division 5.2 (organic peroxide) material must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.

(b) Division 5.2 (organic peroxide) material must be stowed away from living quarters or access to them. Division 5.2 (organic peroxide) material not requiring temperature control must be protected from sources of heat, including radiant heat and strong sunlight, and must be stowed in a cool, well-ventilated area.

* * * * *

85. In § 176.600, paragraph (d) is revised to read as follows:

§ 176.600 General stowage requirements.

* * * * *

(d) Each package of Division 2.3 (poisonous gas) material or Division 6.1 (poison) material that also bears a FLAMMABLE LIQUID or FLAMMABLE GAS label must be stowed in a mechanically ventilated space, kept as cool as reasonably practicable, and be protected from sources of heat and stowed away from potential sources of ignition.

86. The heading for Subpart O is revised to read as follows:

Subpart O—Detailed Requirements for Cotton and Vegetable Fibers, Motor Vehicles, Polymeric Beads, and Plastic Molding Compounds.

87. Section 176.907 is added to read as follows:

§ 176.907 Polymeric Beads and Plastic Molding Compounds.

(a) When transported in cargo transport units, the cargo transport units must provide an adequate exchange of air in the unit. This adequate exchange of air may be accomplished by utilizing a ventilated container, an open-top container, or a container in one door off operation. When cargo transport units with venting devices are used these devices should be kept clear and operable. If mechanical devices are used for ventilation, they must be explosion-proof.

(b) As an alternative to the options presented in paragraph (a) of this section to ensure an adequate exchange of air; a refrigerated cargo transport unit may be used.

(c) The requirements in paragraph (a) and (b) do not apply if the hazardous material is:

(1) Packed in hermetically sealed packagings;

(2) Packed in IBCs which conform to packing group II performance level for liquid dangerous goods ; or

(3) Packages or IBCs with a total pressure in the packaging (i.e., the vapor pressure of the material plus the partial pressure of air or other inert gases, less 100kPa (15 psia)) at 55 °C (131 °F), determined on the basis of the hazardous material not completely filling the receptacle at a temperature of

55 °C (131 °C) or less at a filling temperature of 15 ° C (59 °F), will not exceed two-thirds of the marked test pressure.

(d) Cargo transport units must be marked with a warning mark including the words ''CAUTION—MAY CONTAIN FLAMMABLE VAPOR'' or ''CAUTION—MAY CONTAIN FLAMMABLE VAPOUR'' with lettering having a height of at least 25 mm (1 inch). The mark must be affixed to each access point in a location where it will be easily seen by persons prior to opening or entering the cargo transport unit and shall remain on the cargo transport unit until the following provisions are met:

(1) The cargo transport unit has been completely ventilated to remove any hazardous concentrations of vapor or gas;

(2) The immediate vicinity of the cargo transport unit is clear of any source of ignition; and

(3) The hazardous materials have been unloaded.

PART 178—SPECIFICATIONS FOR PACKAGINGS

88. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

89. In § 178.274:

(a) In paragraph (f)(1)(v), the second sentence is revised.

(b) Paragraph (f)(1)(vi) is redesignated as paragraph (f)(1)(vii).

(c) Paragraph (f)(1)(vi) is added.

(d) Paragraph (i) is revised.

The addition and revisions read as follows:

§ 178.274 Specifications for UN portable tanks.

* * * * *

(f) Pressure relief devices.—

(1) * * *

(v) * * * For spring loaded pressure relief devices, the rated flow capacity shall be determined according to ISO 4126–1 and ISO 4126–7 (IBR, see § 171.7 of this subchapter);

(vi) The cross sectional flow areas of the spring loaded pressure relief devices, frangible discs, and fusible elements in mm^2; and

* * * * *

(i) ISO 13340.

* * * * *

90. In § 178.512, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 178.512 Standards for steel, aluminum or other metal boxes.

(a) The following are identification codes for steel, aluminum or other metal boxes:

(1) 4A for a steel box;

(2) 4B for an aluminum box; and:

(3) 4N for an other metal box.

(b) Construction requirements for steel, aluminum or other metal boxes are as follows:

* * * * *

91. In § 178.603, the table in paragraph (a) and paragraph (b) are revised to read as follows:

§ 178.603 Drop test.

(a) * * *

Packaging	Number of tests (samples)	Drop orientation of samples
* *	* *	* * *
Boxes of natural wood, Plywood boxes, Reconstituted wood boxes, Fiberboard boxes, Plastic boxes, Steel, aluminum or other metal boxes, Composite packagings that are in the shape of a box.	Five—(one for each drop)	First drop: Flat on the bottom (using the first sample). Second drop: Flat on the top (using the second sample). Third drop: Flat on the long side (using the third sample). Fourth drop: Flat on the short side (using the fourth sample). Fifth drop: On a corner (using the fifth sample).
* *	* *	* * *

(b) Exceptions. For testing of single or composite packagings constructed of stainless steel, nickel, or monel at periodic intervals only (i.e., other than design qualification testing), the drop test may be conducted with two samples, one sample each for the two drop orientations. These samples may have been previously used for the hydrostatic pressure or stacking test. Exceptions for the number of steel, aluminum and other metal packaging samples used for conducting the drop test are subject to the approval of the Associate Administrator.

* * * * *

92. In § 178.705, paragraph (a)(3) is revised to read as follows:

§ 178.705 Standards for metal IBCs.

(a) * * *

(3) 31A, 31B, 31N for liquids.

* * * * *

93. In § 178.910, paragraphs (a)(1) and (b) are revised to read as follows:

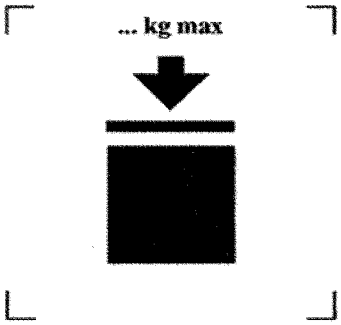
§ 178.910 Marking of Large Packagings.

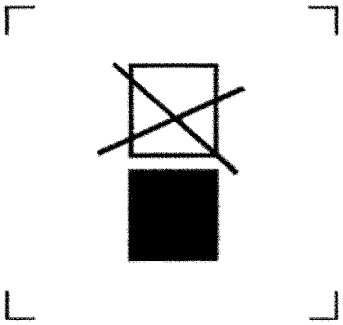
(a) * * *

(1) Mark every Large Packaging in a durable and clearly visible manner. The marking may be applied in a single line or in multiple lines provided the correct sequence is followed with the information required by this section, in letters, numerals, and symbols of at least 12 mm in height. This minimum marking size requirement applies only to large packages manufactured after January 1, 2014. The following information is required in the sequence presented:

* * * * *

(b) All Large Packages manufactured, repaired or remanufactured after January 1, 2015 must be marked with the symbol applicable to a Large Package designed for stacking or not designed for stacking, as appropriate. The symbol must be not less than 100 mm by 100 mm as follows:





* * * * *

94. In § 178.980, paragraph (e)(2) is redesignated as paragraph (e)(3), paragraph (e)(3) is redesignated as paragraph (e)(4), and a new paragraph (e)(2) is added to read as follows:

§ 178.980 Stacking test.

* * * * *

(e) * * *

(2) For fiberboard or wooden Large Packagings, there may be no loss of contents and no permanent deformation that renders the whole Large Packaging, including the base pallet, unsafe for transportation.

* * * * *

95. Subpart R is added to part 178 to read as follows:

Subpart R—Flexible Bulk Container Standards

178.1000 Purpose and scope.
178.1005 Flexible Bulk Container identification code.
178.1010 Marking of Flexible Bulk Containers.
178.1015 General Flexible Bulk Container Standards.
178.1020 Period of use for transportation of hazardous materials in Flexible Bulk Containers.

Subpart R—Flexible Bulk Container Standards

§ 178.1000 Purpose and scope.

(a) This subpart prescribes requirements for Flexible Bulk Containers (FBCs) intended for the transportation of hazardous materials. FBC standards in this subpart are based on the UN Model Regulations (IBR; see § 171.7 of this subchapter).

(b) Terms used in this subpart are defined in § 171.8 of this subchapter.

§ 178.1005 Flexible Bulk Container identification code.

The Flexible Bulk Container code designation is BK3.

§ 178.1010 Marking of Flexible Bulk Containers.

(a) The manufacturer must:

(1) Mark every Flexible Bulk Container in a durable and clearly visible manner. The marking may be applied in a single line or in multiple lines provided the correct sequence is followed with the information required by this section. The following information is required in the sequence presented:

(i) Except as provided in § 178.503(e)(1)(ii), the United Nations packaging symbol as illustrated in § 178.503(e)(1)(i).

(ii) The code number designating the Flexible Bulk Container design type according to § 178.1005. The letter ''W'' must follow the Flexible Bulk Container design type identification code on a Flexible Bulk Container when the Flexible Bulk Container differs from the requirements in subpart R of this part, or is tested using methods other than those specified in this subpart, and is approved by the Associate Administrator in accordance with § 178.1035;

(iii) The capital letter Z identifying that the Flexible Bulk Container meets Packing Group III performance standard under which the design type has been successfully tested.

(iv) The month (designated numerically) and year (last two digits) of manufacture;

(v) The country authorizing the allocation of the mark. The letters ''USA'' indicate that the Flexible Bulk Container is manufactured and marked in the United States in compliance with the provisions of this subchapter.

(vi) The name and address or symbol of the manufacturer or the approval agency certifying compliance with subpart R and subpart S of this part. Symbols, if used, must be registered with the Associate Administrator.

(vii) The stacking test load in kilograms (kg). For Flexible Bulk Containers not designed for stacking the figure ''0'' must be shown.

(viii) The maximum permissible gross mass in kg.

(2) The following is an example of symbols and required markings for a Flexible Bulk container suitable for stacking; stacking load: 1,000 kg; maximum gross mass: 2,500 kg.

BK3/Z/02 12/USA/M9399/1000/2500

§ 178.1015 General Flexible Bulk Container Standards.

(a) Each Flexible Bulk Container must be sift-proof and completely closed during transport to prevent the release of contents and waterproof.

(b) Parts of the Flexible Bulk Container that are in direct contact with hazardous materials:

(1) Must not be affected or significantly weakened by those hazardous materials

(2) Must not cause a dangerous effect with the dangerous goods (e.g., catalyzing a reaction or reacting with the hazardous materials).

(3) Must not allow permeation of the hazardous materials that could

constitute a danger under conditions normally incident to transportation.

(c) Filling and discharge devices must be so constructed as to be protected against damage during transport and handling. The filling and discharge devices must be capable of being secured against unintended opening.

(d) Slings of the Flexible Bulk Container, if fitted with such, must withstand pressure and dynamic forces which can be expected under conditions normally incident to transportation.

(e) Handling devices must be strong enough to withstand repeated use.

(f) A venting device must be fitted to Flexible Bulk Containers intended to transport hazardous materials that may develop dangerous accumulation of gases within the Flexible Bulk Container. Any venting device must be designed so that external foreign substances are prevented from entering the Flexible Bulk Container through the venting device under conditions normally incident to transportation.

§ 178.1020 Period of use for transportation of hazardous materials in Flexible Bulk Containers.

The use of Flexible Bulk Containers for the transport of hazardous materials is permitted for a period of time not to exceed two years from the date of manufacture of the Flexible Bulk Container.

96. Subpart S is added to part 178 to read as follows:

Subpart S—Testing of Flexible Bulk Containers

Sec.
178.1030 Purpose and scope.
178.1035 General requirements.
178.1040 Preparation of Flexible Bulk Containers for testing.
178.1045 Drop test.
178.1050 Top lift test.
178.1055 Stacking test.
178.1060 Topple test.
178.1065 Righting test.
178.1070 Tear test.

Subpart S—Testing of Flexible Bulk Containers

§ 178.1030 Purpose and scope.

This subpart prescribes certain testing requirements for Flexible Bulk Containers identified in subpart R of this part.

§ 178.1035 General requirements.

(a) *General.* The test procedures prescribed in this subpart are intended to ensure that Flexible Bulk Containers containing hazardous materials can withstand normal conditions of transportation. These test procedures are considered minimum requirements. Each packaging must be manufactured and assembled so as to be capable of successfully passing the prescribed tests and to conform to the requirements of § 173.24 of this subchapter while in transportation.

(b) *Responsibility.* The Flexible Bulk Container manufacturer is responsible for ensuring each Flexible Bulk Container is capable of passing the prescribed tests. To the extent a Flexible Bulk Container's assembly function, including final closure, is performed by the person who offers a hazardous material for transportation, that person is responsible for performing the function in accordance with §§ 173.22 and 178.2 of this subchapter.

(c) *Definitions.* For the purpose of this subpart:

(1) *Flexible Bulk Container design type* refers to a Flexible Bulk Container that does not differ in structural design, size, material of construction and packing.

(2) *Design qualification testing* is the performance of the drop, topple, righting, tear, stacking, and top-lift tests prescribed in this subpart, for each different Flexible Bulk Container design type, at the start of production of that packaging.

(3) *Periodic design requalification test* is the performance of the applicable tests specified in paragraph (c)(2) of this section on a Flexible Bulk Container design type, to requalify the design for continued production at the frequency specified in paragraph (e) of this section.

(4) *Production inspection* is the inspection that must initially be conducted on each newly manufactured Flexible Bulk Container.

(5) *Different Flexible Bulk Container design type* is one that differs from a previously qualified Flexible Bulk Container design type in structural design, size, material of construction, wall thickness, or manner of construction, but does not include:

(i) A packaging that differs in surface treatment;

(ii) A packaging that differs only in its lesser external dimensions (*i.e.*, height, width, length) provided materials of construction and material thickness or fabric weight remain the same;

(d) *Design qualification testing.* The packaging manufacturer must achieve successful test results for the design qualification testing at the start of production of each new or different Flexible Bulk Container design type. Application of the certification mark by the manufacturer constitutes certification that the Flexible Bulk Container design type passed the prescribed tests in this subpart.

(e) *Periodic design requalification testing.* (1) Periodic design requalification must be conducted on each qualified Flexible Bulk Container design type if the manufacturer is to maintain authorization for continued production. The Flexible Bulk Container manufacturer must achieve successful test results for the periodic design requalification at sufficient frequency to ensure each packaging produced by the manufacturer is capable of passing the design qualification tests. Design requalification tests must be conducted at least once every 24 months.

(2) Changes in the frequency of design requalification testing specified in paragraph (e)(1) of this section are authorized if approved by the Associate Administrator.

(f) *Test samples.* The manufacturer must conduct the design qualification and periodic tests prescribed in this subpart using random samples of packagings, in the numbers specified in the appropriate test section.

(g) *Proof of compliance.* In addition to the periodic design requalification testing intervals specified in paragraph (e) of this section, the Associate Administrator, or a designated representative, may at any time require demonstration of compliance by a manufacturer, through testing in accordance with this subpart, to ensure packagings meet the requirements of this subpart. As required by the Associate Administrator, or a designated representative, the manufacturer must either:

(1) Conduct performance tests or have tests conducted by an independent testing facility, in accordance with this subpart; or

(2) Make a sample Flexible Bulk Container available to the Associate Administrator, or a designated representative, for testing in accordance with this subpart.

(h) *Record retention.* Following each design qualification test and each periodic retest on a Flexible Bulk Container, a test report must be prepared. The test report must be maintained at each location where the Flexible Bulk Container is manufactured and each location where the design qualification tests are conducted, for as long as the Flexible Bulk Container is produced and for at least two years thereafter, and at each location where the periodic retests are conducted until such tests are successfully performed again and a new test report produced. In addition, a copy of the test report must be maintained by a person certifying compliance with this part. The test report must be made available to a user of a Flexible Bulk Container or a

representative of the Department upon request. The test report, at a minimum, must contain the following information:

(1) Name and address of test facility;

(2) Name and address of applicant (where appropriate);

(3) A unique test report identification;

(4) Date of the test report;

(5) Manufacturer of the packaging;

(6) Description of the flexible bulk container design type (e.g., dimensions materials, closures, thickness, etc.), including methods of manufacture (e.g., blow molding) and which may include drawing(s) and/or photograph(s);

(7) Maximum capacity;

(8) Characteristics of test contents (e.g., particle size for solids);

(9) Mathematical calculations performed to conduct and document testing (e.g., drop height, test capacity, outage requirements, etc.);

(10) Test descriptions and results; and

(11) Signature with the name and title of signatory.

§ 178.1040 Preparation of Flexible Bulk Containers for testing.

(a) Except as otherwise provided in this subchapter, each Flexible Bulk Container must be closed in preparation for testing and tests must be carried out in the same manner as if prepared for transportation. All closures must be installed using proper techniques and torques.

(b) If the material to be transported is replaced for test purposes by a non-hazardous material, the physical properties (grain, size, viscosity) of the replacement material used that might influence the results of the required tests must correspond as closely as possible to those of the hazardous material to be transported. It is permissible to use additives, such as bags of lead shot, to achieve the requisite total package mass, so long as they do not affect the test results.

§ 178.1045 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all Flexible Bulk Container design types and performed periodically as specified in § 178.1035(e) of this subpart.

(b) *Special preparation for the drop test.* Flexible Bulk Containers must be filled to their maximum permissible gross mass.

(c) *Test method.* (1) A sample of all Flexible Bulk Container design types must be dropped onto a rigid, non-resilient, smooth, flat and horizontal surface. This test surface must be large enough to be immovable during testing and sufficiently large enough to ensure that the test Flexible Bulk Container falls entirely upon the surface. The test surface must be kept free from local defects capable of influencing the test results.

(2) Following the drop, the Flexible Bulk Container must be restored to the upright position for observation.

(d) *Drop height.* (1) For all Flexible Bulk Containers, drop heights are specified as follows: Packing group III: 0.8 m (2.6 feet)

(2) Drop tests are to be performed with the solid to be transported or with a non-hazardous material having essentially the same physical characteristics.

(e) *Criteria for passing the test.* For all Flexible Bulk Container design types there may be no loss of the filling substance. However a slight discharge (e.g., from closures or stitch holes) upon impact is not considered a failure of the Flexible Bulk Container provided that no further leakage occurs after the container has been restored to the upright position.

§ 178.1050 Top lift test.

(a) *General.* The top lift test must be conducted for the qualification of all of Flexible Bulk Container design types to be lifted from the top.

(b) *Special preparation for the top lift test.* Flexible Bulk Container design types must be filled to six times the maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* (1) A Flexible Bulk Container must be lifted in the manner for which it is designed until clear of the floor and maintained in that position for a period of five minutes.

(2) If not tested as indicated in paragraph (c)(1) of this section, a Flexible Bulk Container design type must be tested as follows:

(i) Fill the Flexible Bulk Container to 95% full with a material representative of the product to be shipped.

(ii) Suspend the Flexible Bulk Container by its lifting devices.

(iii) Apply a constant downward force through a specially designed platen. The platen will be a minimum of 60 percent and a maximum of 80 percent of the cross sectional surface area of the Flexible Bulk Container.

(iv) The combination of the mass of the filled Flexible Bulk Container and the force applied through the platen must be a minimum of six times the maximum net mass of the Flexible Bulk Container. The test must be conducted for a period of five minutes.

(v) Other equally effective methods of top lift testing and preparation may be used with approval of the Associate Administrator.

(d) *Criterion for passing the test.* For all Flexible Bulk Container design types designed to be lifted from the top, there may be no damage to the Flexible Bulk Container or its lifting devices that renders the Flexible Bulk Container unsafe for transport, and no loss of contents.

§ 178.1055 Stacking test.

(a) *General.* The stacking test must be conducted for the qualification of all Flexible Bulk Containers design types.

(b) *Special preparation for the stacking test.* All Flexible Bulk Containers design types must be loaded to their maximum permissible gross mass.

(c) *Test method.* (1) All Flexible Bulk Containers must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load that is four times the design type maximum gross weight for a period of at least twenty-four hours.

(2) For all Flexible Bulk Containers, the load must be applied by one of the following methods:

(i) Four Flexible Bulk Containers of the same type loaded to their maximum permissible gross mass and stacked on the test Flexible Bulk Container;

(ii) The calculated superimposed test load weight loaded on either a flat plate or a reproduction of the base of the Flexible Bulk Container, which is stacked on the test Flexible Bulk Container.

(d) *Criterion for passing the test.* There may be no deterioration that renders the Flexible Bulk Container unsafe for transportation and no loss of contents during the test or after removal of the test load.

§ 178.1060 Topple test.

(a) *General.* The topple test must be conducted for the qualification of all Flexible Bulk Containers design types.

(b) *Special preparation for the topple test.* Flexible Bulk Container design types must be filled to their maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* Samples of all Flexible Bulk Container design types must be toppled onto any part of its top by lifting the side furthest from the drop edge upon a rigid, non-resilient, smooth, flat and horizontal surface. This test surface must be large enough to be immovable during testing and sufficiently large enough to ensure that the test Flexible Bulk Container falls entirely upon the surface. The test surface must be kept free from local defects capable of influencing the test results.

(d) *Topple height.* (1) For all Flexible Bulk Containers, topple heights are specified as follows: Packing group III: 0.8 m (2.6 feet)

(e) *Criterion for passing the test.* For all Flexible Bulk Container design types there may be no loss of the filling substance. However a slight discharge (e.g., from closures or stitch holes) upon impact shall not be considered to be a failure of the Flexible Bulk Container.

§ 178.1065 Righting test.

(a) *General.* The righting test must be conducted for the qualification of all Flexible Bulk Containers design types designed to be lifted from the top or side.

(b) *Special preparation for the righting test.* Flexible Bulk Container design types must be filled to not less than 95% of their capacity and to their maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* A sample Flexible Bulk Container design type must be tested; the Flexible Bulk Container should start lying on its side and then must be lifted at a speed of at least 0.1m/s (0.328 ft/s) to an upright position clear of the floor, by no more than half of the lifting devices.

(d) *Criterion for passing the test.* For all Flexible Bulk Container design types there shall be no damage that renders the Flexible Bulk Container unsafe for transport or handling.

§ 178.1070 Tear test.

(a) *General.* The tear test must be conducted for the qualification of all of Flexible Bulk Containers design types.

(b) *Special preparation for the tear test.* Flexible Bulk Container design types must be filled its maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* (1) A Flexible Bulk Container design type must be placed on the ground and a 300 mm (11.9 in) cut shall be made. This 300 mm (11.9 in) cut must:

(i) Completely penetrate all layers of the Flexible Bulk Container on a wall with a wide face.

(ii) Be made at a 45° angle to the principal axis of the Flexible Bulk Container, halfway between the bottom surface and the top level of the contents.

(2) The Flexible Bulk Container after being cut according to the provisions of § 178.1070(c)(1), must be subjected to a uniformly distributed superimposed load equivalent to twice the maximum gross mass of the package. This load must be applied for at least fifteen minutes. Flexible Bulk Containers that are designed to be lifted from the top or the side must, after removal of the superimposed load, be lifted clear of the floor and maintained in that position for a period of fifteen minutes

(d) *Criterion for passing the test.* For all Flexible Bulk Container design types, the cut must not spread more than an additional 25% of its original length.

Issued in Washington, DC on July 24, 2012 under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

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Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals During Specified Activities; Confined Blasting Operations by the U.S. Army Corps of Engineers During the Port of Miami Construction Project in Miami, Florida; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA628

Takes of Marine Mammals During Specified Activities; Confined Blasting Operations by the U.S. Army Corps of Engineers During the Port of Miami Construction Project in Miami, FL

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

ACTION: Notice; issuance of an Incidental Take Authorization (ITA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulation, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Army Corps of Engineers (ACOE) take small numbers of marine mammals, by Level B harassment, incidental to confined blasting operations in the Port of Miami in Miami, Florida.

DATES: Effective March 15, 2013 through March 14, 2014.

ADDRESSES: A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here.

An electronic copy of the IHA application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

This project was previously evaluated by the ACOE under an Environmental Impact Statement (EIS) and a Record of Decision (ROD) for the project was signed on May 22, 2006, which is also available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small number of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

16 U.S.C. 1362(18).

Summary of Request

On May 17, 2011, NMFS received a letter from the ACOE, requesting an IHA. The requested IHA would authorize the take, by Level B (behavioral) harassment, of small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to confined blasting operations in the Miami Harbor, Port of Miami, in Miami-Dade County, Florida. The IHA application was considered adequate and complete on September 9, 2011. The ACOE plans to conduct four components as part of the project in Miami Harbor (see Figure 1 of the ACOE's IHA application for a map and more details). These components are:

(1) The widening of Cut 1 and deepening of Cut 1 and Cut 2;

(2) Adding a turn widener and deepening at the southern intersection of Cut 3 within Fisherman's Channel;

(3) Widening and deepening the Fisher Island Turning Basin; and

(4) Expanding the Federal Channel and Port of Miami berthing areas in Fisherman's Channel and the Lummus Island Turning Basin.

The construction will likely be completed using a combination of mechanical dredge (*i.e.,* a clamshell or backhoe), cutterhead dredge, and rock pre-treatment by confined blasting. The dredging will remove approximately 5,000,000 cubic yards (3,822,774.3 cubic meters [m^3]) of material from the harbor. Material removed from the dredging will be placed in Miami Harbor Ocean Dredged Material Disposal Site, or used to construct seagrass and reef mitigation projects.

The confined blasting is planned to take place beginning during the fall/winter of 2012 (November, 2012), and is expected to take up to 24 months in Miami, Florida. Additional information on the construction project is contained in the application, which is available upon request (see **ADDRESSES**). Confined blasting means that the shots would be ''confined'' in the rock with stemming that prevents the explosive energy from going upward from the hole into the water column, and forces it to go laterally into the surrounding rock. In confined blasting, each charge is placed in a hole drilled in the rock approximately 5 to 10 feet deep; depending on how much rock needs to be broken and the intended project depth. The hole is then capped with an inert material, such as crushed rock. A charge is the total weight of the explosives to be detonated during a blast. This can also be broken down into the weight of the individual delays. This process is referred to as ''stemming the

hole'' (see Figure 6 and 7 of the ACOE's application).

Description of the Specified Activities

The ACOE plans to deepen and widen the Federal channels at Miami Harbor, Port of Miami, in Miami-Dade County, Florida. The recommended plan (Alternative 2 of the Environmental Impact Statement [EIS]) includes four components:

(1) Widen the seaward portion of Cut 1 from 500 to 800 feet (ft) (152.4 to 243.8 meters [m]) and deepen Cut 1 and Cut 2 from a project depth of −44 to −52 ft (13.4 to 15.9 m);

(2) Add a turn widener at the southern intersection of Cut 3 within Fisherman's Channel and deepen to a project depth of −50 ft (−15.2 m);

(3) Increase the Fisher Island Turning Basin from 1,200 to 1,500 ft (365.8 to 457.2 m), truncate the northeast section of the turning basin to minimize seagrass impacts, and deepen from −42 ft (−12.8 m) to a project depth of −50 ft; and

(4) Expand the Federal Channel and Port of Miami berthing areas in Fisherman's Channel and in the eastern end of the Lummus Island Turning Basin (LITB) by 60 ft (18.3 m) to the south for a total of a 160 ft (48.8 m) wide berthing area and will be deepened from −42 ft to a project depth of −50 ft. The Federal Channel will be widened 40 ft (12.2 m) to the south, for a 100 ft (30.5 m) total width increase in Fisherman's Channel. This component (referred to as Component 5 in the ACOE's IHA application) will deepen Fisherman's Channel and the LITB from −42 ft to a project depth of −50 ft. See Figure 1 of ACOE's IHA application for a map of the project's components.

Disposal of the estimated five million cubic yards of dredged material would occur at up to three disposal sites (seagrass mitigation area, offshore artificial reef mitigation areas, and the Miami Offshore Dredged Material Disposal Site). This project was previously evaluated under an Environmental Impact Statement (EIS) titled ''Miami Harbor Miami-Dade County, Florida Navigation Study, Final General Reevaluation Report and Environmental Impact Statement,'' prepared under the National Environmental Policy Act, and a Record of Decision for the project was signed on May 22, 2006. The original proposed project included six components, two of which (components four and six) have been removed. The EIS provides a detailed explanation of project location as well as all aspects of project implementation. It is also available online for public review at: *http://www.saj.usace.army.mil/Divisions/Planning/Branches/Environmental/DOCS/OnLine/Dade/MiamiHarbor/NAV_STUDY_VOL-1_MIAMI.pdf.*

To achieve the deepening of the Miami Harbor from the existing depth of −45 ft (−13.7 m) to project depth of −52 ft, pretreatment of some of the rock areas may be required using confined underwater blasting, where standard construction methods are unsuccessful due to the hardness of the rock. The ACOE has used two criteria to determine which areas are most likely to need confined blasting for the Miami Harbor expansion: (1) Areas documented by core borings to contain hard and/or massive rock; and (2) areas previously blasted in the harbor during the 2005 confined blasting and dredging project.

The duration of the confined blasting is dependent upon a number of factors including hardness of rock, how close the drill holes are placed, and the type of dredging equipment that will be used to remove the pretreated rock. Without this information, an exact estimate of how many confined ''blast days'' will be required for the project cannot be determined. The harbor deepening project at Miami Harbor in 2005 to 2006 estimated between 200 to 250 days of confined blasting with one shot per day (a blast day) to pre-treat the rock associated with that project; however, the contractor completed the project in 38 days with 40 confined blasts. A shot, or blast, is an explosion made up of a group of blast holes set in a pattern referred to as a blast array that are detonated all at once or in a staggered manner with delays between them. A blast hole is the hole drilled into the bottom substrate that will be filled with explosives, capped with stemming, and detonated.

The upcoming expansion at Miami Harbor scheduled to begin in fall/winter of 2012 currently estimates a maximum of 600 blast days for the entire multi-year project footprint. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [no confined blasting is allowed on Sundays due to local ordinances]). A blast day is defined as one confined blast event/day. A blast event is made up of all the actions during a shot, this includes the Notice of Project Team and Local Authorities, which occurs two hours before the blast is detonated, through the end of the protected species watch, which last 30 minutes after the blast detonation. A typical blast timeline consists of: Notice to Project Team and Local Authorities (T minus 2 hours), protected species watch begins (T minus 1 hour), Notice to Mariners (channel closes, T minus 15 minutes), fish scare (T minus 1 minute), blast detonation, all clear signal (T plus 5 minutes), protected species watch ends (T plus 30 minutes), and delay capsule—if an animal is observed in either the danger or safety zones, the blast is delayed to monitor the animal until it leaves, on its own volition, from both the danger and safety zones (can occur between T minus 1 hour and detonation). There may be more than one confined blast event in a calendar day. While confined blasting events will occur only during daylight hours, typically six days a week. Other operations associated with the action (*i.e.,* dredging activities) will take place 24 hours a day, typically seven days a week. Confined blasting activities normally will not take place on Sundays due to local ordinances. The contractor may drill the blast array (*i.e.,* to physically drill the holes in the substrate to be removed in the pattern designed by the blasting engineer to remove the rock in the manner he/she needs to achieve the needed results) at night and then blast after at least two hours after sunrise (1 hour, plus one hour of monitoring). After detonation of the first explosive array, a second array may be drilled and detonated before the one-hour before sunset prohibition is triggered. An explosive array is the pattern of blast holes drilled into the bottom substrate that will be fractured by the blast detonation.

At this time, the ACOE has not selected a contractor and thus does not have a contractor-developed confined blasting plan from the contractor specifically identifying the number of holes that will be drilled, the amount of explosives that will be used for each hole, the number of confined blasts per day (usually no more than two per a day) or the number of days the construction is anticipated to take to complete. The ACOE is required to have all authorizations and permits completed (including the possession of an IHA) prior to the request for proposal and advertising the contract, per the Competition in Contracting Act, and the Federal Acquisition Regulations. While the ACOE does not have contract bids at this time, it is possible to make reasonable estimates of the bounds based on previous similar projects that have been conducted by the ACOE here and at other locations. NMFS supports the use of the worst-case scenarios to estimate confined blasting activities and associated potential impacts.

Drill holes are small in diameter (typically 2 to 4 in [5.1 to 10.2 cm] in diameter) and only 5 to 10 ft (1.5 to 3.1

m) deep, drilling activities take place for a short time duration, with no more than three holes being drilled at the same time (based on the current drill-rigs available in the industry that range from one to three drills). During the 2005 confined blasting event, dolphins were seen near the drill barge during drilling events and the ACOE did not observe avoidance behavior. No measurements associated with noise from drilling small blast holes have been recorded. The ACOE does not expect incidental harassment from drilling operations and is not requesting take associated with this activity.

Although the ACOE does not have a specific contractor-provided confined blasting plan, the ACOE developed plans and specifications for the project that direct the contractor to do certain things in certain ways and are basing these plans and specifications on the previous deepening project in Miami Harbor (construction was conducted in 2005 to 2006).

The previous ACOE project in Miami Harbor required a maximum weight of explosives used in each delay of 376 pounds (lb) (170.6 kilograms [kg]) and the contractors blasted once or twice daily from June 25 to August 25, 2005, for a total of 40 individual blasts in 38 days of confined blasting. The 2005 project, which utilized confined blasting, was limited to Fisherman's Channel and the Dodge-Lummus Island Turning Basin (see Figure 2 of ACOE's IHA application, which shows the confined blasting footprint for the 2005 project), whereas the project described in the ACOE's application includes Fisherman's Channel, Dodge-Lummus Island Turning Basin, Fisher Island Turning Basin, and Inner and Outer Entrance Channel. This larger area will result in more confined blasting for this project than was completed in 2005, as it includes areas not previously blasted in 2005.

A copy of the **Federal Register** notice of issuance for the IHA from 2003 (68 FR 32016, May 29, 2003), the IHA renewal from 2005 (70 FR 21174, April 25, 2005), and the final biological monitoring report from the ACOE's Miami Harbor Phase II project (completed in 2006) is attached to the ACOE's application and available on NMFS's Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha.* For the new construction at Miami Harbor, the ACOE expects the project may take multiple years, and the ACOE will seek subsequent renewals of this IHA after issuance, with sufficient time to prevent any delay to the project.

For the deepening at Miami Harbor, the ACOE has consulted with blasting industry experts and believes, based on the rock hardness and composition at Miami Harbor, a maximum charge weight per delay of 450 lbs (204.1 kg) should be expected. The minimum charge weight will be 10 lbs (4.5 kg). A delay is a period of time (in milliseconds) between small detonations that are part of the total charge weight of the entire detonation.

The focus of the confined blasting work at the Miami Harbor is to pre-treat the massive limestone formation that makes up the base of Miami Harbor prior to removal by a dredge utilizing confined blasting, meaning the explosive shots would be ''confined'' in the rock. Typically, each blast array is set up in a square or rectangle area divided into rows and columns (see Figures 3, 4, and 5 in the ACOE's IHA application). A typical blast array is 10 holes long by 4 holes wide with holes being spaced 40 ft (12.2 m) apart covering an area of 4,000 ft^2 (371.6 m^2). Blast arrays near bulkheads can be long-linear feature of one-hole wide by 8 or 10 holes long (see Figure 4 of the IHA application).

In confined blasting, each charge is placed in a hole drilled in the rock approximately 5 to 10 ft (1.5 to 3.0 m) deep; depending on how much rock needs to be broken and the intended project depth. The hole is then capped with an inert material, such as crushed rock. This process is referred to as ''stemming the hole'' (see Figure 6 and 7 of ACOE's IHA application; each bag as shown contains approximate volume of material used per discharge). The ACOE used this technique previously at the Miami Harbor Phase II project in 2005. NMFS issued an IHA for that operation on May 22, 2003 (68 FR 32016, May 29, 2003) and renewed the IHA on April 19, 2005 (70 FR 21174, April 25, 2005).

For the Port of Miami expansion project (Miami Harbor Phase II) that used confined blasting as a pre-treatment technique, the stemming material was angular crushed rock. (Stemming is the process of filling each borehole with crushed rock after the explosive charge has been placed. After the blasting charge has been set, then the chain of explosives within the rock is detonated. A chain of explosives refers to all of the detonations within the blast array, without regard to how many holes are in the array. They will detonate within milliseconds of each other. Stemming reduces the strength of the outward pressure wave produced by blasts.) The optimum size of stemming material is material that has an average diameter of approximately 0.05 times the diameter of the blast-hole. The selected material must be angular to perform properly (Konya, 2003). For the ACOE's project, specifications will be prepared by the geotechnical branch of the Jacksonville District.

The specifications for any construction utilizing the confined blasting for the deepening of Miami Harbor will have similar stemming requirements as those that were used for the Miami Harbor Phase II project in 2005 to 2006. The length of stemming material would vary based on the length of the hole drilled, however a minimum of two 2-ft (0.6 m) walls will be included in the project specific specifications. Studies have shown that stemmed blasts have up to a 60 to 90 percent decrease in the strength of the pressure wave released, compared to open water blasts of the same charge weight (Nedwell and Thandavamoorthy, 1992; Hempen *et al.,* 2005; Hempen *et al.,* 2007). However, unlike open water (unconfined) blasts (see Figure 8 of ACOE's IHA application), very little peer-reviewed research exists on the effects that confined blasting can have on marine animals near the blast (Keevin *et al.,* 1999). The visual evidence from a typical confined blast is shown in Figure 9 of ACOE's IHA application.

In confined blasting, the detonation is conveyed from the drill barge to the primer and the charge itself by Primacord and Detaline. These are used to safely fire the blast from a distance to ensure human safety from the blast. The Primacord and Detaline used on this project have a specific grain weight, and they burn like a fuse. They are not electronic. The time delay from activation to detonation of the charge is less than one second.

To estimate the maximum poundage of explosives that may be utilized for this project, the ACOE has reviewed previous confined blasting projects, including San Juan Harbor, Puerto Rico in 2000, and Miami Harbor, Florida in 2005. Additional data was also reviewed from the New York Harbor deepening project (ACOE, 2004 and Keevin *et al.,* 2005) and the Wilmington Harbor project (Settle *et al.,* 2002). The San Juan Harbor and 2005 Miami Harbor projects are most similar to the existing project in general environment, hardness/massiveness of rock, and species composition. The San Juan Harbor project's heaviest confined blast event using explosives was 375 lbs (170.1 kg) per delay and in Miami it was 376 lbs (170.6 kg) per delay. Based on discussion with the ACOE's geotechnical engineers, it is expected

that the maximum weight of delays for Miami Harbor will be larger since the rock is deeper, and expected to be harder and massive, in comparison to the previous two blasting projects.

Based upon industry standards and ACOE Safety & Health Regulations, the confined blasting program will follow these operating guidelines:

- The weight of explosives to be used in each confined blast will be limited to the lowest poundage of explosives that can adequately break the rock.
- Drill patterns (*i.e.,* holes in the array) are restricted to a minimum of 8 ft (2.4 m) separation from a loaded hole.
- Hours of confined blasting are restricted from two hours after sunrise to one hour before sunset to allow for adequate observation of the project area for marine mammals.
- Selection of explosive products and their practical application method must address vibration and air blast (overpressure) control for protection of existing structures and marine wildlife.
- Loaded blast holes will be individually delayed to reduce the maximum lbs per delay at point detonation, which in turn will reduce the mortality radius.
- The blast design will consider matching the energy in the ''work effort'' of the borehole to the rock mass or target for minimizing excess energy vented into the water column or hydraulic shock.
- Delay timing adjustments with a minimum of 8 milliseconds (ms) between delay detonations to stagger the blast pressures and prevent cumulative addition of pressures in the water.

Test Blast Program

Prior to implementing a construction blasting program, a test blast program will be completed. The test blast program will have all the same protective monitoring and mitigation measures in place for protected species as blasting operations for construction purposes. The purpose of the test blast program is to demonstrate and/or confirm the following:

- Drill boat capabilities and production rates;
- Ideal drill pattern for typical boreholes;
- Acceptable rock breakage for excavation;
- Tolerable vibration level emitted;
- Directional vibration; and
- Calibration of the environment.

The test blast program begins with a single range of individually delayed holes and progresses up to the maximum production blast intended for use. The test blast program will take place in the project area and will count toward the pre-treatment of material, since the blasts of the test blast program will be cracking rock. Each test blast is designed to establish limits of vibration and air blast overpressure, with acceptable rock breakage for excavation. The final test event simulates the maximum explosive detonation as to size, overlying water depth, charge configuration, charge separation, initiation methods, and loading conditions anticipated for the typical production blast.

The results of the test blast program will be formatted in a regression analysis with other pertinent information and conclusions reached. This will be the basis for developing a completely engineered procedure for the construction blasting plan.

During the test blast program, the following data will be used to develop a regression analysis:

- Distance;
- Pounds per delay;
- Peak particles velocities (Threshold Limit Value [TVL]);
- Frequencies (TVL);
- Peak vector sum; and
- Air blast, overpressure.

As part of the development of the protected species monitoring and mitigation protocols, which will be incorporated into the plans and specification for the project, ACOE will continue to coordinate with the resource agencies and non-governmental organizations (NGOs) to address concerns and potential impacts associated with the use of blasting as a construction technique.

Additional details regarding the confined blasting and dredging project can be found in the ACOE's IHA application and EIS. The EIS can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Description of the Dates, Duration, and Specified Geographic Region

At this time the ACOE has not yet awarded a contract or given a Notice to Proceed (NTP) with a specific date for the initiation of construction activities within the Port of Miami. However, the ACOE requested that the first IHA be issued by the end of July, 2012, with an effective date of March 15, 2013, to allow for the advertisement of the contract for construction in September, 2012; award the contract and provide the NTP to the selected in February, 2012 to the selected contractor, resulting in construction work beginning in March 15, 2013. After receiving NTP, the contractor will have 45 days to begin dredging activities, but blasting activities shall not begin until after March 15, 2013. The construction activities are expected to take up to 26 months and at this time, it is possible that confined blasting could take place at any time during construction. The ACOE also notes that multiple IHAs (up to three) will be needed and requested for this project due to the project duration.

The confined blasting activities will be limited to waters shallower than 60 ft. (18.3 m) and located entirely on the continental shelf and will not take place seaward of the outer reef. The specified geographic area of the construction will be within the boundaries of the Port of Miami, in Miami, Florida (see Figure 11 of the ACOE's IHA application). The Port of Miami is an island facility consisting of 518 upland acres and is located in the northern portion of Biscayne Bay in South Florida. The City of Miami is located on the west side of the Biscayne Bay; the City of Miami Beach is located on an island on the northeast side of Biscayne Bay, opposite of Miami. Both cities are located in Miami-Dade County, Florida, and are connected by several causeways crossing the bay. The Port of Miami is the southernmost major port on the Atlantic Coast. The Port of Miami's landside facilities are located on Dodge-Lummus Island, which has a GPS location 25°46′05″ North 80°09′40″ West. See Figure 11 of the ACOE's IHA application for more information on the location of the project area in the Port of Miami.

Comments and Responses

A notice of preliminary determinations and proposed IHA for the ACOE confined blasting operations was published in the **Federal Register** on November 18, 2011 (76 FR 71517). During the 30 day public comment period, NMFS received combined comments from the Sierra Club Miami Group, Biscayne Bay Waterkeeper, and Kent Harrison Robbins (Robbins *et al.*), as well as comments from the Marine Mammal Commission (Commission). The comments are posted online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their substantive comments and NMFS' responses:

Comment 1: Robbins *et al.* states that the ACOE's request for an IHA does not comply with the regulatory and legal standards for issuance of an IHA because the project proposes 600 days of confined blasting with an average of one or two blasting periods per day. To authorize an IHA for a project longer than a one-year period undermines the purpose of the authorization because the cumulative and continued effects of the

confined blasts on the resident and transient bottlenose dolphin populations known to both the Biscayne Bay and Atlantic Shelf areas cannot be properly assessed by the limited scope of an IHA analysis, which can consider impact not to exceed one year.

Response: The commenter incorrectly states the project will have 600 days of blasting. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [normally no confined blasting is allowed on Sundays due to local ordinances]), with no more than one confined blast event at a time and no more than two confined blast events per a single day. A calendar day is 24 hours. A blast day/blast event (*i.e.,* approximately 1 hour 30 minutes in length) is the series of events beginning one hour before the detonation through 30 minutes after the detonation. There may be more than one blast day/blast event per calendar day, they will not occur simultaneously.

50 CFR 216.107 states that IHAs will be valid for a period of time not to exceed one year but may be renewed for additional periods of time not to exceed one year for each reauthorization; therefore, the promulgation of regulations and the subsequent issuance of Letters of Authorization (LOAs) to the ACOE for the confined blasting operations in the Port of Miami is not necessary or required.

NMFS considered cumulative effects of the confined blasting on the resident and transient bottlenose dolphin populations (*i.e.,* Biscayne Bay and Western North Atlantic Central Florida Coastal stocks) in the action area as part of its NEPA analysis and prepared an ''Environmental Assessment for Issuance of an Incidental Harassment Authorization for U.S. Army Corps of Engineers Confined Blasting Operations During the Port of Miami Construction Project in Miami, Florida,'' which analyzes the project's purpose and need, alternatives, affected environment, and environmental effects for the action prior to making a determination on the issuance of the IHA. NMFS also considered these cumulative effects before making its negligible impact determination for issuance of the IHA to the ACOE. NMFS' EA and ACOE's FEIS adequately address the cumulative effects of relatively short-term confined blasting operations in relation to long-term noise and events from other past, present and reasonably foreseeable future anthropogenic sources, such as dredging, construction and demolition activities, shipping, commercial fishing, recreational fishing and boating, military readiness activities, and other human activities in the action area. These other activities are considered to be long-term and continuous.

Comment 2: Robbins *et al.* states that relative to the 2005/2006 Port of Miami safety zone calculations, the current application does not reflect the significant blasting area and duration of the project as well as the high maximum weight which will be employed in this project. In addition, the ACOE has not addressed how it will ensure that stemming the blast hole will be more effective in this round of blasting, especially when considering the specific nature of the blast area which is in a channel, which may carry sound and pressure farther and/or in a more concentrated route. Robbins *et al.* states that there should be improved methods for stemming blast holes. Studies such as Jordan (2007) and Hempen & Keevin (2007) have shown that the practice of confined blasting such as those done at the Port of Miami in 2005 significantly reduces the pressure wave released as compared to open water discharges of the same weight. However, if the protocol of stemming the holes to benefit the marine community is not properly executed, these mitigation methods are not creating the positive changes that are so critical to reducing the take number of fish, sea turtles, and manatees. The blast area is also in an extremely sensitive part of Biscayne Bay, sharing a boundary with a critical wildlife area frequented by bottlenose dolphin.

Response: The ACOE's IHA application clearly defines the Miami Harbor Deepening Project's action area and expected project duration. Protective zone (danger, exclusion, safety, and watch) calculations will be relatively applied in comparison to 2005/2006 Port of Miami safety zone calculations. The term ''relative'' means that the calculations utilized to determine the danger, exclusion, safety, and watch zones that are being used are based upon the actual charge weights that will be utilized for this effort—which may be as high as 450 lbs per delay (as compared to 376 lbs per delay in the 2005/2006 confined blasting in the Port of Miami), which consequently will result in larger protective zones. For instance, the calculated area of the danger zone for the largest blast conducted in 2005/2006 was 11,059,023.62 ft^2 (1,027,416.91 m^2), representing 0.09% of the total area of Biscayne Bay, and the calculated area of the danger zone for the largest confined blast proposed for this effort is 12,466,026.04 ft^2 (1,158,131.72 m^2), representing 0.10% of the total area of Biscayne Bay. This is a difference of 1,407,002.42 ft^2 (130,714.802 m^2), or an increase in the total impact area of 0.01% of the total area of Biscayne Bay, or 12% increase in impact area specific to the confined blast.

Regarding the effectiveness of the stemming, Section 3.5.5 of the ACOE's project confined blasting specification (02 10 00) state:

3.5.5 Stemming

All blast holes shall be stemmed. The Blaster or Blasting Specialist shall determine the thickness of stemming using blasting industry conventional stemming calculation. The minimum stemming shall be 2 ft (0.61 m) thick. Stemming shall be placed in the blast hole in a zone encompassed by competent rock. Measures shall be taken to prevent bridging of explosive materials and stemming within the hole. Stemming shall be clean, angular to subangular, hard stone chips without fines having an approximate diameter of ⅜ to ½ in (0.95 to 1.27 cm). A barrier shall be placed between the stemming and explosive product, if necessary, to prevent the stemming from settling into the explosive product. Anything contradicting the effectiveness of stemming shall not extend through the stemming.

The specifications clearly direct the contractor to utilize and employ blasting industry standards and specifically requires the contractor to place the blast hole in a zone encompassed by competent rock to minimize the potential rifling (when a hole is not well confined). The ACOE's Master Blaster reviews all proposed contractor blasting plans to ensure compliance with the project specifications.

NMFS uses the best scientific evidence available in its environmental analysis and the development of monitoring and mitigation measures required in the IHA issued to the ACOE. In the IHA, NMFS requires the ACOE to implement mitigation measures (*e.g.,* limiting the weight of explosives; capping explosives in loaded holes; minimum separation distance of loaded holes; staggering detonations; restricting hours when blasting can occur; calculating, establishing, and monitoring danger, exclusion, safety, and watch zones, etc.) during confined blasting operations that are expected to reduce the potential for incidental take and ensure the activity will have the least practicable impact on marine mammals and their habitat.

The ACOE has previously noted in the project environmental coordination documents (project FEIS and Biological Assessments) and continues to recognize that the project area is adjacent to the Bill Sadowski Critical Wildlife Area. NMFS' IHA requires the ACOE to implement monitoring and mitigation measures so that the confined

blasting operations will have the least practicable impact on bottlenose dolphins in the action area.

Comment 3: Robbins *et al.* states that as there is no evidence presented that drilling and dredging activities themselves do not increase harassment, these activities should be further tested. The only construction activity restricted to daylight hours is the blasting and all other work is permissible through the night when there will be no watch plan in place or possible, so it is unclear the amount of harm that these activities will cause. The extended nature of this project will also adversely impact the habitat of the bottlenose dolphin, sea turtles, and other marine mammals because the project is dredging approximately 415 acres of bay bottom, coral reef, and sea grass beds (and not including damage to outer shelf reef systems from barge anchoring chains) and FDEP is only requiring a total of 14 acres of seagrass mitigation and 9.78 of artificial reef mitigation.

Response: The ACOE has agreed to collect sound recordings of drilling operations during the confined blasting operations at Miami Harbor to help the ACOE and NMFS better characterize the noise associated with drilling activities at confined blasting projects throughout the U.S. The ACOE has conducted interviews with Protected Species Observers (PSOs) having more than 25 years of experience monitoring blasting activities. These individuals have stated that no avoidance behavior from any marine mammal species in many parts of the country, including bottlenose dolphins, has been observed in association with drilling activities associated with confined underwater blasting.

The ACOE conducts dredging operations 24 hours a day throughout the U.S. and, to date, utilizes the same types of dredging equipment planned to be used for the blasting and dredging operations as part of the Miami Harbor Deeping Project. The ACOE's Jacksonville District Local Master Guide Specification (Section 01 57 20) covers the requirements for environmental protection during construction activities, which includes monitoring and mitigation measures for dredging operations. This document can be found online at: *www.saj.usace.army.mil/Divisions/Engineering/DOCS/CADD/docsect/01_57_20.pdf.* Neither the ACOE, nor NMFS, has determined that dredging operations, in previously dredged and maintained navigation channels, has the potential to result in the incidental take of cetaceans.

Habitat loss associated with the project is limited primarily to an existing and maintained Federal channel that is 0.07% of the total area of Biscayne Bay, which is habitat area for the Biscayne Bay stock of bottlenose dolphins, and 0.0009% of the 20 m (65.6) isobar off the coast of Florida, which is habitat area for the Western North Atlantic Central Florida Coastal stock of bottlenose dolphin. The ACOE also conducted consultations with NMFS Southeast Regional Office (SERO) under the ESA and Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) regarding designated critical habitat of ESA-listed species and essential fish habitat (EFH).

The IHA issued to ACOE provides monitoring and mitigation requirements that will protect marine mammals from injury, serious injury, or mortality. The ACOE is required to comply with the IHA's requirements. Under the MMPA, IHAs must include means of effecting the least practicable impact on marine mammal species and their habitat (*i.e.,* impacts to seagrass, hardbottom or coral habitats). Monitoring and mitigation measures are designed to comply with this requirement.

Comment 4: Robbins *et al.* states that the ACOE is seeking, and NMFS has noticed, a legally-defective IHA by authorizing harassment of marine mammal species arising from activities expected to last for more than one year. NMFS cannot issue an IHA for the proposed blasting operations, as they are part of the overall Port of Miami blasting and dredging project, and the substantial number of takes that will occur over the period of many years involved in the project can only be authorized through LOA regulations under section 101(a)(5)(A)(i), 16 U.S.C. 1371(a)(5)(A)(i). For this reason, NMFS must deny the IHA application, and a comprehensive analysis and due process required under rulemaking, consistent with a request for a Letter of Authorization, should be required.

Response: NMFS disagrees with the commenter's statement. The ACOE requested an IHA in its adequate and complete application, and does not need to pursue the promulgation of regulations and subsequent LOAs by NMFS under section 101(a)(5)(A) of the MMPA for this specified activity. 50 CFR 216.107 states that except for activities that have the potential to result in serious injury or mortality, which must be authorized under § 216.105, IHAs may be issued, following a 30-day public review period, to allow activities that may result in only the incidental harassment of a small number of marine mammals. IHAs are valid for a period of time not to exceed one year but may be renewed for additional periods of time not to exceed one year for each reauthorization; therefore, the promulgation of regulations and the subsequent issuance of LOAs to the ACOE for the confined blasting operations in the Port of Miami is not necessary or required.

Comment 5: The proposed safety zone surrounding the blasting operations is [in]sufficient and detrimental to several marine mammals covered by the IHA.

Response: The safety zone is calculated to be twice the area of the danger zone, and pressure measurements collected during in situ pressure monitoring, have shown that blast pressures return to background at the outer edge of the danger zone. Additionally, both the safety and danger zones are based on unconfined, open water blasts (which is not the case here) and the safety zones were developed by the U.S. Navy to protect naval divers working with military ordinance during warfare to ensure that divers are not injured or killed. Also, the exclusion zone is larger than the area where the ACOE has determined that Level B harassment will occur, so if the monitoring and mitigation measures implemented are successful as expected, and no detonation occurs when an animal is inside the exclusion zone, no take by Level B harassment is likely to occur.

The ACOE's specified activity only authorizes the use of confined blasting, which results in a 60 to 90 percent reduction in the strength of the pressure wave released (Hempen *et al.,* 2007; Hempen *et al.,* 2005; Nedwell and Thandavamoorthy, 1992) when compared to an unconfined, open water blast like those seen in other military readiness activities using explosive ordinance. It is therefore unclear how these mitigation measures and protective zones are detrimental to bottlenose dolphins in the action area. The bottlenose dolphin is the only species of marine mammal managed under NMFS jurisdiction that is expected to occur in the action area. The commenter refers to ''marine mammal species'' to be included in the IHA, however, only the Biscayne Bay and Western North Atlantic Central Florida Coastal stocks of bottlenose dolphins are covered by the IHA. The West Indian (Florida) manatee, which may also be found in the action area, is managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS).

Comment 6: Robbins *et al.* states that the Biscayne Bay stock of bottlenose dolphins is apparently isolated within the Biscayne Bay community and from any other dolphin populations, thus,

Biscayne Bay is a distinct habitat for these bottlenose dolphins that are at risk.

Response: The available data do not support the commenter's belief that the Biscayne Bay stock of bottlenose dolphins is apparently isolated within Biscayne Bay and from any other dolphin populations. NMFS stock assessment report (2009) states that the range of the Biscayne Bay stock of bottlenose dolphins (*i.e.,* Haulover Inlet [north] and Card Sound bridge [south] boundaries) corresponds to the extent of confirmed home ranges of bottlenose dolphins observed residing in Biscayne Bay by a long-term photographic identification (photo-ID) study conducted by the NMFS SEFSC (Litz, 2007; SEFSC unpublished data), however, there have been few surveys outside of this range. These boundaries are subject to change upon further study of bottlenose dolphin home ranges within the Biscayne Bay estuarine system and comparison to an extant photo-ID catalog from Florida Bay to the south.

NMFS has to consider other information, not just the stock assessment reports, to provide a complete picture of marine mammals in the action area. There are at least five openings from the Atlantic Ocean into Biscayne Bay where bottlenose dolphins from the Biscayne Bay stock can exit the Biscayne Bay system. From the north they are: Haulover Inlet, Government Cut, Norris Cut, Bear Cut, and the Safety Valve. Additionally the Atlantic Intracoastal Waterway allows animals from Biscayne Bay to transit north into the Indian River Lagoon Estuarine System (IRLES) and South into Florida Bay. Contillo *et al.* (2011) documented that dolphins from Biscayne Bay have been observed in Florida Bay and dolphins from Florida Bay have been observed in Biscayne Bay on at least 20 occasions since 1999. Additionally, Biscayne Bay dolphins have been documented exiting the bay and been seen outside of Biscayne Bay in nearshore coastal waters off of Miami-Dade County, and animals documented as belonging to the coastal stock have been documented in Biscayne Bay on numerous occasions (Contillo, pers. comm., 2011). In the NMFS stock assessment report (2009), NMFS states that at least one dolphin was ''confirmed to be of the offshore morphotype by genetic testing and therefore not a Biscayne Bay resident.'' These data document that the Biscayne Bay stock of bottlenose dolphins (while likely are residents) are not isolated within Biscayne Bay, can and do exit Biscayne Bay, and that bottlenose dolphins from outside the stock enter Biscayne Bay and can mix with the Biscayne Bay stock.

Comment 7: Robbins *et al.* states that the northern portion of Biscayne Bay, which is geographically distinct from the southern portion of Biscayne Bay, is no longer polluted contrary to the allegations in the ACOE's IHA application and NMFS' notice of preliminary determinations and a proposed IHA. The corridor for the proposed 600 days of twice-a-day explosive blasting is located along the east-west Government Cut and Miami Harbor Channel bay corridor, which is the geographical divide between the northern and southern portions of Biscayne Bay. While there may have been a time decades ago when there were serious problems of industrial and municipal pollution of the northern portion of Biscayne Bay, that is not the current conditions of northern Biscayne Bay. Much of the municipal pollution and industrial effluent into Biscayne Bay and its tributaries has been eliminated over the prior decades due to strict code enforcement and the construction of deep well storage filtration systems as part of comprehensive plans adopted by the localities. It is a healthy estuarine habitat for dolphins and other sea mammals in the northern bay. Not noted in the ACOE IHA application and NMFS' notice of preliminary determinations and a proposed IHA is the enhancement of the northern Biscayne Bay estuary by the replanting of mangroves and the creation of Oleta River Florida Park. Thus, the suggestion that the northern portion of Biscayne Bay is unhealthy due to municipal and industrial pollution is not true. The northern portion of Biscayne Bay constitutes a significant wildlife habitat that supports marine mammals and other wildlife.

Response: The commenter is referring to the citation by NMFS in its stock assessment report (2009) for the Biscayne Bay stock of bottlenose dolphins that states ''the northern portion of Biscayne Bay is surrounded by the cities of Miami and Miami Beach and is therefore heavily influenced by industrial and municipal pollution sources (Bialczak *et al.,* 2001).'' Litz (2007) found that tissue samples collected for genetic and persistent organic pollutants (POP) analysis from dolphins in Biscayne Bay, male dolphins with home ranges in the northern portion of Biscayne Bay had polychlorinated biphenyl (PCB) levels five times higher than their counterparts with southern home ranges. This trend continued for dichlorodiphyltrichloroethane (DDT) (twice as high); chlordanes (four times higher); polybrominated diphenyl ethers (PBDE) (three times higher), and other pesticides (three times higher). The same trend was also observed in female dolphins when northern vs. southern animals' POP levels were compared. While it can be agreed that water quality in Biscayne Bay is better than it has been previously, high levels of POP, commonly associated with land-based pollution sources, remain higher in north Biscayne Bay then in the remainder of the Biscayne Bay system and continue to impact marine species inhabiting that part of Biscayne Bay.

Additionally, the commenter incorrectly states the project will have 600 days of blasting. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [normally no confined blasting is allowed on Sundays due to local ordinances]), with no more than one confined blast event at a time and no more than two confined blast events per a single day. A calendar day is 24 hours. A blast day/blast event (*i.e.,* approximately 1 hour 30 minutes in length) is the series of events beginning one hour before the detonation through 30 minutes after the detonation. There may be more than one blast day/blast event per calendar day, they will not occur simultaneously.

Comment 8: Robbins *et al.* states that the proposed level of take analysis is faulty. While Level A harassment causing tympanic membrane (TM) rupture with correlated permanent hearing impairment is intended to be avoided, NMFS admits that it is ''unknown at this time'' as the farthest distance at which a dolphin would be exposed to an energy flux density (EFD) from an explosive which would cause Level A harassment (76 FR 71525). What this means is that the explosive detonations proposed may result in permanent hearing impairment and Level A harassment. Nonetheless, without this knowledge, the ACOE proposes allowing detonations. Without rational basis, the NMFS notice addresses Level B harassment without discussing why the dolphins should be permitted to be exposed to possible Level A harassment including permanent hearing loss.

NMFS also acknowledges that the Level B harassment definition also includes noise exposures below TTS that may result in behavioral modifications to resident animals. Without any scientific basis, the NMFS notice concludes that the behavioral modification criteria would not apply

''because there will be only two blasting events a day'' and each blast event will be multiple (440 in a matrix) within a few microseconds.

The ACOE's IHA application and NMFS' **Federal Register** notice do not correctly consider the impact of the blasting twice a day for 600 days on the behavior of the dolphins. Indeed, under the criteria for Level B harassment, ''behavioral disruption'' must be considered when TTS occurs. Under the harassment criteria for NMFS, Level B harassment includes behavioral disruption associated with TTS. As a result of a misconstruction of the dual criteria for harassment, the ACOE and NMFS do not consider the behavioral impact of the explosives and the proposed 600 days of twice-a-day blasting. Instead, it conclusively determines that twice a day blasting is not ''multiple detonations'' and, therefore, does not consider the third criteria of Level B harassment, sub-TTS impact with behavioral disruption, and utterly ignores the dual criteria of Level B harassment with TTS, which requires consideration of associated behavioral modification.

Response: The commenter incorrectly states the project will have 600 days of blasting. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [normally no confined blasting is allowed on Sundays due to local ordinances]), with no more than one confined blast event at a time and no more than two confined blast events per a single day. A calendar day is 24 hours. A blast day/blast event (*i.e.,* approximately 1 hour 30 minutes in length) is the series of events beginning one hour before the detonation through 30 minutes after the detonation. There may be more than one blast day/blast event per calendar day, but they will not occur simultaneously.

NMFS disagrees with the commenter that the proposed level of take analysis is faulty in the ACOE's IHA application and NMFS's notice of preliminary determinations and proposed IHA (76 FR 71517, November 18, 2011). The IHA issued to the ACOE for the confined blasting operations in the Port of Miami only authorizes the incidental take of bottlenose dolphins by Level B harassment; no incidental takes by Level A harassment (injury), serious injury, or mortality are anticipated or authorized.

Because for ACOE's confined blasting activities all of the holes in the delay will explode within a few seconds at most (the blast array will be timed with a minimum eight milliseconds delay between detonations to stagger the blast pressures and prevent cumulative addition of pressures in the water), and a maximum of only two confined blasting events will occur in a day separated by a minimum of four to six hours (worst case scenario). NMFS applies the explosive TTS threshold which then allows us to estimate the number of animals that may incur TTS and account for any associated behavioral disruption.

The multiple detonations threshold was designed for specified activities like gunnery exercises where tens, to hundreds, to thousands of individual explosions continue over minutes to hours that would clearly have the potential to cause behavioral harassment associated at levels lower than those that result in TTS. The Level B harassment (behavioral) threshold criteria of 177 dB re 1 μPa^2 s would not apply to the ACOE's activity because there will only be a maximum of two blasting events a day (minimum four to six hours apart), and the multiple (staggered) detonations are within a few milliseconds of each other and do not last more than a few seconds in total duration per a blasting event.

Also, the exclusion zone is larger than the area where the ACOE has determined that Level B harassment will occur, so if the monitoring and mitigation measures are successful as expected, and no duration occurs when an animal is inside the exclusion zone, no take by Level B harassment is likely to occur.

The primary potential impact to the Atlantic bottlenose dolphins occurring in the Port of Miami action area from the detonations is Level B harassment (in the form of TTS and any associated behavioral disruption resulting) incidental to noise generated by confined explosives. In addition, NMFS believes that the monitoring and mitigation measures required by the IHA will further limit incidental take to Level B harassment and have the least practicable impact on marine mammal species or stocks in the action area.

Comment 9: Robbins *et al.* states that the blasting and resulting behavioral modification may sever the distinct Biscayne Bay bottlenose dolphin stock between the northern and southern parts of Biscayne Bay. The issue of behavioral modification is significant and, without any scientific analysis, is not considered by the ACOE's IHA application or NMFS' **Federal Register** notice. Biscayne Bay is a single identified habitat for a distinct genetic stock of bottlenose dolphins. It is transected by a corridor of about four miles (mi) (6.4 kilometers [km]). Half that corridor constitutes the blasting area. That corridor physically divides the northern and southern half of Biscayne Bay. The northern portion of Biscayne Bay, which is substantially a shallow grass covered environment where 69 of the 229 resident bottlenose dolphins have been found to reside, is unlike the southern portion of Biscayne Bay, which is a wide gulf of substantial width and breadth. Access to the narrow northern portion of Biscayne Bay is limited to passages below two bridges, one immediately adjacent to the blasting corridor. The only other means of egress from the northern portion of Biscayne Bay is below a bridge, at Bakers Haulover, cut approximately 9 mi (14.5 km) north, which provides access to the coastal waters adjacent to beaches without surrounding mangrove or other estuarine conditions in which the distinct Biscayne Bay dolphin community has been found to reside. The Biscayne Bay stock, which is genetically distinct from the coastal stock of dolphins, does not breed with the dolphins along the coast. Essentially, the blasting may create a significant acoustical barrier between the northern and southern portions of Biscayne Bay.

It has not been studied or determined whether the current bottlenose dolphins that reside in the northern portion of Biscayne Bay would be stressed by their isolation from the remainder of their resident community or would alternatively abandon their habitat in the northern portion of Biscayne Bay where 30% of the identified individuals currently reside. There is not consideration of data or presentation of scientific analysis that established the 600 days of blasting would not disrupt the behavioral patterns of the community of dolphins which reside in both the northern and southern areas of Biscayne Bay. Given the known intelligence of the dolphins, and their sensitive hearing, it is necessary for the applicant to establish with data and analysis that the blasting would not disrupt the natural behavioral patterns of the community of bottlenose dolphins in Biscayne Bay. No such analysis was presented in the ACOE's IHA application or in the NMFS **Federal Register** notice. How the blasting would disturb the Biscayne Bay stock by causing the disruption of their traversing across the blasting area as well as their breeding and feeding and related activities needs to be studied thoroughly before any incidental take from blasting is considered.

The ACOE and NMFS admit that they are ''unable to determine how the temporary modification of the action area by the proposed construction and blasting will impact the two stocks of

dolphins expected to be present in the Port of Miami'' (76 FR 71526, November 18, 2011). That statement suggests that the NMFS **Federal Register** notice does not recognize a significant distinction of the geographical location of the blasting that will impact the two different stocks (estuarine bay vs. coastal) in different ways. The impact to the coastal stock may very well be occasional because the blast area merely juts into the ocean coastal area, but the impact on the estuarine bay stock will be ongoing and will not be temporary. The disruption of the Biscayne Bay stock will be during the entire term of the 600 days of blasting and, if long term behavioral modification has occurred, for perhaps years thereafter. The NMFS' use of the word ''temporary'' is disingenuous given the 600 days of blasting and many more days of construction. The NMFS **Federal Register** notice acknowledges that the proposed construction and blasting'' may delay or detour their movements (76 FR 71526), but does not consider that as to traversing from north to south or vice-versa, an acoustical barrier will be created and dolphins, especially cows with nursing and young calves, may avoid the dangers of the area rather than place their young at risk. The effectual trapping of the dolphins in the northern portion of Biscayne Bay will not cause their slaughter, but may change their natural behavior.

Response: The commenter incorrectly states the project will have 600 days of blasting. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [normally no confined blasting is allowed on Sundays due to local ordinances]), with no more than one confined blast event at a time and no more than two confined blast events per a single day. A calendar day is 24 hours. A blast day/blast event (*i.e.,* approximately 1 hour 30 minutes in length) is the series of events beginning one hour before the detonation through 30 minutes after the detonation. There may be more than one blast day/blast event per calendar day, they will not occur simultaneously.

NMFS believes that the confined blasting is unlikely to result in behavioral modifications that may sever the Biscayne Bay stock of bottlenose dolphins between the northern and southern parts of Biscayne Bay. A review of data collected by NMFS SEFSC before, during, and after the 2005 confined blasting event shows no difference in home range usage of bottlenose dolphins from the Biscayne Bay stock. The ACOE and NMFS expect this same response for the future confined blasting associated with the Miami Harbor Deepening Project. The project area is a commercial port environment, and the bottlenose dolphins residing in or transiting through the vicinity of the Port of Miami are likely habituated to the presence of, and noise from, numerous vessel movements ranging from large commercial vessels to small recreational craft, as well as sea planes and helicopters operating from the vicinity of Rickenbacker Causeway and overflying the Bill Sadowski Critical Wildlife Area. This ongoing commercial and recreational use of the Port of Miami's channels far exceeds the potential impact of the confined blast events associated with the deepening project that have a duration of less than 60 seconds each (from the first fish scare to the end of the actual confined blast), and with no more than two confined blast events (separated by at least four hours) occurring in one calendar day. Blasting events take from the time beginning one hour before the detonation through 30 minutes after the detonation, including any delays due to protected species. This means that the maximum duration of noise and pressure associated with confined blasts will be 120 seconds in a calendar day, which is 0.14% of all of the time in a calendar day, assuming a worst case of two confined blast events in a calendar day that last up to 60 seconds each in duration, with confined blasts occurring no more than six days a week. The ACOE took the most conservative calculation for each blast to protect natural resources. Furthermore, bottlenose dolphins residing in Biscayne Bay can transit through the Port of Miami area from north to south in two locations inside Biscayne Bay—at the Intracoastal Waterway, on the west side of the Port of Miami, which is completely outside the project area (including the safety zone) and where Fisherman's Channel meets the main channel in Government Cut, Fisher Island Turning Basin. These two corridors allow animals wishing to avoid the project area a mechanism to transit north and south. The issue of the isolation of the Biscayne Bay stock of bottlenose dolphins has already been addressed in the response to Comment 6 and is hereby incorporated by reference.

Comment 10: Robbins *et al.* states that the history of the ACOE's blasting operations at the Port of Miami indicates substantial impacts on dolphins. The lack of data and analysis is disturbing because during the prior blasting in 2005 at the Port of Miami, which lasted only 40 days, bottlenose dolphin in the exclusion zone were sighted 12 times involving a total of 30 individuals in the exclusion zone when those prior blasts were scheduled (76 FR 71532). In other words, in 30 percent of the dates in which blasting was scheduled, dolphins were sighted in the exclusion zone. Thus, given the radius, an even greater number would have been immediately adjacent and subject to sub-TTS impacts. Once the number of blasting events increases from 40 to 1,200, it is likely that a much greater number of dolphins will be adversely affected. The 30 multiple (from 40 to 1,200) of increased blasting events may likely result in 360 incidents of dolphin groups in the exclusion zone and many times that amount within the immediate area affected by sub-TTS noise. Using the same number of individuals per group as in 2005, results in a total of 900 individual dolphins traversing the exclusion zone during the 1,200 blasting events. Of course, these high numbers assume that the dolphins will not be avoiding the area after the repetitive blasting which is an assumption that the undersigned do not accept because behavioral modification may result in dolphins avoiding the area during the course of the blasting operations.

Response: The commenter incorrectly states the project will have 600 days of blasting. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [normally no confined blasting is allowed on Sundays due to local ordinances]), with no more than one confined blast event at a time and no more than two confined blast events per a single day. A calendar day is 24 hours. A blast day/blast event (*i.e.,* approximately 1 hour 30 minutes in length) is the series of events beginning one hour before the detonation through 30 minutes after the detonation. There may be more than one blast day/blast event per calendar day, they will not occur simultaneously.

NMFS and the ACOE disagree with the comment that the history of the ACOE's confined blasting operations at the Port of Miami indicates substantial impacts on bottlenose dolphins in the action area. Utilizing the correct number of confined blast days/events and the specification requirement that when bottlenose dolphins are observed in either the danger or exclusion zone (as demonstrated in Figure 10 of the ACOE's IHA application), confined blasting operations are delayed until the animals leave the area of their own volition. The assumptions in the commenter's analysis indicating that bottlenose dolphins observed in the

exclusion zone (which includes the danger zone within its boundaries) are adversely affected by the planned confined blasting is flawed. The detonations are delayed until the dolphins leave the exclusion zone, where pressure monitoring has demonstrated that pressures at the edge of the danger zone return to background levels (Hempen *et al.,* 2007). By ensuring the animals have left the exclusion zone (an area larger than the danger zone) before the confined blast is detonated, the ACOE and NMFS believe that the project will have minimal impact on the stocks of bottlenose dolphins, since the animals outside the danger zone will not be subjected to pressures higher than the surrounding background environment. Also, the exclusion zone is larger than the area where the ACOE has determined that Level B harassment will occur, so if the monitoring and mitigation measures implemented are successful as expected, and no detonation occurs when an animal is inside the exclusion zone, no take by Level B harassment is likely to occur.

In contrast to the commenter's statement, the ACOE's 2005/2006 confined blasting and dredging project did not have any documented incidents of take by Level B harassment during the 40 confined blast days/events. One bottlenose dolphin was recorded as jumping after a confined blast detonation out of the 58 bottlenose dolphins observed in the project area during the blasting activities. However, this same dolphin was observed 30 minutes after the recorded jump, and behavior was documented as normal.

Comment 11: Robbins *et al.* states that the take estimates in the ACOE's IHA application are faulty. The applicant assumes no behavioral modification in which the bottlenose dolphin avoids the blast area. By the applicant's admission contained in Table 4 of NMFS' **Federal Register** notice (76 FR 71352), the estimated take of bottlenose dolphins stock could be 0.162 per blasting event, and applying the 1,200 blasting events (two per day for 600 days), a total of 194 takes of bottlenose dolphins of the Biscayne Bay stock will occur. That means that 194 bottlenose dolphins (assuming that a single dolphin is subject to a take only once), then 84% of the Biscayne Bay stock will be subject to harassment. The analysis of the number of takes is faulty at 76 FR 71354. Because the ACOE IHA application is for only one year and does not consider the entire course of 600 blasts, nor does it consider the worst case in its own charts, it minimizes the impact, claiming only 12 of the Biscayne Bay stock of bottlenose dolphins will be taken (see 76 FR 71534). It is a disingenuous analysis and the percentages impacted are intentionally misleading. The NMFS **Federal Register** notice claims that ''at worst [one year of blasting] may result, at worst in a temporary modification in behavior and/or low physiological effects (Level B harassment) of a small number of Atlantic bottlenose dolphins'' (76 FR 71534). This conclusion is false and without the data and analysis to support it. Then, in the next sentence the NMFS **Federal Register** notice acknowledges that there may be ''behavioral modifications'' (76 FR 71534), but then claims that it will be just ''temporary,'' vacating the area immediately after the blasting ''to avoid underwater acoustic disturbances,'' however, there are no data and analysis to show that after days, weeks, and months of blasting, an intelligent mammal like a dolphin will not learn to avoid the area in its entirety, resulting in the splitting of the Biscayne Bay stock between the northern and southern portions of Biscayne Bay. ''Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days'' (76 FR 71534). Does that not describe what is being proposed? Furthermore, the NMFS claims that the activities ''will result in the incidental take of small numbers of marine mammals by Level B harassment only, and that the total taking from the blasting activities will have a negligible impact on the affected species or stocks of marine mammals'' (76 FR 71534). This is utterly without support. As many as 84% of the Biscayne Bay stock of bottlenose dolphins would be impacted. Moreover, the functional severing of its habitat may affect behaviors from breeding to feeding to territorial behavior that have not been considered or analyzed.

Response: The commenter incorrectly states the project will have 600 days of blasting. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [normally no confined blasting is allowed on Sundays due to local ordinances]), with no more than one confined blast event at a time and no more than two confined blast events per a single day. A calendar day is 24 hours. A blast day/blast event (*i.e.,* approximately 1 hour 30 minutes in length) is the series of events beginning one hour before the detonation through 30 minutes after the detonation. There may be more than one blast day/blast event per calendar day, they will not occur simultaneously. NMFS and the ACOE disagree with the comment that the take estimates in the IHA application are faulty. Although the ACOE has calculated a total potential take of 45 bottlenose dolphins from the Biscayne Bay stock and 42 bottlenose dolphins from the Western North Atlantic Central Florida Coastal stock, these estimated take (87 total) were calculated without considering the implementation of monitoring and mitigation measures to protect marine mammals. By adding the layers of protection—(1) Confined blasting that reduces the pressure by up to 90%; (2) zones of protection based on open water detonations that give no credit for the pressure reduction previously mentioned; and (3) PSOs and aerial overflights; the ACOE and NMFS feel that these monitoring and mitigation measures reduce the potential for incidental take, and as a result the ACOE limited the take request (*i.e.,* a total of 22 bottlenose dolphins [12 from the Biscayne Bay stock and 10 from the Western North Atlantic Central Florida Coastal]) to the amounts cited in the **Federal Register** notice (76 FR 71517, November 18, 2011). See ''Estimated Take by Incidental Harassment'' section later in this document for more information on how the estimates of incidental takes of the two stocks of bottlenose dolphins were calculated.

Additionally, as previously stated in the response to Comment 9, bottlenose dolphins residing in or transiting through the vicinity of the Port of Miami are likely habituated to the presence and noise from commercial and recreational vessels, sea planes, and helicopters frequently in the action area, and have two locations within Biscayne Bay to transit between the northern and southern portions of the Biscayne Bay to avoid the ACOE's confined blasting and dredging operations, if necessary. Also, dolphins in the action area will have short exposure to the ACOE's confined blasting activities and it is unlikely that any particular animals would be in the small danger zone near the explosives long enough to be subjected to repeated exposures.

Comment 12: Robbins *et al.* states that the ACOE's blasting area is immediately north and adjacent to the Bill Sadowski Critical Wildlife Area. The area adjacent to the Fisherman's Channel is a prime location to watch surfacing dolphins with their calves feeding during the hour before sunset. The proposed time of the blasts is one hour before sunset. The NMFS analysis of the incidental take does not consider the concentration

of marine mammals adjacent to and in the Bill Sadowski Critical Wildlife Area (76 FR 71532).

Response: The ACOE is aware that the project borders the Bill Sadowski Critical Wildlife Area, however, a review of the NMFS SEFSC sighting data from 1990 to 2004 does not support the commenter's statement that the area adjacent to Fisherman's Channel has been identified as a prime habitat area for observing mother/calf pairs or groups in the hour before sunset. The data show the highest concentrations of dolphin sightings to be north of the Port of Miami near Baker's Haulover Inlet and south of Rickenbacker Causeway, west of Key Biscayne, neither of these areas are within the boundaries of the Bill Sadowski Critical Wildlife Area. This may be because the part of Biscayne Bay west of Key Biscayne and south of Rickenbacker Causeway may be quieter then the area immediately south of the Port of Miami. The commenters have provided no additional data to support their claim. Additionally, the ACOE's project specifications and NMFS' monitoring and mitigation measures in the IHA require that confined blast detonations be complete at least one hour before sunset, the ACOE does not say that this is when detonations occur.

Comment 13: Robbins *et al.* states that the ACOE cannot obtain an IHA on the basis of its IHA application. The ACOE's project in the Port of Miami is expected to take up to 24 months and therefore requires development of regulations. The blasting and dredging project in the Port of Miami has been authorized in its entirety by the Federal and state governments (except for the MMPA incidental take authorization).

Despite clear statutory language, the ACOE and NMFS appear to take the position that the incidental take of marine mammals during the lengthy blasting and dredging phase could be covered under successive one-year IHAs. To the contrary, the specified activity of the deepening project in the Port of Miami can be considered for MMPA purposes only under regulations and the issuance of subsequent LOAs, as section 101(a)(5)(D) of the MMPA specifies that an IHA can be issued for ''periods not more than one year.'' The legislative history of the MMPA, case law, and NMFS' own practice in issuing IHAs and LOAs all point to the need for the ACOE to apply for a rule in this context.

NMFS must administer the MMPA for the ''benefit of the protected species rather than for the benefit of commercial exploitation.'' *Committee for Human Legislation* v. *Richardson,* 540 F.2d 1141, 1148 (1976) (citing H.R. Rep. No. 92–707). And any decision ''must be consistent with the MMPA immediate goal'' of reducing take or serious injury to marine mammals to ''insignificant levels approaching zero mortality and serious injury rate.'' *Kokechik Fishermen's Ass'n* v. *Sec'y of Commerce,* 839 F.2d 795, 801 (1988) (citing 16 U.S.C. 1371(a)(2)). Congress' intent was to ''insist that the management of the animal populations be carried out with the interests of the animals as the prime consideration.'' H.R. Rep. No. 92–707, at 18. Therefore, the Secretary of Commerce must first look at the ''interest in maintaining healthy populations of marine mammals'' when balancing competing interests. Id. At 802; *Committee for Humane Legislation,* v. *Richardson,* 540 F.2d at 1151 n.39; see H.R. Rep. No.92–707, at 24 (1971) (The House Merchant Marine and Fisheries Committee intended to ''build such a conservative bias into the [MMPA]''); 118 Cong. Rec. S. 15680 (daily ed. October 4, 1971) (statement of Sen. Packwood) (''Scientists generally will state that our level of knowledge of marine mammals is very low * * * Barring better and more information, it would therefore appear to be wise to adopt a cautious attitude toward the exploitation of marine mammals.'').

When these principles are applied, NMFS must adopt an interpretation of its section 101(a)(5) incidental take authority that recognizes the one-year limitation applied to IHAs and apply regulations (and subsequent LOA) requirements. Any other approach will fail to give sufficient protection to the many marine mammals that will be subjected to take and harassment in favor of expediting the development of the Port of Miami blasting and dredging project. NMFS cannot allow for such a result and must deny the ACOE's IHA application.

The choice of incidental take authorization is very important because it has consequences for the protection provided to marine mammals and the level of public involvement. An IHA will consider only the takes that occur over the course of one year to determine whether the impacts of the ''specified activity'' on marine mammals are negligible. An activity like the Port of Miami blasting and dredging operations will occur continuously over several years and will have greater impacts when considered in its entirety than it will for just a component of the activity conducted during a single year. To determine if there is a ''negligible impact,'' it is therefore necessary to consider the entire activity, not just a subset of the activity defined by one-year increments.

Response: NMFS disagrees with the commenter's statement. The ACOE has requested an IHA in its adequate and complete application. 50 CFR 216.107 states that except for activities that have the potential to result in serious injury or mortality, which must be authorized under § 216.105, IHAs may be issued, following a 30-day public review period, to allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such IHA shall set forth permissible methods of taking by harassment; means of effecting the least practicable impact on the species, its habitat, and on the availability of the species for subsistence uses; and requirements for monitoring and reporting. IHAs will be valid for a period of time not to exceed one year but may be renewed for additional periods of time not to exceed one year for each reauthorization; therefore, the promulgation of regulations and the subsequent issuance of LOAs to the ACOE for the confined blasting operations in the Port of Miami is not necessary or required. NMFS has issued IHAs under section 101(a)(5)(D) of the MMPA for ''periods not more than one year'' and renewed IHAs, upon request for applicant's conducting specified activities that have the potential to result in the incidental harassment (Level A and/or Level B harassment) of small numbers of marine mammals. Specified activities that have the potential to result in serious injury or mortality of marine mammals must be authorized under 50 CFR 216.106. For additional information, please see the response to Comment 1.

Per requirements of 50 CFR 216.104, the ACOE included the necessary information for their activity in its submission to NMFS requesting an IHA. NMFS worked with the ACOE and requested additional information in its original IHA application to ensure and determine, based upon the best available scientific evidence, that it was adequate and complete. For the proposed IHA (76 FR 71517, November 18, 2011), NMFS invited information, suggestions, and comments from the public for a period not to exceed 30 days from the date of publication in the **Federal Register**. NMFS will involve the public on a proposed IHA, if or when the ACOE requests a renewal of the IHA for confined blasting operations as part of the Miami Harbor Deepening Project. The cumulative impacts of the ACOE's multiple year activities are considered and analyzed in the ACOE's FEIS and NMFS's EA.

Comment 14: Robbins *et al.* states that the mitigation efforts are insufficient and detrimental to the bottlenose dolphin. The issue of necessity for blasting and the amount of blasting involved in the blasting and dredging project in the Port of Miami does not appear to have been revisited. Technological advances in dredging equipment that would reduce the amount of blasting needed would greatly minimize the adverse effects on all marine life in and around the project footprint. As this project takes place within an Aquatic Preserve, classified as an Outstanding Florida Water, adjacent to a critical wildlife area, and is considered habitat for over 12 endangered or threatened species of marine life, it is imperative the most updated and least impactful best management practices be employed, including the most recent machinery, scientific studies and mitigation practices.

Response: As previously discussed in the response to Comment 5, it is unclear why the commenter believes that protective monitoring and mitigation measures proposed by the ACOE and required in the IHA issued by NMFS are detrimental to the bottlenose dolphins. NMFS has determined that the monitoring and mitigation measures required by the IHA will ensure the specified activity will have the least practicable impact on the stocks of bottlenose dolphins in the action area. The commenter contends that technological advances in dredging equipment would reduce the amount of blasting. During the feasibility and EIS process, ACOE reviewed all of the geotechnical data collected over the last 20 years. The ACOE's geotechnical engineers determined that the rock in Miami Harbor is both hard and massive, and will require pretreatment before removal with any dredging technology currently available.

The only methods available for pre-treatment of hard/massive rock are confined blasting and the use of a punch-barge or hydrohammer. As part of the feasibility and EIS process, the ACOE consulted with NMFS and the USFWS under section 7 of the ESA to determine the impacts of both methods on listed and protected species in the action area. NMFS and USFWS have both documented that the use of a punch-barge or hydrohammer, which would work during daylight hours, strikes the rock approximately once every 60 seconds for up to 720 hits in a 12 hour period. This would increase during periods of extended daylight. This constant pounding would serve to disrupt animal behavior in the area. Using the punch-barge would also extend the length of the project, thus increasing any potential impacts to all fish and wildlife resources in the action area. The ACOE believes that confined blasting to remove the rock in the Port of Miami has the least environmental impact of all available methods. Utilization of a punch-barge would result in pressure being released into the water like an unconfined blast, without a reduction in associated pressure wave, which can lead to impacts to marine mammals, and fish kill at levels much higher than confined underwater blasting. The ACOE removed punch-barging as a viable pre-treatment methodology, which leaves confined blasting as the only method to pre-treat rock prior to removal by conventional dredging methodologies.

NMFS' SERO issued a Biological Opinion (BiOp) on September 8, 2011, that analyzes the project's effects on staghorn coral (*Acropora cervicornis*). It is NMFS' biological opinion that the action, is likely to adversely affect staghorn coral, but is not likely to jeopardize its continued existence or destroy or adversely modify its designated critical habitat. Based upon NMFS SERO's analysis, NMFS no longer expects the project is likely to adversely affect Johnson's seagrass (*Halophila johnsonii*) or its designated critical habitat. NMFS has determined that the ESA-listed marine mammals (Blue, fin, sei, humpback, North Atlantic right, and sperm whales), smalltooth sawfish (*Pristis pectinata*), and leatherback sea turtles (*Dermochelys coriacea*) are not likely to be adversely affected by the action (NMFS, 2011). The USFWS concurred with the ACOE's determination that the construction activities related to the modification of Miami Harbor to accommodate the expansion of the Port of Miami may affect, but are not likely to adversely affect the West Indian manatee and the American crocodile since appropriate monitoring to minimize these effects will be incorporated into the project design. In addition, the effects of the action will not result in the adverse modification to designated critical habitat for the West Indian manatee if sufficient mitigation is provided for seagrass impacts (USFWS, 2003). See the Endangered Species Act section below for more information on endangered or threatened species.

Comment 16: Robbins *et al.* states that NMFS should require improvement for zones and the monitoring program. Zone calculations should use the latest studies and incorporate all findings from prior blasting events and account for bathymetric data and the nature of the blast area (*i.e.,* channels). A report entitled ''Blast emission criteria and detection methods for the safeguarding of marine mammals in a blast environment'' by R. A. Godson, published in 2010, states the following criteria:

> In order to provide an objective and quantitative assessment of the range and severity of any environmental effect from underwater blasting, it is necessary to be able to estimate the following parameters: The source level (*i.e.,* level of sound) generated by the explosives; the transmission loss, that is, the rate at which sound from the source is attenuated as it propagates underwater; the effect threshold, that is, the level of sound at which a particular effect, such as death, injury or avoidance of a species, occurs * * * (page 684).
>
> The Safety Zone is the zone beyond which peak pressure levels from blasting are predicted to be lower than the 83 kPa criterion, creating no adverse effects on marine mammals * * * This criterion was originally established for estimating the impacts of large unconfined explosions and was introduced in order to provide a more conservative range * * * when explosive or the marine animal approaches the sea surface (for which cases the explosive energy is reduced but the peak pressure is not) (page 686).
>
> The report further specifies the determination of the safety zone radius:
>
> The Safety Zone is the zone beyond which peak pressure levels from blasting are predicted to be lower than the 83 kPa criterion, creating no adverse effects * * * The propagation of the peak pressure is very much dependent on the hydrography specific to the site, the water depth and the sound propagation underwater (page 686).

The ACOE's IHA application frequently cites its 2005 blasting activities as a point of reference for the proposed blasting activities in 2012. These projects do not warrant the comparison, especially for the incidental take of dolphins as the ACOE contends. The project footprint is far larger in the present project than in 2005. The maximum weight of explosives has increased from 376 lbs (76 FR 71519) to 450 lbs with averages of two blasts per day for an estimated 600 days of blasting. Although, in its proposed calculations, ACOE has increased the danger zone for dolphins by 500 ft, this is insufficient accommodation relative to the large increase in blast pressure due to increased weight and frequency of blasting. Further, the safety zone calculation has not changed from the past blasting event in the current application. As detailed above, the safety zone is a critical component to ensure marine mammal safety.

Despite an incident during a 2005 blast reported in the ''Protected Marine

Species Watch Program Miami Harbor Deepening Project'' by ECOES Consulting, Inc. for the ACOE, the ACOE has not altered its mitigation program based on these findings. As stated in the report, two dolphins located in the channel west of the blasting, stationary at approximately 2,400 ft, ''were feeding and cavorting.'' The exclusion zone calculation was 1,600 ft for the lower weight of explosives used that day (the exact weight used is not recorded in this report). The report continues to describe the channel area (where much of the proposed blasting will also occur):

> The topography of the bottom of that area is very much shallow to the south, then an exceptionally steep drop off into the channel at 40+ ft ending at the bulkhead wall to the north. Westward, the channel continues and has a more gradual upward slope. At the time of the blast, one of the dolphins was at the surface in the shallows, which the other dolphin was underwater within the channel. The dolphin that was underwater showed a strong reaction to the blast. The animal jumped fully out of the water in a ''breaching'' fashion; behavior that had not been exhibited prior to the blast (ECOES, p. 18).

It is critical to note that based on the ACOE formula (which is proposed to remain the same in the current IHA application), the harassed dolphin was located 800 ft outside of the exclusion zone and still exhibited a strong adverse reaction to the blast described as ''lower weight.'' Considering the significant increase in weight maximum in the current project and the much increased frequency and duration of this project, it is clear that the mitigation and zone calculations are insufficient as proposed. In the ECOES report conclusion, the author also notes that the shallow channel and bathymetry of the project site, which remains the same (only expanded) in the current project has a great effect on the pressure and sound effect of the blasting agents: ''This observation may be important to consider when formulating blast/watch plans for marine mammals in the future. It may be prudent to extend or contract the exclusion zone based on the bathymetry of the project site'' (ECOES, p. 18).

Response: The commenter incorrectly states the project will have 600 days of blasting. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (*i.e.,* 365 days in a year minus 52 Sundays [normally no confined blasting is allowed on Sundays due to local ordinances]), with no more than one confined blast event at a time and no more than two confined blast events per a single day. A calendar day is 24 hours. A blast day/blast event (*i.e.,* approximately 1 hour 30 minutes in length) is the series of events beginning one hour before the detonation through 30 minutes after the detonation. There may be more than one blast day/blast event per calendar day, they will not occur simultaneously.

The commenter recommends that NMFS and the ACOE adopt the model proposed in Godson (2010) and believes that Godson's report entitled ''Blast emission criteria and detection methods for safeguarding of marine mammals in a blast environment'' presents the most recent data available (*i.e.,* the best scientific evidence) concerning underwater blasting. This is incorrect. Godson states that his model is based on a ''comprehensive review of different underwater blasting propagation models for a recent underwater blasting impacts assessment study'' found in Godson (2005). This means he did not review the most recent pressure studies and models developed from the data collected after the Kill van Kull blasting was completed in 2004, particularly the data collected in 2005 at Miami Harbor and published in Hempen *et al.* (2007).

The Godson model utilizes an unconfined blast as is demonstrated by its use of -1.13 exponential in the model equation. The -1.13 exponential utilized in the blasting literature is the attenuation, or reduction, of the maximum pressure through water. This is not an accurate representation of the effects from the proposed confined blasting at Miami Harbor. Based on the in situ pressure measurements collected in 2005, the ACOE's blasting experts developed a similar model to assess the benefit of confinement of the blast, however, even with the knowledge that confinement of the detonation in rock significantly reduces the pressure wave (Hempen *et al.,* 2007; Hempen *et al.,* 2005; Nedwell and Thandavamoorthy, 1992), the ACOE opted not to give any credit to the reduction in maximum pressure. By opting not to incorporate the reduction in maximum pressure into the protective zone equations, the ACOE is being conservative and protective of marine mammals in and near the action area.

Comment 15: The Commission recommends that NMFS issue the IHA, provided it requires the ACOE to conduct empirical sound propagation measurements during two detonation events per day using various delay weights and numbers of delays to verify that the danger and exclusion zones are sufficient to protect marine mammals from sound exposure levels, including the 182 and 177 dB re 1 Pa^2s thresholds. If the zones are found to be too small, then NMFS and ACOE should adjust them accordingly. In addition, NMFS and the ACOE should use the distances to the relevant thresholds from those empirical measurements to estimate the number of takes for subsequent IHAs.

Response: The ACOE is unable to collect data on empirical sound propagation measurements as recommended by the Commission because the area immediately south of Fisherman's Channel is bounded by shallow seagrass beds and encompassed by the Bill Sadowski Critical Wildlife Area. The shallow seagrass beds are found in waters so shallow that seagrasses are often exposed at low tides and motoring through the area would adversely impact the seagrass beds by dredging prop scars into the beds, resulting in previously unanticipated impacts. Additionally, Florida state law prohibits motorized vessels from entering this area.

To be able to collect the data requested by the Commission, the ACOE's contractor would have to lay out a network of hydrophones or pressure transducers before each blast, which requires entering the Bill Sadowski Critical Wildlife Area to lay the hydrophones or pressure transducers with a motorized vessel, and repeat the process to recover them after each blast, or it would require the ACOE to set up a network of vessels in the boundaries of the Bill Sadowski Critical Wildlife Area with a hydrophone or pressure transducer on each vessel. Hydrophone equipment systems have limitations gathering peak pressure data from blasting, and can be quickly overloaded if placed too close to the detonation; pressure transducers are better designed to measure blast pressures (Keevin, pers. comm.). Again, the vessels would have to enter the Bill Sadowski Critical Wildlife Area, which is in violation of the previously mentioned state law.

Comment 16: The Commission recommends that NMFS issue the IHA, provided it requires the ACOE to suspend all activities if the authorized number of takes is reached.

Response: NMFS concurs with the Commission's recommendation and has included a condition to this effect in the IHA. The taking by injury (Level A harassment), serious injury, or mortality of Atlantic bottlenose dolphins or any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of the IHA. If the ACOE exceeds the authorized number of takes, then the ACOE will notify NMFS and the IHA may be modified.

Description of Marine Mammals in the Area of the Specified Activity

Several cetacean species and a single species of sirenian are known to or could occur in the Miami Harbor action area and off the Southeast Atlantic coastline (see Table 1 below). Species listed as endangered under the U.S. Endangered Species Act (ESA), includes the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), North Atlantic right (*Eubalaena glacialis*), and sperm (*Physeter macrocephalus*) whale, and West Indian (Florida) manatee (*Trichechus manatus latirostris*). The marine mammals that occur in the Atlantic Ocean off the U.S. southeast coast belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the manatee). The West Indian manatee in Florida and U.S. waters is managed under the jurisdiction of the USFWS and therefore is not considered further in this analysis.

Table 1 below outlines the marine mammal species and their habitat in the region of the project area.

TABLE 1—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROJECT AREA IN THE ATLANTIC OCEAN OFF THE U.S. SOUTHEAST COAST

Species	Habitat	ESA [1]	MMPA [2]
Mysticetes:			
North Atlantic right whale (*Eubalaena glacialis*)	Coastal and shelf	EN	D
Humpback whale (*Megaptera novaeangliae*)	Pelagic, nearshore waters, and banks.	EN	D
Bryde's whale (*Balaenoptera brydei*)	Pelagic and coastal	NL	NC
Minke whale (*Balaenoptera acutorostrata*)	Shelf, coastal, and pelagic.	NL	NC
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	EN	D
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic.	EN	D
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic.	EN	D
Odontocetes:			
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep seas	EN	D
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	NL	NC
Gervais' beaked whale (*Mesoplodon europaeus*)	Pelagic	NL	NC
True's beaked whale (*Mesoplodon mirus*)	Pelagic	NL	NC
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	NL	NC
Dwarf sperm whale (*Kogia sima*)	Offshore, pelagic	NL	NC
Pygmy sperm whale (*Kogia breviceps*)	Offshore, pelagic	NL	NC
Killer whale (*Orcinus orca*)	Widely distributed	NL EN (Southern Resident).	NC D (Southern Resident, AT1 Transient)
Short-finned pilot whale (*Globicephala macrorhynchus*)	Inshore and offshore.	NL	NC
False killer whale (*Pseudorca crassidens*)	Pelagic	NL	NC
Mellon-headed whale (*Peponocephala electra*)	Pelagic	NL	NC
Pygmy killer whale (*Feresa attenuata*)	Pelagic	NL	NC
Risso's dolphin (*Grampus griseus*)	Pelagic, shelf	NL	NC
Bottlenose dolphin (*Tursiops truncatus*)	Offshore, Inshore, coastal, and estuaries.	NL	NC S (Biscayne Bay and Central Florida Coastal stocks) D (Western North Atlantic Coastal)
Rough-toothed dolphins (*Steno bredanensis*)	Pelagic	NL	NC
Fraser's dolphin (*Lagenodelphis hosei*)	Pelagic	NL	NC
Striped dolphin (*Stenella coeruleoalba*)	Pelagic	NL	NC
Pantropical spotted dolphin (*Stenella attenuata*)	Pelagic	NL	NC D (Northeastern Offshore)
Atlantic spotted dolphin (*Stenella frontalis*)	Coastal to pelagic	NL	NC
Spinner dolphin (*Stenella longirostris*)	Mostly pelagic	NL	NC D (Eastern)
Clymene dolphin (*Stenella clymene*)	Pelagic	NL	NC
Sirenians:			
West Indian (Florida) manatee (*Trichechus manatus latirostris*)	Coastal, rivers, and estuaries.	EN	D

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not classified.

The one species of marine mammal under NMFS jurisdiction known to commonly occur in close proximity to the blasting area of the Port of Miami is the Atlantic bottlenose dolphin, specifically the stocks living near the Port of Miami within Biscayne Bay (the Biscayne Bay stock) or transiting the outer entrance channel (Western North Atlantic Central Florida Coastal stock).

Atlantic Bottlenose Dolphin

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters, and in U.S. waters occur in multiple complex stocks along

the U.S. Atlantic coast. The coastal morphotype of bottlenose dolphins is continuously distributed along the Atlantic coast south of Long Island, New York, to the Florida peninsula, including inshore waters of the bays, sounds, and estuaries. Except for animals residing within the Southern North Carolina and Northern North Carolina Estuarine Systems (*e.g.,* Waring *et al.,* 2009), estuarine dolphins along the U.S. east coast have not been previously included in stock assessment reports. Several lines of evidence support a distinction between dolphins inhabiting coastal waters near the shore and those present in the inshore waters of the bays, sounds, and estuaries. Photo-ID and genetic studies support the existence of resident estuarine animals in several inshore areas of the southeastern United States (Caldwell, 2001; Gubbins, 2002; Zolman, 2002; Mazzoil *et al.,* 2005; Litz, 2007), and similar patterns have been observed in bays and estuaries along the Gulf of Mexico coast (Well *et al.,* 1987; Balmer *et al.,* 2008). Recent genetic analyses using both mitochondrial DNA and nuclear microsatellite markers found significant differentiation between animals biopsied along the coast and those biopsied within the estuarine systems at the same latitude (NMFS, unpublished data). Similar results have been found off the west coast of Florida (Sellas *et al.,* 2005).

Biscayne Bay Stock

Biscayne Bay is a shallow estuarine system located along the southeast coast of Florida in Miami-Dade County. The Bay is generally shallow (depths less than 5 m [16.4 ft]) and includes a diverse range of benthic communities including seagrass beds, soft coral and sponge communities, and mud flats. The northern portion of Biscayne Bay is surrounded by the cities of Miami and Miami Beach and is therefore heavily influenced by industrial and municipal pollution sources. The water flow in this portion of Biscayne Bay is very restricted due to the construction of dredged islands (Bialczak *et al.,* 2001). In contrast, the central and southern portions of Biscayne Bay are less influenced by development and are better flushed. Water exchange with the Atlantic Ocean occurs through a broad area of grass flats and tidal channels termed the Safety Valve. Biscayne Bay extends south through Card Sound and Barnes Sound, and connects through smaller inlets to Florida Bay.

The Biscayne Bay stock of bottlenose dolphins is bounded by Haulover Inlet to the north and Card Sound Bridge to the south. This range corresponds to the extent of confirmed home ranges of bottlenose dolphins observed residing in Biscayne Bay by a long-term photo-ID study conducted by the Southeast Fisheries Science Center (Litz, 2007; SEFSC unpublished data). It is likely that the range of Biscayne Bay dolphins extends past these boundaries; however, there have been few surveys outside of this range. These boundaries are subject to change upon further study of dolphin home ranges within the Biscayne Bay estuarine system and comparison to an extant photo-ID catalog from Florida Bay to the south.

Dolphins residing within estuaries north of this stock along the southeastern coast of Florida are currently not included in a stock assessment report. There are insufficient data to determine whether animals in this region exhibit affiliation to the Biscayne Bay stock, the estuarine stock further to the north in the IRLES, or are simply transient animals associated with coastal stocks. There is relatively limited estuarine habitat along this coastline; however, the Intracoastal Waterway extends north along the coast to the IRLES. It should be noted that during 2003 to 2007, there were three stranded bottlenose dolphins in this region in enclosed waters. One of these had signs of human interaction from a boat strike and another was identified as an offshore morphotype of bottlenose dolphin.

Bottlenose dolphins have been documented in Biscayne Bay since the 1950's (Moore, 1953). Live capture fisheries for bottlenose dolphins are known to have occurred throughout the southeastern U.S. and within Biscayne Bay during the 1950's and 1960's; however, it is unknown how many individuals may have been removed from the population during this period (Odell, 1979; Wells and Scott, 1999).

The Biscayne Bay bottlenose dolphin stock has been the subject of an ongoing photo-ID study conducted by the NMFS SEFSC since 1990. From 1990 to 1991, preliminary information was collected focusing on the central portion of Biscayne Bay. The survey was re-initiated in 1994, and it was expanded to include the northern portion of Biscayne Bay and south to the Card Sound Bridge in 1995 (SEFSC unpublished data; Litz, 2007). Through 2007, the photo-ID catalog included 229 unique individuals. Approximately 80% of these individuals may be long-term residents with multiple sightings over the 17 years of the study (SEFSC, unpublished data). Analyses of the sighting histories and associations of individuals from the Biscayne Bay segregated along a north/south gradient (Litz, 2007).

Remote biopsy samples of Biscayne Bay animals were collected between 2002 and 2004 for analyses of population genetic structure and persistent organic pollutant concentrations in blubber. Genetic structure was investigated using both mitochondrial DNA and nuclear (microsatellite) markers, and the data from Biscayne Bay were compared to data from Florida Bay dolphins to the south (Litz, 2007). Within Biscayne Bay, dolphins sighted primarily in the northern half of Biscayne Bay were significantly differentiated from those sighted primarily in the southern half at the microsatellite loci but not at the mitochondrial locus. There was not sufficient genetic information between these groups to indicate true population subdivision (Litz, 2007). However, genetic differentiation was found between the Biscayne Bay and Florida Bay dolphins in both markers (Litz, 2007). The observed genetic differences between resident animals in Biscayne Bay and those in an adjacent estuary combined with the high levels of sight fidelity observed, demonstrate that the resident Biscayne Bay bottlenose dolphins are a demographically distinct population stock.

The total number of bottlenose dolphins in the Biscayne Bay stock is unknown. During small boat surveys between 2003 and 2007, 157 unique individuals were identified using standard methods, however, this catalog size does not represent a valid estimate of population size because the residency patterns of dolphins in Biscayne Bay is not fully understood. Litz (2007) determined that 69 animals in Biscayne Bay have a northern home range. Based on Waring *et al.* (2010), the maximum population of animals that may be in the project area is equal to the total number of uniquely identified animals for the entire photo-ID study of Biscayne Bay—229 individuals. Present data are insufficient to calculate a minimum population estimate, and to determine the population trends, for the Biscayne Bay stock of bottlenose dolphins. The total human-caused mortality and serious injury for this stock is unknown and there is insufficient information available to determine whether the total fishery-related mortality and serious injury for this stock is insignificant and approaching zero mortality and serious injury rate. Documented human-caused mortalities in recreational fishing gear entanglement and ingestion of gear reinforce concern for this stock. Because the stock size is currently unknown, but likely small and relatively few

mortalities and serious injuries would exceed potential biological removal, NMFS considers this stock to be a strategic stock.

Western North Atlantic Central Florida Coastal Stock

On the Atlantic coast, Scott *et al.* (1988) hypothesized a single coastal migratory stock ranging seasonally from as far north as Long Island, to as far south as central Florida, citing stranding patterns during a high mortality event in 1987 to 1988 and observed density patterns. More recent studies demonstrate that the single coastal migratory stock hypothesis is incorrect, and there is instead a complex mosaic of stocks (McLellan *et al.,* 2003; Rosel *et al.,* 2009).

The coastal morphotype is morphologically and genetically distinct from the larger, more robust morphotype primarily occupying habitats further offshore (Hoelzel *et al.,* 1998; Mead and Potter, 1995; Rosel *et al.,* 2009). Aerial surveys conducted between 1978 and 1982 (CETAP, 1982) north of Cape Hatteras, North Carolina, identified two concentrations of bottlenose dolphins, one inshore of the 82 ft (25 m) isobath and the other offshore of the 164 ft (50 m) isobath. The lowest density of bottlenose dolphins was observed over the continental shelf, with higher densities along the coast and near the continental shelf edge. It was suggested, therefore, that north of Cape Hatteras, North Carolina, the coastal morphotype is restricted to waters less than 82 ft deep (Kenney, 1990). Similar patterns were observed during summer months in more recent aerial surveys (Garrison and Yeung, 2001; Garrison *et al.,* 2003). However, south of Cape Hatteras during both winter and summer months, there was no clear longitudinal discontinuity in bottlenose dolphin sightings (Garrison and Yeung 2001; Garrison *et al.,* 2003). To address the question of distribution of coastal and offshore morphotypes in waters south of Cape Hatteras, tissue samples were collected from large vessel surveys during the summers of 1998 and 1999, from systematic biopsy sampling efforts in nearshore waters from New Jersey to central Florida conducted in the summers of 2001 and 2002, and from winter biopsy collection effort in 2002 and 2003 in nearshore continental shelf waters of North Carolina and Georgia. Additional biopsy samples were collected in deeper continental shelf waters south of Cape Hatteras during the winter of 2002. Genetic analyses using mitochondrial DNA sequences of these biopsies identified individual animals to the coastal or offshore morphotype. Using the genetic results from all surveys combined, a logistic regression was used to model the probability that a particular bottlenose dolphin group was of the coastal morphotype as a function of environmental variables including depth, sea surface temperature, and distance from shore. These models were used to partition the bottlenose dolphin groups observed during aerial surveys between the two morphotypes (Garrison *et al.,* 2003).

The genetic results and spatial patterns observed in aerial surveys indicate both regional and seasonal differences in the longitudinal distribution of the two morphotypes in coastal Atlantic waters. Generally, from biopsy samples collected, the coastal morphotype is found in nearshore waters, the offshore morphotype in deeper waters and a spatial overlap between the two morphotypes in intermediate waters. More information on the seasonal differences and genetic studies off of the Carolina's, Georgia, and Florida, differentiating morphotypes of bottlenose dolphins can be found online in the NMFS stock assessment reports.

In summary, the primary habitat of the coastal morphotype of bottlenose dolphin extends from Florida to New Jersey during summer months and in waters less than 65.6 ft (20 m) deep, including estuarine and inshore waters.

In addition to inhabiting coastal nearshore waters, the coastal morphotype of bottlenose dolphin also inhabits inshore estuarine waters along the U.S. east coast and Gulf of Mexico (Wells *et al.,* 1987; Wells *et al.,* 1996; Scott *et al.,* 1990; Weller, 1998; Zolman, 2002; Speakman *et al.,* 2006; Stolen *et al.,* 2007; Balmer *et al.,* 2008; Mazzoil *et al.,* 2008). There are multiple lines of evidence supporting demographic separation between bottlenose dolphins residing within estuaries along the Atlantic coast. In Biscayne Bay, Florida, there is a similar community of bottlenose dolphins with evidence of year-round residents that are genetically distinct from animals residing in a nearby estuary in Florida Bay (Litz, 2007). A few published studies demonstrate that there are significant genetic distinctions and differences between animals in nearshore coastal waters and estuarine waters (Caldwell, 2001; Rosel *et al.,* 2009). Despite evidence for genetic differentiation between estuarine and nearshore populations, the degree of spatial overlap between these populations remains unclear. Photo-ID studies within estuaries demonstrate seasonal immigration and emigration and the presence of transient animals (*e.g.,* Speakman *et al.,* 2006). In addition, the degree of movement of resident estuarine animals into coastal waters on seasonal or shorter time scales is poorly understood. However, for the purposes of this analysis, bottlenose dolphins inhabiting primarily estuarine habitats are considered distinct from those inhabiting coastal habitats. Initially, a single stock of coastal morphotype bottlenose dolphins was thought to migrate seasonally between New Jersey (summer months) and central Florida based on seasonal patterns in strandings during a large scale mortality event occurring during 1987 to 1988 (Scott *et al.,* 1988). However, re-analysis of stranding data (McLellan *et al.,* 2003) and extensive analysis of genetic (Rosel *et al.,* 2009), photo-ID (Zolman, 2002) and satellite telemetry (NMFS, unpublished data) data demonstrate a complex mosaic of coastal bottlenose dolphin stocks. Integrated analysis of these multiple lines of evidence suggests that there are five coastal stocks of bottlenose dolphins: the Northern Migratory and Southern Migratory stocks, a South Carolina/Georgia Coastal stock, a Northern Florida Coastal stock, and a Central Florida Coastal stock.

The spatial extent of these stocks, their potential seasonal movements, and their relationships with estuarine stocks are poorly understood. More information on the migratory movements and genetic analyses of bottlenose dolphins can be found online in the NMFS stock assessment reports.

The NMFS stock assessment report addresses the Central Florida Coastal stock, which is present in coastal Atlantic waters from 29.4° North south to the western end of Vaca Key (approximately 24.69° North to 81.11° West) where the stock boundary for the Florida Keys stock begins (see Figure 1 of the NMFS Stock Assessment Report). There has been little study of bottlenose dolphin stock structure in coastal waters of southern Florida; therefore the southern boundary of the Central Florida stock is uncertain. There is no obvious boundary defining the offshore extent of this stock. The combined genetic and logistic regression analysis (Garrison *et al.,* 2003) indicated that in waters less than 32.8 ft (10 m) depth, 70% of the bottlenose dolphins were of the coastal morphotype. Between 32.8 ft and 65.6 ft depth, the percentage of animals of the coastal morphotype dropped precipitously, and at depths greater than 131.2 ft (40 m) nearly all (greater than 90%) animals were of the offshore morphotype. These spatial patterns may not apply in the Central Florida Coastal stock, as there is a

significant change in the bathymetric slope and a close approach of the Gulf Stream to the shoreline south of Cape Canaveral.

Aerial surveys to estimate the abundance of coastal bottlenose dolphins in the Atlantic were conducted during winter (January to February) and summer (July to August) of 2002. Abundance estimates for bottlenose dolphins in each stock were calculated using line-transect methods and distance analysis (Buckland *et al.,* 2001). More information on the survey tracklines, design, effort, animals sighted, and methods for calculating estimated abundance can be found online in the NMFS stock assessment reports.

The estimated best and minimum population for the Central Florida Coastal Stock is 6,318 and 5,094 animals, respectively. There are insufficient data to determine the population trends for this stock. From 1995 to 2001, NMFS recognized only a single migratory stock of coastal bottlenose dolphins in the western North Atlantic, and the entire stock was listed as depleted. This stock structure was revised in 2002 to recognize both multiple stocks and seasonal management units and again in 2008 and 2010 to recognize resident estuarine stocks and migratory and resident coastal stocks. The total U.S. fishery-related mortality and serious injury for the Central Florida Coastal stock likely is less than 10% of the calculated PBR, and thus can be considered to be insignificant and approaching zero mortality and serious injury rate. However, there are commercial fisheries overlapping with this stock that have no observer coverage. This stock retains the depleted designation as a result of its origins from the originally delineated depleted coastal migratory stock. The species is not listed as threatened or endangered under the ESA, but this is a strategic stock due to the depleted listing under the MMPA.

Further information on the biology and local distribution of these species and others in the region can be found in ACOE's IHA application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

Potential Effects on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include mortality, serious injury, as well as Level A harassment (injury) and Level B harassment. In the absence of mitigation, marine mammals could be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects would be likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called ''cavitation.''

A second potential possible cause of mortality (in the absence of mitigation) is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS' criteria for determining potential for non-lethal injury (Level A harassment) from explosives are the peak pressure that will result in: (1) The onset of slight lung hemorrhage, or (2) a 50 percent probability level for a rupture of the tympanic membrane (TM). These are injuries from which animals would be expected to recover on their own.

NMFS has established dual criteria for what constitutes Level B harassment: (1) An energy based temporary threshold shift (TTS) in hearing at received sound levels of 182 dB re 1 μPa^2-s cumulative energy flux in any ⅓ octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway *et al.,* 1997; Schlundt *et al.,* 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (*i.e.,* TTS). The threshold for sub-TTS behavioral harassment is 177 dB re 1 μPa^2 s. The Level B harassment zone is the distance from the mortality, serious injury, injury (Level A harassment) zone to the radius where neither of these criterion is exceeded.

TABLE 2—NMFS' THRESHOLD CRITERIA AND METRICS UTILIZED FOR IMPACT ANALYSES FROM THE USE OF EXPLOSIVES

Mortality	Level A Harassment (Non-lethal injury)		Level B Harassment (Non-injurious; TTS and associated behavioral disruption [dual criteria])	Level B Harassment (Non-injurious behavioral, Sub-TTS)
31 psi-msec (onset of severe lung injury [mass of dolphin calf]).	205 dB re 1 μPa^2·s EFD (50 percent of animals would experience TM rupture).	13 psi-msec positive pressure (onset of slight lung injury).	182 dB re 1 μPa^2·s EFD*; 23 psi peak pressure (< 2,000 lb) 12 psi peak pressure (> 2,000 lb).	177 dB re 1 μPa sEFD* (for multiple detonations only).

* **Note:** In greatest 1/3-octave band above 10 Hz or 100 Hz.

The primary potential impact to the Atlantic bottlenose dolphins occurring in the Port of Miami action area from the detonations is Level B harassment incidental to noise generated by explosives. In the absence of any monitoring or mitigation measures, there is a very small chance that a marine mammal could be injured, seriously injured, or killed when exposed to the energy generated from an explosive force on the sea floor. However, the ACOE and NMFS believe that the monitoring and mitigation measures will preclude this possibility in the case of this particular specified activity.

Non-lethal injurious impacts (Level A harassment) are defined in this IHA as TM rupture and the onset of slight lung injury. The threshold for Level A harassment corresponds to a 50 percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 μPa^2 s. TM rupture is well-correlated with permanent hearing impairment (Ketten, 1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold. The farthest distance from the source at which an animal is exposed to the EFD level for the Level A harassment threshold is unknown at this time.

Level B (non-injurious) harassment includes temporary (auditory) threshold

shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 μPa² s maximum EFD level in any 1/3-octave band above 100 Hz for toothed whales (*e.g.,* dolphins). A second criterion, 23 psi, has been established by NMFS to provide a more conservative range of TTS when the explosive or animals approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. For the project in Miami Harbor, the distance from the blast array at which the 23 psi threshold could be met for various charge detonation weights can be, and has been calculated.

The threshold for sub-TTS behavioral harassment is 177 dB re 1 μPa² s. However, as described previously, this criterion would not apply to the ACOE's activity because there will only be a maximum of two blasting events a day (minimum four to six hours apart), and the multiple (staggered) detonations are within a few milliseconds of each other and do not last more than a few seconds in total duration per a blasting event.

For a fully confined blast, the pressure at the edge of the danger zone is expected to be 6 psi. Utilizing the pressure data collected the Miami Harbor Phase II project in 2005, for a maximum charge weight of 450 lbs in a fully confined blast, the pressure is expected to be 22 psi approximately 700 ft (213.4 m) from the blast, which is below the threshold for Level B harassment (*i.e.,* 23 psi criteria for explosives less than 2,000 lb). However to ensure the protection of marine mammals, and in case of an incident where a detonation is not fully confined, the ACOE assumes that any animal within the boundaries of a designated ''danger zone'' at the time of detonation would be taken by Level B harassment.

The ACOE is planning to implement, and NMFS has required, a series of monitoring and mitigation measures to protect marine mammals from the potential impacts of the confined blasting activities. The ACOE has designated a ''danger zone'' as the area within which the potential for Level B harassment occurs, and the ''exclusion zone'' as the area within which if an animal crosses and enters that zone then the confined blast will be delayed until the animal leaves the zone of its own volition. The exclusion zone is larger than the area where the ACOE has determined that Level B harassment will occur, so if the monitoring and mitigation measures implemented are successful as expected, and no detonation occurs when an animal is inside of the exclusion zone, no take by Level B harassment is likely to occur. However, to be conservative, the ACOE has calculated the potential exists for Level B harassment and is pursuing an IHA from NMFS. More information on how the danger and exclusion zones are determined is included in the ''Mitigation'' section of this document (see below).

In a previous monitoring report for ACOE's Miami Harbor Phase II project in 2005, it was noted that a bottlenose dolphin outside the exclusion zone, in the deeper water channel, exhibited a startle response immediately following a confined blast. Details of that event from the monitoring report are included below:

> Any animals near the exclusion zone were watched carefully during the blast for any changes in behavior or noticeable reaction to the blast. The only observation that showed signs of a possible reaction to the blast was on July 27, when two dolphins were in the channel west of the blast. The dolphins were stationary at approximately 2,400 ft (731.5 m) from the blast array, feeding and generally cavorting. Due to the proximity of the dolphins, the drill barge was contacted prior to the blast to confirm that the exclusion zone calculation was 1,600 ft (487.7 m) for the lower weight of explosives used that day. The topography of the bottom in that area is very shallow (approximately 3.3 ft [1 m]) to the south, then an exceptionally steep drop off into the channel at 40 plus ft ending at the bulkhead wall to the north. Westward, the channel continues and has a more gradual upward slope. At the time of the blast, one of the dolphins was at the surface in the shallows, while the other dolphin was underwater within the channel. The dolphin that was underwater showed a strong reaction to the blast. The animal jumped fully out of the water in a 'breaching' fashion; behavior that had not been exhibited prior to the blast. The animal was observed jumping out of the water immediately before the observers heard the blast suggesting that the animal reacted to the blast and not some other stimulus. It is probable that, because this animal was located in the channel, the sound and pressure of the blast traveled either farther or was more focused through the channeling and the reflection from the bulkhead, thus causing the animal to react even though it was well outside the safety radius. These two dolphins were tracked for the entire 30 min post blast period and no obvious signs of distress or behavior changes were observed. Other animals observed near the safety radius during the blast were all to the south of the blasting array, well up on the seagrass beds or in the pipe channel that runs through the seagrass beds. None of these animals showed any reaction to the blast.

Individual dolphins from other stocks and within the Biscayne Bay and Western North Atlantic Central Florida Coastal stocks potentially move both inshore and offshore of Biscayne Bay due to the openness of this bay system and closeness of the outer continental shelf. These movements are not fully understood and the possibility exists that these other stocks may be affected in the same manner as the Biscayne Bay and Western North Atlantic Central Florida Coastal stocks.

Based on the data from the Miami Harbor project in 2005 and the implementation of the monitoring and mitigation measures, the ACOE and NMFS expects limited potential effects of the construction and confined blasting activities on marine mammals in the Port of Miami action area.

Potential Effects on Marine Mammal Habitat

No information is currently available that indicates resident bottlenose dolphins in the action area specifically utilize the inner and outer channels, walls, and substrate of the Port of Miami as habitat for feeding, resting, mating, or other biologically significant functions. The bottom of the channel has been previously blasted, and the rock and sand dredged. The walls of the channels are composed of vertical rock. The ACOE acknowledges that while the port may not be suitable foraging habitat for bottlenose dolphins in Biscayne Bay, it is likely that dolphins may use the area to traverse to and from North Biscayne Bay or offshore via the main channel (*i.e.,* Government Cut).

The temporary modification of the action area by the construction and confined blasting activities may potentially impact the two stocks of bottlenose dolphins expected to be present in the Port of Miami, however, these impacts are not expected to be adverse. If animals are using the Port of Miami project area to travel from south to north Biscayne Bay or vice-versa and/or exiting the Biscayne Bay via the main shipping channel, the construction and confined blasting activities may delay or detour their movements.

Confined blasting within the boundaries of the Port of Miami will be limited both spatially and temporally. The explosives utilized in the confined blasting operations are water soluble and non-toxic. If an explosive charge is unable to be fired and must be left in the drill hole, it is designed to break down. Also, each drill hole has a booster with detonator and detonation cord. Most of the detonation cord is recovered onto the drill barge by pulling it back onboard the drill barge after the confined blasting event. Small amounts of detonation cord may remain in the water after the confined blasting event has taken place, and will be recovered by small vessels with scoop nets. Any material left in the drill hole after the confined blast event will be recovered

through the dredging process, when the cutterhead dredge excavates the fractured rock material.

With regard to prey species (mainly fish), a very small number of fish are expected to be impacted by the Miami Harbor project, based on the results of the 2005 blasting project in Miami Harbor. That project consisted of 40 confined blast events over a 38 day time frame. Of these 40 confined blast events, 23 were monitored (57.5% of the total) by the State, and injured and dead fish were collected after the all clear was given (the ''all-clear'' is normally at least two to three min after the shot is fired, since seagulls and frigate birds quickly learned to approach the confined blast site and swoop in to eat some of the stunned, injured, and dead fish floating on the surface of the water). State biologists and volunteers collected the carcasses of the floating fish (note that not all dead fish float after a blasting event, and due to safety concerns, there are no plans to put divers on the bottom of the channel in the blast zone to collect non-floating fish carcasses. The fish were described to the lowest taxonomic level possible (usually species) and the injury types were categorized. The data forms are available from the FWC and ACOE upon request.

A summary of those data shows that 24 different genera were collected during the previous Miami Harbor blasting project. The species with the highest abundance were white grunts (*Haemulon plumier,* N = 51), scrawled cowfish (*Lactophrys quadricornis,* N = 43), and pygmy filefish (*Monocanthus setifer,* N = 30). The total fish collected during the 23 confined blasts was 288 or an average of 12.5 fish per blast (range 3 to 38). In observation of the three confined blasts with the greatest number of fish killed (see Table 4 of ACOE's application) and reviewing the maximum charge weight per delay for the Miami Harbor project, it appears that there is no direct correlation between the charge weight and fish killed that can be determined from such a small sample. Reviewing the 23 blasting events where dead and injured fish were collected after the ''all-clear'' signal was given, no discernable pattern exists. Factors that affect fish mortality include, but are not limited to fish size, body shape (fusiform, etc.), proximity of the blast to a vertical structure like a bulkhead (*e.g.,* see the August 10, 2005 blast event, a much smaller charge weight resulted in a higher fish kill due to the closeness of a bulkhead).

TABLE 3—CONFINED BLAST MAXIMUM CHARGE WEIGHT AND NUMBER OF FISH KILLED DURING MIAMI HARBOR 2005 PROJECT

Date	Max charge weight/delay (lb)	Fish killed
July 25, 2005	112	35
July 26, 2005	85	38
August 10, 2005	17	28

In the past, to reduce the potential for fish to be injured or killed by the confined blasting, the resource agencies have requested, and ACOE has allowed, that confined blasting contractors utilize a small, unconfined explosive charge, usually a 1 lb (0.5 kg) booster, detonated about 30 seconds before the main confined blast, to drive fish away from the confined blasting zone. It is assumed that noise or pressure generated by the small charge will drive fish from the immediate area, thereby reducing impacts from the larger and potentially more-damaging confined blast. Blasting companies use this method as a ''good faith effort'' to reduce the potential impacts to aquatic natural resources. The explosives industry recommends firing a ''warning shot'' to frighten fish out of the area before seismic exploration work is begun (Anonymous, 1978 in Keevin *et al.,* 1997).

There are limited data available on the effectiveness of fish scare charges at actually reducing the magnitude of fish kills, and the effectiveness may be based on the fish's life history. Keevin *et al.* (1997) conducted a study to test if fish scare charges are effective in moving fishes away from blast zones. They used three freshwater species (*i.e.,* largemouth bass (*Micropterus salmoides*), channel catfish (*Ictalurus punctatus*), and flathead catfish (*Pylodictis olivaris*), equipping each fish with an internal radio tag to allow the fishes movements to be tracked before and after the scare charge. Fish movement was compared with a predicted lethal dose (LD) 0% mortality distance for an open water shot (no confinement) for a variety of charge weights. Largemouth bass showed little response to repelling charges and none would have moved from the kill zone calculated for any explosive size. Only one of the flathead catfish and two of the channel catfish would have moved to a safe distance for any blast. This means that only 11% of the fish used in the study would have survived the blast events.

These results call into question the effectiveness of this minimization methodology; however, some assert that based on the monetary value of fish (American Fishery Society, 1992 in Keevin *et al.,* 1997), including the high value commercial or recreational species like snook (*Centropomus undecimalis*) and tarpon (*Megalops atlanticus*) found in southeast Florida inlets like Port Everglades, the low cost associated with repelling charge use would be offset if only a few fish moved from the kill zone (Keevin *et al.,* 1997).

To calculate the potential loss of prey species from the project area as an impact of the confined blasting events, the ACOE used a 12.5 fish kill per blasting event estimate based on the Miami Harbor 2005 project, and multiplied it by the 40 shots, reaching a total estimate of 500 floating fish. As stated previously, not all carcasses float to the surface and there is no way to estimate how many carcasses did not float. Using an estimate of 12.5 fish kill per blasting event, and the maximum 600 detonations for the entire multi-year project, the minimum number of fish expected to be killed by the project is approximately 7,500 fish across the entire 28,500 ft (8,686.8 m) long channel footprint, assuming the worst case scenario and the entire channel needs to be blasted.

NMFS anticipates that the action will result in no significant impacts to marine mammal habitat beyond rendering the areas immediately around the Port of Miami less desirable shortly after each confined blasting event and during dredging operations and potentially eliminating a relatively small amount of locally available prey. The impacts will be localized and instantaneous. Impacts to marine mammal habitat, as well as invertebrate

and fish species are not expected to be significantly detrimental.

Mitigation

In order to issue an ITA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Over the last 10 years, the ACOE's Jacksonville District has been collecting data concerning the effects of confined blasting projects on marine mammals. This effort began in the early 1990's when the ACOE contracted with Dr. Calvin Koyna, Precision Blasting Services, to review previous ACOE blasting projects. The ACOE also received recommendations from the Florida Fish and Wildlife Conservation Commission (FWC, then known as the Florida Department of Natural Resources) and the USFWS to prepare for a harbor deepening project at Port Everglades, Florida, which was conducted in the mid-1980s. The recommendations prepared for the project were specifically aimed at protecting endangered manatees and endangered and threatened sea turtles.

The ACOE will develop and implement four zones as protective measures that are based on the use of an unconfined blast. The use of unconfined blast in development of these protective zones for a confined blast will increase the conservation measures afforded marine mammals in the action area. These four zones are referred to as the danger zone (*i.e.,* inner most zone, located closest to the blast), the exclusion zone (*i.e.,* the danger zone plus 500 ft (152.4 m) to add an additional layer of conservatism for marine mammals), the safety zone (*i.e.,* the third zone), and the watch zone (*i.e.,* the outer most zone). All of these zones are noted in Figure 11 of ACOE's IHA application and described in further detail in this section of the document (see below). Of these four zones, only the danger zone is associated with an MMPA threshold. The danger zone has been determined to be larger than or equal to the threshold for Level B harassment, as defined by the MMPA. Injury (Level A harassment), serious injury, or mortality are expected to occur at closer distances to the blasting array within the danger zone.

These four zone calculations will be included as part of the specifications package that the contractors will bid on before the project is awarded.

As part of the ACOE's Miami Harbor Phase II project, the ACOE monitored the confined blasting project and collected data on the pressures associated with confined blasts, while employing a formula to calculate buffer and exclusion zones that would protect marine mammals. Results from the pressure monitoring at Miami Harbor Phase II demonstrate that stemming each drill hole reduces the blast pressure entering the water (Nedwell and Thandavamoorthy, 1992; Hemen *et al.,* 2005; Hempen *et al.,* 2007).

The following standard conditions have been incorporated into the project specifications to reduce the risk to marine mammals in the project area. While this application is specific to bottlenose dolphins, these specifications are written for all protected species that may be in the project area.

If confined blasting is planned during the period of November 1 through March 31, significant operational delays should be expected due to the increased likelihood of manatees being present within the project area. If possible, avoid scheduling confined blasting during the period from November 1 through March 31. In the area where confined blasting could occur or any area where confined blasting is required to obtain channel design depth, the following marine mammal protective measures shall be employed, before, during, and after each confined blast:

(A) The USFWS and NMFS must review the contractor's approved Blasting Plan prior to any confined blasting activities. (Copies of this blasting plan shall be provided to FDEP and FWC as a matter of comity.) This confined blasting proposal must include information concerning a watch program and details of the confined blasting events. This information must be submitted at least 30 days prior to the date of the confined blast(s) to the following addresses:

(1) FWC–ISM, 620 South Meridian Street, Mail Stop 6A, Tallahassee, FL 32399–1600 or *ImperiledSpecies@myfwc.com.*

(2) NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(3) USFWS, 1339 20th Street, Vero Beach, Florida 32960–3559 or 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216–0912 (project location dependent).

(4) NMFS Southeast Regional Office, Protected Species Management Branch, 263 13th Avenue South, St. Petersburg, FL 33701.

In addition to plan review, Dr. Allen Foley shall be notified at the initiation and completion of all in-water blasting (*allen.foley@myfwc.com*).

(B) The contractor's blasting plan shall include at least the following information, as required by the project's specifications:

(1) A list of PSOs, their qualifications, and positions for the watch, including a map depicting the locations for boat or land-based PSOs. Qualified PSOs must have prior on-the-job experience observing for protected species during previous in-water blasting events where the blasting activities were similar in nature to this project.

(2) The amount of explosive charge, the explosive charge's equivalency in TNT, how it will be executed (depth of drilling, stemming, in-water, etc.), a drawing depicting the placement of the charges, size of the exclusion zone, and how it will be marked (also depicted on a map), tide tables for the blasting event(s), and estimates of times and days for blasting events (with an understanding this is an estimate, and may change due to weather, equipment, etc.).

(C) For each explosive charge placed, four zones will be calculated, denoted on monitoring reports and provided to PSOs before each blast for incorporation in the watch plan for each planned detonation. All of the zones will be noted by buoys for each of the blasts. These zones are:

(1) Danger Zone: The danger zone radius is equal to 260 (79.25 m) times the cube root of the weight of the explosive charge in lbs per delay (equivalent weight of tetryl or TNT). The radius of the danger zone has been determined to be equal to or larger than the distance from the charge to a location where a marine mammal would experience Level B harassment.

Danger zone (ft) = 260 $(\text{lbs/delay})^{1/3}$

Danger Zone Development: The radius of the danger zone will be calculated to determine the maximum distance from the confined blast at which mortality to marine mammals is likely to occur. The danger zone was determined by the amount of explosives used within each delay (which can contain multiple boreholes). (The original basis of this calculation was to protect human U.S. Navy Seal divers from underwater detonations of underwater mines [Goertner, 1982]). Goertner's calculations were based on impacts to terrestrial animals in water when exposed to a detonation suspended in the water column (unconfined blast) as researched by the U.S. Navy in the 1970's (Yelverton *et al.,* 1973; Richmond *et al.,* 1973).

Additionally, observations of sea turtle injury and mortality associated with unconfined blasts for the cutting of oil rig structures in the Gulf of Mexico (Young, 1991; Young and O'Keefe, 1994) were also incorporated in this radius beyond its use by the Navy.

The U.S. Navy Dive Manual and the FWC Guidelines (2005) set the danger zone formula for an unconfined blast suspended in the water column, which is as follows:

$R = 260(W)^{1/3}$

Where:

R = radius of the danger zone in ft

W = weight of the explosive charge in lbs (tetryl or TNT)

This formula is conservative for the confined blasting being done by the ACOE in the Port of Miami since the blast will be confined with the rock and not suspended in the water column. The reduction of impact by confining the shots more than compensates for the presumed higher sensitivity of marine mammals. The ACOE and NMFS believes that the radius of the danger zone, coupled with a strong marine mammal monitoring and protection plan is a conservative approach to the protection of marine mammals in the action area.

(2) Exclusion Zone: The exclusion zone radius is equal to the danger zone plus a buffer of 500 ft. Detonation will not occur if a marine mammal is known to be (or based on previous sightings, may be) within the exclusion zone.

Exclusion zone (ft) = danger zone + 500 ft

Exclusion Zone Development: The exclusion zone is not associated with any threshold of take under the MMPA. The exclusion zone was developed during consultations with the FWC during the 2005 to 2006 Phase II dredging and confined blasting project in Miami Harbor. FWC requested a larger ''no blast'' radius due to the high number of manatees documented in the vicinity of the Port of Miami, particularly utilizing the Bill Sadowski Critical Wildlife Area directly south of the port and north of Virginia Key. The ACOE concurred with this request and added a second zone with an additional 500 ft radius above the calculated radius of the danger zone. To be consistent with the previous blasting activities at Miami Harbor, and since the confined blasting will take place in the same area, with the same concerns about the proximity of manatees to the blasting sites along Fisherman's Channel, the ACOE plans to maintain the exclusion zone.

(3) Safety Zone: The safety zone is equal to 520 (158.50 m) times the cube root of the weight of the explosive charge in lbs per delay (equivalent weight of tetryl or TNT).

Safety zone (ft; two times the size of the danger zone) = $520\ (\text{lbs/delay})^{1/3}$

Safety Zone Development: The safety zone is not associated with any threshold of take. The safety zone was developed to be an area of ''heightened awareness'' of protected species (*e.g.* dolphins, manatees, and sea turtles) entering the blast area, without triggering a shut-down. This area triggers individual specific monitoring of each individual or group of animals as they transit in, out, or through the designated zones.

(4) Watch Zone: The watch zone is three times the radius of the danger zone to ensure that animals entering or traveling close to the exclusion zone are sighted and appropriate actions can be implemented before or as the animal enters the any impact areas (*i.e.,* a delay in blasting activities).

Watch zone (ft; three times the size of the Danger Zone) = $3\ [260\ (\text{lbs/delay})^{1/3}]$

Watch Zone Development: The watch zone is not associated to any threshold of take. The watch zone is the area that can be typically covered by a small helicopter based on the blasting site, flight speed, flight height, and available fuel to ensure effective mitigation-monitoring of the project area.

(D) The watch program shall begin at least one hour prior to the scheduled start of blasting to identify the possible presence of marine mammals. The watch program shall continue for at least 30 minutes (min) after detonations are complete.

(E) The watch program shall consist of a minimum of six PSOs. Each PSO shall be equipped with a two-way radio that shall be dedicated exclusively to the watch. Extra radios should be available in case of failures. All of the PSOs shall be in close communication with the blasting sub-contractor in order to halt the blast event if the need arises. If all PSOs do not have working radios and cannot contact the primary PSO and the blasting sub-contractor during the pre-blast watch, the blast shall be postponed until all PSOs are in radio contact. PSOs will also be equipped with polarized sunglasses, binoculars, a red flag for back-up visual communication, and a sighting log with a map to record sightings. All confined blasting events will be weather dependent. Climatic conditions must be suitable for optimal viewing conditions, to be determined by the PSOs.

(F) The watch program shall include a continuous aerial survey to be conducted by aircraft, as approved by the Federal Aviation Administration (FAA). The confined blasting event shall be halted if an animal(s) is sighted within the exclusion zone, within the five min before the explosives are scheduled to be detonated. An ''all clear'' signal must be obtained from the aerial PSO before the detonation can occur. The confined blasting event shall be halted immediately upon request of any of the PSOs. If animals are sighted, the blast event shall not take place until the animal(s) moves out of the exclusion zone under its own volition. Animals shall not be herded away or intentionally harassed into leaving. Specifically, the animals must not be intentionally approached by project watercraft or aircraft. If the animal(s) is not sighted a second time, the event may resume 30 min after the last sighting.

(G) An actual delay in blasting shall occur when a marine mammal is detected within the exclusion zone at the point where the blast countdown reaches the T-minus five min. At that time, if an animal is in or near the safety zone, the countdown is put on hold until the zone is completely clear of marine mammals and all 30 min sighting holds have expired. Animal movements into the safety zone prior to that point are monitored closely, but do not necessarily stop the countdown. The exception to this would be stationary animals that do not appear to be moving out of the area or animals that begin moving into the safety zone late in the countdown. For these cases, holds on the T-minus 15 minutes may be called to keep the shipping channel open and minimize the impact on the Port of Miami operations.

(H) The PSOs and contractors shall evaluate any problems encountered during blasting events and logistical solutions shall be presented during blasting events and logistical solutions shall be presented to the Contracting Officer. Corrections to the watch shall be made prior to the next blasting event. If any one of the aforementioned conditions is not met prior to or during the blasting, the watch PSOs shall have the authority to terminate the blasting event, until resolution can be reached with the Contracting Officer. The Contracting Officer will contact FWC, USFWS, and NMFS.

(I) If an injured or dead marine mammal is sighted after the confined blast event, the PSOs on watch shall contact the ACOE and the ACOE will then contact the proper Federal and/or state natural resource agencies.

The PSOs shall maintain contact with the injured or dead marine mammal

until authorities have arrived. Blasting shall be postponed until consultations are reinitiated and completed, and determinations can be made of the cause of injury or mortality. If blasting injuries are documented, all demolition activities shall cease. The ACOE will then submit a revised blasting plan to USFWS and NMFS for review with copies provided to FWC and FLDEP as a matter of comity.

(J) Within 30 days after completion of all blasting events, the primary PSO shall submit a report the ACOE, who will provide it to the USFWS, NMFS, FWC, and FLDEP providing a description of the event, number and location of animals seen and what actions were taken when animals were seen. Any problems associated with the event and suggestions for improvements shall also be documented in the report.

Monitoring for Mitigation

The ACOE will rely upon the same monitoring protocol developed for the Port of Miami project in 2005 (Barkaszi, 2005) and published in Jordan *et al.* (2007), which can be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The monitoring protocol is summarized here:

A watch plan will be formulated based on the required monitoring radii and optimal observation locations. The watch plan will consist of at least five PSOs including at least one aerial PSO, two boat-based PSOs, and two PSOs stationed on the drill barge (see Figures 13, 14, 15, and 16 of the ACOE's IHA application). This watch plan will be consistent with the program that was utilized successfully at Miami Harbor in 2005. The sixth PSO will be placed in the most optimal observation location (boat, barge, or aircraft) on a day-by-day basis depending on the location of the blast and the placement of dredging equipment. This process will ensure complete coverage of the four zones as well as any critical areas. The watch will begin at least one hour prior to each blast and continue for one half hour after each blast (Jordan *et al.,* 2007).

The aerial PSO will fly in a turbine engine helicopter (bell jet ranger) with the doors removed. This provided maximum visibility of the watch and safety zones as well as exceptional maneuverability and the needed flexibility for continual surveillance without fuel stops or down time, minimization of delays due to weather or visibility and the ability to deliver post-blast assistance. Additionally, at least six commercial helicopter, small Cessna, and ultra-light companies operate on Key Biscayne, immediately south of the Port of Miami and offer ''flight-seeing'' operations over downtown Miami, Bayfront, and the Port of Miami. Recreational use of ultra-lights launching from Key Biscayne is also common in the area, as are overflights of commercial seaplanes, jet aircraft, and helicopters. The action area being monitored is a high traffic area, surrounded by an urban environment where animals are potentially exposed to multiple overflights daily. ACOE conferred with Mary Jo Barkaszi, owner and chief PSO of ECOES, Inc., a protected species monitoring company with 25 years experience, and has worked on the last five blasting events involving marine mammal concerns for the ACOE throughout the country. All of these blasting events had bottlenose dolphins commonly occur in the project area. Ms. Barkaszi states that in her experience, she has not observed bottlenose dolphins diving or fleeing the area because a helicopter is hovering nearby at 500 ft (pers. comm., September 12, 2011). During monitoring events, the helicopter hovers at 500 ft above the watch zone and only drops below that level when helping to confirm identification of something small in the water, like a sea turtle. The ACOE and NMFS do not expect the incidental take of bottlenose dolphins, by Level B harassment, from helicopter-based monitoring of the blasting operations and the ACOE is not requesting take.

Boat-based PSOs are placed on one of two vessels, both of which have attached platforms that place the PSOs eyes at least 10 ft (3 m) above the water surface enabling optimal visibility of the water from the vessels. The boat-based PSOs cover the safety zone where waters are deep enough to safely operate the boats without any impacts to seagrass resources. The shallow seagrass beds south of the project site relegate the PSO boats mainly to the channel east and west of the blast zone. At no time are any of the PSO boats allowed in shallow areas where propellers could potentially impact the fragile seagrass.

At times, turbidity in the water may be high and visibility through the water column may be reduced so that animals are not seen below the surface as they should be under normal conditions. This may be more common on an ebb tide or with a sustained south wind. However, animals surfacing in these conditions are still routinely sighted from the air and from the boats, thus the overall PSO program is not compromised, only the degree to which animals were tracked below the surface. Adjustments to the program are made accordingly so that all protected species are confirmed out of the safety zone prior to the T-minus five min, just as they are under normal visual conditions. The waters within the project area are exceptional for observation so that the decreased visibility below the surface during turbid conditions make the waters more typical of other port facilities where PSO programs are also effective throughout the U.S., for example New York and Boston harbors, where this monitoring method has also been employed.

All PSOs are equipped with marine-band VHF radios, maps of the blast zone, polarized sunglasses, and appropriate data sheets. Communications among PSOs and with the blaster is of critical importance to the success of the watch plan. The aerial-based PSO is in contact with vessel and drill barge-based PSOs and the drill barge with regular 15 min radio checks throughout the watch period. Constant tracking of animals spotted by any PSO is possible due to the amount and type of PSO coverage and the excellent communications plan. Watch hours are restricted to between two hours after sunrise and one hour before sunset. The watch begins at least one hour prior to the scheduled blast and is continuous throughout the blast. Watch continues for at least 30 min post blast at which time any animals that were seen prior to the blast are visually re-located whenever possible and all PSOs in boats and in the aircraft assisted in cleaning up any blast debris.

If any marine mammals are spotted during the watch, the PSO notifies the aerial-based PSO and/or the other PSOs via radio. The animals is located by the aerial-based PSO to determine its range and bearing from the blast array. Initial locations and all subsequent re-acquisitions are plotted on maps. Animals within or approaching the safety zone are tracked by the aerial and boat-based PSOs until they exited the safety zone. Anytime animals are sighted near the safety zone, the drill barge is alerted as to the animal's proximity and some indication of any potential delays it might cause.

If any animal(s) is sighted inside the safety zone and not re-acquired, no blasting is authorized until at least 30 minutes has elapsed since the last sighting of that animal(s). The PSOs on watch will continue the countdown up until the T-minus five minute point. At this time, the aerial-based PSO confirms that all animals are outside the safety zone and that all holds have expired prior to clearing the drill barge for the T-minus five min notice. A fish scare charge will be fired at T-minus five min and T-minus one min to minimize

effects of the blast on fish that may be in the same area of the blast array by scaring them from the blast area.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' NMFS implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The ACOE will be conducting a study on fish kill associated with confined underwater blasting that will provide information on the effects of confined underwater blasting on prey species for dolphins in the project area. This study will determine the minimum distance from the blast array, based on charge weight, at which fish will not be killed, or injured (the ''lethal dose of zero'' distance) by confined underwater blasting. Similar studies have been completed for open water (unconfined) blasts as cited by Hempen and Keevin (1995), Keevin *et al.* (1995a, 1995b, and 1997), and Keevin (1998), but no such studies have been conducted for confined underwater blasting. This data will be useful for future confined blasting projects where pisciverous marine mammals are found, since it will allow resource managers to assess the impacts of the blasting activities on marine mammal prey, where species composition and density data have been collected for that project.

Additionally, ACOE will provide sighting data for each blast to researchers at NMFS Southeast Fisheries Science Center's marine mammal program and any other researchers working on dolphins in the project area to add to their database of animal usage of the project area. The ACOE will rely upon the same monitoring protocol developed for the Port of Miami project in 2005 (Barkaszi, 2005) and published in Jordan *et al.* (2007).

The ACOE plans to coordinate monitoring with the appropriate Federal and state resource agencies, and will provide copies of all relevant monitoring reports prepared by their contractors. After completion of all detonation and dredging events, the ACOE will submit a summary report to regulatory agencies.

Within 30 days after completion of all blasting events, the lead PSO shall submit a report to the ACOE, who will provide it to NMFS. The report will contain the PSO's logs (including names and positions during the blasting events), provide a description of the events, environmental conditions, number and location of animals sighted, the behavioral observations of the marine mammals, and what actions were taken when animals were sighted in the action area of the project. Any problems associated with the event and suggestions for improvements shall also be documented in the report. A draft final report must be submitted to NMFS within 90 days after the conclusion of the blasting activities. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of detonations as well as pre- and post-blasting monitoring observations. A final report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury, serious injury or mortality, ACOE will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*) (Florida Marine Mammal Stranding Hotline at 888–404–3922). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description of the incident;
- Status of all noise-generating source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ACOE to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ACOE may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that ACOE discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), ACOE will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299) and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ACOE to determine whether modifications in the activities are appropriate.

In the event that ACOE discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ACOE will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and Howard.Goldstein@noaa.gov, and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299), and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*), within 24 hours of discovery. ACOE will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The ACOE is requesting the take of Atlantic bottlenose dolphins, by Level B harassment only, incidental to blasting activities at Miami Harbor. The ACOE notes that multiple IHAs (up to three) will likely be needed and requested for the project due to the duration of the planned blasting activities. See Table 2 (above) for NMFS' threshold criteria and metrics utilized for impact analyses from the use of explosives.

Biscayne Bay Stock

The Biscayne Bay stock of Atlantic bottlenose dolphins is bounded by Haulover Inlet to the north and Card Sound Bridge to the south. Biscayne Bay is 428 square mi (mi^2) (1,108.5 square km [km^2]) in area. The Port of Miami channel, within the boundaries of Biscayne Bay, is approximately 7,200 ft (2,194.6 m) long by 500 ft (152.4 m) wide, with the 3,425 ft (1,044 m) long by 1,400 ft (426.7 m) wide Dodge-Lummus Island turning basin (total area 0.3 mi^2 [0.8 km^2]) at the western terminus of Fisherman's Channel. The Port of Miami's channels consist of approximately 0.1% of the entire area of Biscayne Bay.

To determine the maximum area of Biscayne Bay in which bottlenose dolphins may experience pressure levels greater than or equal to the 23 psi threshold for explosives less than 2,000 lb (907.2 kg), which has the potential to result in Level B harassment due to temporary threshold shift (TTS) and associated behavioral disruption, the ACOE may utilize a maximum charge weight of 450 lb (204.1 kg) with a calculated danger zone of 1,995 ft (608.1 m). Using this radius, the total area of this zone is approximately 0.1% of Biscayne Bay (12,503,617 ft^2 [1,161,624 m^2]).

Utilizing the pressure data collected the Miami Harbor Phase II project in 2005, for a maximum charge weight of 450 lbs in a fully confined blast, the pressure is expected to be 22 psi approximately 700 ft (213.4 m) from the blast, which is below the threshold for Level B harassment (*i.e.,* 23 psi criteria for explosives less than 2,000 lb). However to ensure the protection of marine mammals, and in case of an incident where a detonation is not fully confined, the ACOE assumes that any animal within the boundaries of the danger zone would be taken by Level B harassment.

Litz (2007) identified 69 individuals of the Biscayne Bay stock that she classified as the ''northern dolphins'' meaning animals with a mean sighting history from 1994 to 2004 north of 25.61° North. The photo-ID study that Litz's data is based on encompassed an area of approximately 200 mi^2 (518 km^2), approximately 50% of Biscayne Bay. The estimated maximum population of animals that may be in the project area is equal to the total number of uniquely identified animals for the entire photo-ID study of Biscayne Bay is 229 individuals (Waring *et al.,* 2010). The best population estimate for Biscayne Bay is 157 individuals, which is based on SEFSC's most consistent survey effort conducted during the 2003 to 2007 photo-ID survey seasons (Waring *et al.,* 2010).

Table 4 (below) presents the estimated incidental take, by Level B harassment, for varying charge weight delays likely to be used during the blasting activities and the estimated impacts based on the population estimates used in this analysis. In all cases, less than one bottlenose dolphin is expected to be taken incidental to each blasting event (0.049 minimum to 0.162 maximum). This assumes that the distribution of bottlenose dolphins is equal throughout all of Biscayne Bay.

TABLE 4—THE ESTIMATED INCIDENTAL TAKE OF BOTTLENOSE DOLPHINS FROM THE BISCAYNE BAY STOCK, PER EACH BLASTING EVENT, BASED ON THE MAXIMUM CHARGE WEIGHT/DELAY AND POPULATION DENSITY

Maximum (lbs/delay)	Danger zone (ft)	Estimated take based on minimum population estimate (69 animals)	Estimated take based on best population estimate (157 animals)	Estimated take based on maximum population estimate (229 animals)
450	1,992	0.072	0.164	0.239
200	1,518	0.042	0.095	0.139
119	1,277	0.030	0.067	0.098
50	957	0.017	0.038	0.055
17	668	0.008	0.018	0.027

The ACOE accessed the NMFS SEFSC photo-ID survey data from 1990 to 2004 in Biscayne Bay via the OBIS–Seamap database (*http://seamap.env.duke.edu/*) and downloaded the Google Earth overlay of the data. Figure 12 of the ACOE's IHA application shows the general area of the Port of Miami and hot spots of bottlenose dolphin sightings both north and south of Miami Harbor. The data were used to see if sightings across all parts of the Biscayne Bay were equal. This sighting frequency data was not used to calculate the potential take numbers of marine mammals incidental to the blasting activities.

Reviewing the data from the Miami Harbor Phase II project in 2005, the ACOE noted that for the 40 detonations, 28% of all animals sighted within the action area (Fisherman's Channel) were bottlenose dolphins (the other animals sighted were manatees and sea turtles). Bottlenose dolphins were sighted inside the exclusion zone 12 times with a total of 30 individuals, with an average of 2.5 animals per sighting out of the total 58 bottlenose dolphins recorded during the project; therefore, groups of dolphins entered the exclusion zone multiple times. Also, dolphins entered the exclusion zone during 30% of the blasting events. Not all of the incidents where dolphins entered the exclusion zone resulted in a project delay, it is dependent upon when during the countdown the animals cross the line demarcating the exclusion zone, and how long they stay in the exclusion zone.

During the Miami Harbor Phase II project in 2005, bottlenose dolphins in

the exclusion zone triggered delays on four occasions during the 13 blasting events (31%). If the maximum 313 (365 calendar days/year minus 52 Sundays/year [no confined blasting will occur on Sundays]) potential detonations for the duration of the one year IHA have an equal percentage of delays as the 2005 project (assuming construction starts in June with blasting June, 2012 to June, 2013 timeframe, with no blasting on Sundays), 94 of the detonations would be delayed for some period of time due to the presence of protected species and 29 of those delays would specifically be for bottlenose dolphins.

As a worst case, using the area of the danger zone, and recognizing that the Port of Miami is within the boundaries of the northern area described in Litz (2007), and that the danger zone of any blasting event using equal to or less than 450 lbs/delay will be approximately 0.1% of Biscayne Bay, the ACOE assumes that because animals are not evenly distributed throughout Biscayne Bay, that they travel as single individuals or in groups (as documented in the OBIS–Seamap data and the monitoring data from the Miami Harbor Phase II project in 2005), and that without any monitoring and mitigation measures to minimize potential impacts, up to three bottlenose dolphins from the Biscayne Bay stock may be taken, by Level B harassment, incidental to each blasting event.

Assuming that the delays will be spread equally across the action area and using the calculation of 29 delays and that three bottlenose dolphins would be inside the danger zone, 15 of the delayed blasting events would take place in Biscayne Bay since it compromises 52% of the action area. Three bottlenose dolphins times 15 detonations is equal to 45 bottlenose dolphins potentially exposed to an underwater sound and pressure over a 1-year period for an IHA incidental to the blasting activities at the Port of Miami.

Western North Atlantic Central Florida Coastal Stock

The Western North Atlantic Central Florida Coastal stock of bottlenose dolphins is present in the coastal Atlantic waters shallower than 65.6 ft (20 m) in depth between latitude 29.4° North to the western end of Vaca Key (approximately 29.69° North to 81.11° West) where the stock boundary for the Florida Key stock begins, with an area of 3,007 mi^2 (7,789 km^2). The outer entrance channel of the Port of Miami is approximately 15,500 ft long (4,724.4 m) by 500 ft wide, which is approximately 0.28 mi^2 (0.73 km^2). The Port of Miami's channels consist of approximately 0.009% of the stocks boundaries.

The same calculations for assessing the potential impacts to bottlenose dolphins from the blasting activities that were used for the Biscayne Bay stock were also applied to this stock. To determine the maximum area of the coastal Atlantic in which bottlenose dolphins may experience pressure levels greater than or equal to the 23 psi threshold for explosives less than 2,000 lb (907.2 kg), which has the potential to result in Level B harassment due to TTS and associated behavioral disruption, the ACOE may utilize a maximum charge weight of 450 lb (204.1 kg) with a calculated danger zone of 1,995 ft (608.1 m). Using this radius, the total area of this zone is approximately 0.015% of coastal Atlantic where this stock is expected to occur).

For an open-water, unconfined blast, the pressure edge of the danger zone is expected to be 23 psi. For a fully confined blast, the pressure at the edge of the danger zone is expected to be 6 psi. Utilizing the pressure data collected the Miami Harbor Phase II project in 2005, for a maximum charge weight of 450 lbs in a fully confined blast, the pressure is expected to be 22 psi approximately 700 ft (213.4 m) from the blast, which is below the threshold for Level B harassment (*i.e.,* 23 psi criteria for explosives less than 2,000 lb). However to ensure the protection of marine mammals, and in case of an incident where a detonation is not fully confined, the ACOE assumes that any animal within the boundaries of the danger zone would be taken by Level B harassment.

Waring *et al.* (2010) estimates the minimum population for the Western North Atlantic Central Florida stock to be 5,094 animals, and estimates the best population to be 6,318 animals.

Table 5 (below) presents the estimated incidental take, by Level B harassment, for varying charge weight delays likely to be used during the blasting activities and the estimated impacts based on the population estimates used in this analysis. In all cases, less than one bottlenose dolphin is expected to be taken incidental to each blasting event (0.102 minimum to 0.948 maximum). This assumes that the distribution of bottlenose dolphins is equal throughout all of the stock's range.

TABLE 5—THE ESTIMATED INCIDENTAL TAKE OF BOTTLENOSE DOLPHINS FROM THE WESTERN NORTH ATLANTIC CENTRAL FLORIDA COASTAL STOCK, PER EACH BLASTING EVENT, BASED ON THE MAXIMUM CHARGE WEIGHT/DELAY AND POPULATION DENSITY

Maximum (lbs/delay)	Danger zone (ft)	Estimated take based on minimum population estimate (5,094)	Estimated take based on best population estimate (6,318)
450	1,992	0.758	0.940
200	1,520	0.441	0.547
119	1,279	0.312	0.387
50	958	0.175	0.217
17	668	0.085	0.106

Other than the aerial surveys conducted by NMFS used to develop the stock assessment report, the ACOE has not been able to locate any additional photo-ID or habitat usage analysis. As a result, the ACOE is unable to determine if animals are evenly distributed throughout the stock's range, particularly in the southernmost portion of the stock's range where the action area is located.

To be conservative, the ACOE will use the same assumptions for the Western North Atlantic Central Florida Coastal stock as was used for the Biscayne Bay stock. Reviewing the data from the Miami Harbor Phase II project in 2005, the ACOE noted that for the 40 detonations, 28% of all animals sighted within the action area (Fisherman's Channel) were bottlenose dolphins (the

other animals sighted were manatees and sea turtles). Bottlenose dolphins were sighted inside the exclusion zone 12 times with a total of 30 individuals, with an average of 2.5 animals per sighting out of the total 58 bottlenose dolphins recorded during the project; therefore, groups of dolphins entered the exclusion zone multiple times. Also, dolphins entered the exclusion zone during 30% of the blasting events. Not all of the incidents where dolphins entered the exclusion zone resulted in a project delay, it is dependent upon when during the countdown the animals cross the line demarcating the exclusion zone, and how long they stay in the exclusion zone.

During the Miami Harbor Phase II project in 2005, bottlenose dolphins in the exclusion zone triggered delays on four occasions during the 13 blasting events (31%). If the maximum 313 planned detonations for the duration of the one year IHA (equal to 365 calendar days/year minus 52 Sundays/year [no confined blasting will occur on Sundays) have an equal percentage of delays as the 2005 project (assuming construction starts in June with blasting June, 2012 to June, 2013 timeframe, with no blasting on Sundays), 94 of the detonations would be delayed for some period of time due to the presence of protected species and 29 of those delays would specifically be for bottlenose dolphins.

As a worst case, using the area of the danger zone, and that the danger zone of any blasting event using equal to or less than 450 lbs/delay will be approximately 0.009% of the stock's range. The ACOE assumes that because animals are not evenly distributed throughout the stock's range, that they travel as single individuals or in groups (as documented in the monitoring data from the Miami Harbor Phase II project in 2005), and that without any monitoring and mitigation measures to minimize potential impacts, up to three bottlenose dolphins from the Western North Atlantic Central Florida Coastal stock may be taken, by Level B harassment, incidental to each blasting event.

Assuming that delays will be spread equally across the action area and using the calculation of 29 delays and that three bottlenose dolphins would be inside the danger zone, 14 of the delayed blasting events would take place in Biscayne Bay since it compromises 48% of the action area. Three bottlenose dolphins times 14 detonations is equal to 42 bottlenose dolphins potentially exposed to underwater sound and pressure over a one year period for an IHA incidental to the blasting activities at the Port of Miami.

Summary of Requested Estimated Take

Without the implementation of the monitoring and mitigation measures, the ACOE has calculated up to 87 bottlenose dolphins (45 from the Biscayne Bay stock, 42 of the Western North Atlantic Central Florida stock) may be potentially taken, by Level B harassment, incidental to the blasting operations over the course of the one year IHA. Due to the protective measures of confined blasts, the implementation of the monitoring and mitigation measures (*i.e.,* danger, exclusion, safety, and watch zones, use of the confined blasting techniques, as well as PSOs), the ACOE is requesting the take, by Level B harassment only, of a total of 22 bottlenose dolphins (12 bottlenose dolphins from the Biscayne Bay stock and 10 bottlenose dolphins from the Western North Atlantic Central Florida Coastal stock). The ACOE believes that the implementation of the protective measures of confined blasts reduces the potential for take to approximately 25% of the calculated take without any monitoring and mitigation measures. Based on the previous project by the ACOE at Miami Harbor, with 40 blast events and no documented take, this estimated take is likely high.

Encouraging and Coordination Research

The ACOE will coordinate monitoring with the appropriate Federal and state resource agencies, including NMFS Office of Protected Resources and NMFS SERO Protected Resources Division, and will provide copies of any monitoring reports prepared by the contractors.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to the baseline data);

(4) The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, and impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment or survival; and

(6) The effectiveness of monitoring and mitigation measures (*i.e.,* the manner and degree in which the measure is likely to reduce adverse impacts to marine mammals, the likely effectiveness of the measures, and the practicability of implementation).

Tables 1, 4, and 5 in this document discloses the habitat, regional abundance, conservation status, density, and the number of individuals potentially exposed to sounds and pressure levels considered the threshold for Level B harassment. There are no known important reproductive or feeding areas in the action area.

For reasons stated previously in this document, and in the notice of the proposed IHA (76 FR 71517), the specified activities associated with the ACOE's blasting operations are not likely to cause PTS, or other non-auditory injury, serious injury, or death to affected marine mammals. As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be minimized through the incorporation of the monitoring and mitigation measures.

No injuries or mortalities are anticipated to occur as a result of the ACOE's blasting operations, and none are to be authorized by NMFS. Approximately 22 Atlantic bottlenose dolphins (12 from the Biscayne Bay stock, 10 from the Western North Atlantic Central Florida Coastal stock) are anticipated to incur short-term, minor, hearing impairment (TTS) and associated behavioral disruption due to the instantaneous duration of the blasting events. While some other species of marine mammals may occur in the project area, only Atlantic bottlenose dolphins are anticipated to be potentially impacted by the ACOE's blasting operations.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than

one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). The ACOE's action at Miami Harbor includes up to two planned blasting events per day over multiple days, however, they are very short in duration, and are only expected to potentially result in momentary reactions by marine mammals in the action area, which would not be expected to accumulate in a manner that would impact reproduction or survival.

Atlantic bottlenose dolphins are the only species of marine mammals under NMFS jurisdiction that are likely to occur in the action area, they are not listed as threatened or endangered under the ESA, however both stocks are listed as depleted and considered strategic under the MMPA. To protect these marine mammals (and other protected species in the action area), the ACOE must delay operations if animals enter designated zones. Due to the nature, degree, and context of the Level B harassment anticipated and described in this notice (see Potential Effects on Marine Mammals section above), the activity is not expected to impact rates of recruitment or survival for any affected species or stock. Also, the confined blasting activities are very short in duration and there are no known important areas in the ACOE's action area.

As mentioned previously, NMFS estimates that one species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are estimated to be small (*i.e.,* 22 Atlantic bottlenose dolphins, 12 from the Biscayne Bay stock [17% of the estimated minimum population, 7.6% of the estimated best population, and 5.2% of the estimated maximum population], and 10 from the Western North Atlantic Central Florida Coastal stock [0.19% of the estimated minimum population and 0.15% of the estimated best population] and has been mitigated to the lowest level practicable through the incorporation of the monitoring and mitigation measures mentioned previously in this document.

NMFS has determined, provided that the aforementioned monitoring and mitigation measures are implemented, that the impact of conducting the blasting activities in the Port of Miami from June, 2012 through May, 2012, may result, at worst in a temporary modification in behavior and/or low level physiological effects (Level B harassment) of small numbers of Atlantic bottlenose dolphins.

While behavioral modifications, including temporarily vacating the area immediately after blasting operations, may be made by these species to avoid the resultant underwater acoustic disturbance, the availability of alternate areas within these area and the instantaneous and sporadic duration of the blasting activities, have led NMFS to determine that this action will have a negligible impact on the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS has determined that the ACOE's planned blasting activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the blasting activities will have a negligible impact on the affected species or stocks of marine mammals; and the impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There is no subsistence hunting for marine mammals in the action area (waters off of the coast of southeast Florida) that implicates MMPA section 101(a)(5)(D).

Endangered Species Act

Under section 7 of the ESA, the ACOE requested formal consultation with the NMFS SERO, on the project to improve the Port of Miami on September 5, 2002, and reinitiated consultation on January 6, 2011. NMFS determined that the action is likely to adversely affect one ESA-listed species and prepared a Biological Opinion (BiOp) issued on September 8, 2011, that analyzes the project's effects on staghorn coral (*Acropora cervicornis*). It is NMFS' biological opinion that the action, is likely to adversely affect staghorn coral, but is not likely to jeopardize its continued existence or destroy or adversely modify its designated critical habitat. Based upon NMFS SERO's updated analysis, NMFS no longer expects the project is likely to adversely affect Johnson's seagrass (*Halophila johnsonii*) or its designated critical habitat. NMFS SERO has determined that the ESA-listed marine mammals (blue, fin, sei, humpback, North Atlantic right, and sperm whales), smalltooth sawfish (*Pristis pectinata*), and leatherback sea turtles (*Dermochelys coriacea*) are not likely to be adversely affected by the action. Previous NMFS BiOps have determined that hopper dredges may affect hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), and loggerhead (*Caretta caretta*) sea turtles through entrainment by the draghead. Any incidental take of loggerhead, green, Kemp's ridley, or hawksbill sea turtles due to hopper dredging has been previously authorized in NMFS' 1997 South Atlantic Regional BiOp on hopper dredging along the South Atlantic coast. The ACOE is currently in re-initiation of consultation with NMFS on the South Atlantic Regional BiOp. When a new BiOp is issued by NMFS, the Terms and Conditions of that South Atlantic Regional BiOp will be incorporated into the project.

National Environmental Policy Act

The ACOE has prepared a ''Final General Reevaluation Report and Environmental Impact Statement on the Navigation Study for Miami Harbor, Miami-Dade County, Florida,'' and a ''Record of Decision on the Navigation Study for Miami Harbor, Miami-Dade County, Florida'' for the project was signed on May 22, 2006; however, this document does not analyze NMFS' action, the issuance of the IHA for the ACOE's activity. NMFS, after independently reviewing and evaluating the document for sufficiency and compliance with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216–6 § 5.09(d), has conducted a separate National Environmental Policy Act (NEPA) analysis and prepared a ''Environmental Assessment for Issuance of an Incidental Harassment Authorization for U.S. Army Corps of Engineers Confined Blasting Operations During the Port of Miami Construction Project in Miami, Florida,'' which analyzes the project's purpose and need, alternatives, affected environment, and environmental effects for the action prior to making a determination on the issuance of the IHA. Based on the analysis in the EA and the underlying information in the record, including the application, proposed IHA, public comments, and formal ESA section 7 consultation, NMFS has prepared and issued a Finding of No Significant Impact determining that preparation of an

Environmental Impact Statement is not required.

Authorization

NMFS has issued an IHA to the ACOE for conducting blasting operations at the Port of Miami, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 31, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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Part VI

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; States of Minnesota and Michigan; Regional Haze Federal Implementation Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0954; EPA–R05–OAR–2010–0037; FRL–9709–8]

Approval and Promulgation of Implementation Plans; States of Minnesota and Michigan; Regional Haze Federal Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a Federal Implementation Plan (FIP) to address the requirement for best available retrofit technology (BART) for taconite plants in Minnesota and Michigan. BART is a requirement of EPA's regional haze rule which has not been satisfied by Minnesota or Michigan for its subject taconite plants. EPA developed this proposal in response to an inadequate BART determination by Michigan for its one subject taconite source. On June 12, 2012, EPA approved revisions to the Minnesota State Implementation Plan (SIP) addressing regional haze but also, on that date, announced that in response to comments it was deferring action on emission limitations that Minnesota intended to represent BART for its taconite facilities. EPA is proposing to determine that the FIP satisfies requirements of the Clean Air Act (CAA or ''the Act'') that require states, or EPA in promulgating a FIP, to establish BART for applicable sources.

DATES: Comments must be received on or before September 28, 2012.

Public Hearing. EPA will hold a public hearing to solicit comments on its proposal to establish emission limits for taconite plants in Minnesota and Michigan, to satisfy requirements for best available retrofit technology for these facilities. This hearing will be held on Wednesday, August 29, 2012, 10 a.m. to 2 p.m., Office of Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, MN, Citizens Board Hearing Room. Information on this hearing is also available at *http://www.epa.gov/region5/mnhaze.*

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2010–0954 and EPA–R05–OAR–2010–0037, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID Nos. EPA–R05–OAR–2010–0954 and EPA–R05–OAR–2010–0037. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning & Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

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

I. What should I consider as I prepare my comments for EPA?
II. What action is EPA taking today?
III. Background
IV. Requirements for a Regional Haze FIP
V. EPA's BART Analysis of Michigan and Minnesota's Taconite Facilities
VI. Proposed Action
VII. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What action is EPA taking today?

EPA is proposing a FIP that establishes BART emission limitations for the taconite plants in Minnesota and Michigan that are subject to the Regional Haze Rule.

III. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particulates ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

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

B. Requirements of the CAA and EPA's Regional Haze Rule

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

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999. (64 FR 35714, July 1, 1999), codified at 40 CFR part 51, subpart P. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in this section of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands.[3] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.[4]

Few states submitted a Regional Haze SIP prior to the December 17, 2007 deadline, and on January 15, 2009, EPA found that 37 states, including Michigan and Minnesota, had failed to submit SIPs addressing the regional haze requirements. (74 FR 2392, January 15, 2009). Once EPA has found that a state has failed to make a required submission, EPA is required to promulgate a FIP within two years unless the state submits a SIP and the Agency approves it within the two year period. CAA § 110(c)(1).

C. Roles of Agencies in Addressing Regional Haze

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

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

IV. Requirements for a Regional Haze FIP

The following is a summary of the requirements of the Regional Haze Rule. *See* 40 CFR 51.308 for further detail regarding the requirements of the rule.

A. The CAA and the Regional Haze Rule

Regional haze FIPs must assure Reasonable Progress towards the national goal of achieving natural

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[3] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[4] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states, or EPA when implementing a FIP, to establish long-term strategies for making Reasonable Progress toward meeting this goal. The FIP must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze FIP requirements are discussed in further detail below.

B. EPA's Authority To Promulgate a FIP

Under section 110(c) of the Act, whenever we find that a State has failed to make a required submission we are required to promulgate a FIP. Specifically, section 110(c) provides:

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under [section 110(k)(1)(A)], or

(B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan. Section 302(y) defines the term ''Federal implementation plan'' in pertinent part, as:

[A] plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions or emissions allowances)* * *.

Thus, because the Michigan and Minnesota failed to adequately establish BART limits for its subject taconite ore processing facilities we are required to promulgate a FIP.

C. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states, or EPA if implementing a FIP, to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires EPA to implement a FIP to contain such measures as may be necessary to make Reasonable Progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources [5] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by EPA. Under the Regional Haze Rule, EPA is directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states, or EPA if implementing a FIP, in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. (70 FR 39104, July 6, 2005). In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), EPA must use the approach set forth in the BART Guidelines. EPA is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. Regardless of source size or type, EPA must meet the requirements of the CAA and our regulations for selection of BART, and EPA's BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.

The process of establishing BART emission limitations can be logically broken down into three steps: First, EPA identifies those sources which meet the definition of ''BART-eligible sources'' set forth in 40 CFR 51.301; [6] second, EPA determines which of such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART''); and third, for each source subject to BART, EPA then identifies the best available type and level of control for reducing emissions.

States, or EPA if implementing a FIP, must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM.

A regional haze FIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once EPA has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of the final FIP. CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the Regional Haze Rule, general SIP, or FIP, requirements mandate that the SIP, or FIP, must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a).

V. EPA's BART Analysis of Michigan and Minnesota's Taconite Facilities

A. Sources Subject to BART

EPA agrees with Michigan and Minnesota with respect to the taconite facilities that the States determined to be subject to BART. These determinations are included in Minnesota's December 2009 Regional Haze Plan and Michigan's November 2010 Regional Haze Plan. EPA also agrees with the States' determination that BART for direct PM is satisfied by the taconite maximum achievable control technology (MACT) rule. See, National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, 40 CFR part 63, subpart RRRRR. The primary sources that have been specifically identified as being subject to BART and requiring an analysis to establish BART are the taconite pelletizing, or indurating, furnaces identified in Table V–A.1. While they mean the same thing, we have chosen to refer to these furnaces as indurating furnaces or pelletizing furnaces in a manner consistent with how they are referred to by the States.

[5] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7), and includes ''taconite ore processing facilities.''

[6] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

TABLE V–A.1—LIST OF TACONITE FACILITIES

State	Company	Unit
Minnesota	U.S. Steel, Minntac	Grate-Kiln Lines 3–7.
Minnesota	Northshore Mining Company	Straight-Grate Furnaces 11 and 12.
Minnesota	United Taconite	Grate-Kiln Lines 1 and 2.
Minnesota	ArcelorMittal Steel	1 Straight-Grate.
Minnesota	Hibbing Taconite	Straight-Grate Lines 1–3.
Minnesota	U.S. Steel, Keetac	1 Grate-Kiln.
Michigan	Tilden Mining	Grate-Kiln Line 1.

The U.S. taconite iron ore industry uses two types of pelletizing machines or processes: Straight-grate and grate-kiln. A significant difference is that straight-grate kilns do not burn coal and they therefore have a much lower potential for emitting SO_2.

In the straight-grate kiln, a continuous bed of agglomerated green pellets is carried through different temperature zones with upward draft or downward draft blown through the pellets on the metal grate. Pellet residence time inside the machine is about 40 minutes. Fuel combustion chambers supply hot flue gas to a zone in the middle portion of the machine (combustion zone). (In order to make fully fluxed pellets, auxiliary burners need to be added to the preheating zone.) Fired pellets are cooled on the remaining portion of the machine. To protect the metal grate and other parts of the machine, about 20 percent of the cooled, fired pellets are used to make a hearth layer at the bottom and two sides of the pellet bed.

For the straight-grate kiln, used process gas consists of exhaust gas from the updraft drying zone and exhaust gas closer to the firing zone. The former can be called ''hood exhaust'' and the latter ''windbox exhaust.'' For many straight-grate kilns, both hood exhaust and windbox exhaust are directed to one common header. The common exhaust header has one ''hot side'' inlet to receive windbox exhaust and one ''cold side'' inlet to receive hood exhaust. From the common exhaust header, the exhaust gas is vented through four parallel stacks, which are outfitted with air pollution control equipment. For some older machines, two separate common headers are used to vent hood exhaust and windbox exhaust. The hood exhaust header vents through three stacks, and the wind exhaust (often referred to as ''waste gas'') header vents through two stacks.

Gases are passed numerous times through the pellet bed in order to heat and cool the pellets as they pass along a large grate. ''Windbox exhaust'' gases are derived from the down draft and preheat zones, but are passed through multiclone dust collectors before entering the wet scrubber/exhaust system. ''Hood exhaust'' gases from the updraft drying zone originate from the second cooling zone and pass directly into the wet scrubber/exhaust system. Windbox and hood exhaust gases partially mix in a common header before being vented to the atmosphere through a series of four stacks.

The grate-kiln system actually consists of a traveling grate, a rotary kiln, and an annular cooler. Pellet residence time inside the system is about 55 minutes (less than 10 minutes in the grate, about 20 minutes in the kiln, and about 30 minutes in the cooler). The grate-kiln system does not need a hearth layer for the grate, which handles only drying and preheating. The rotary kiln does not need a hearth layer, either, because it is lined with refractory material. One waste gas stack, or two side-by-side waste gas stacks, is used for the grate-kiln system.

Combustion gases for heating the pellets are directed up a large rotating kiln and then down through the pellet bed in the preheat zone. The gases are then used for initial heating and drying of the green pellet feed. Gases used for cooling the hot pellets are also used to dry and heat the pellets. Depending on the operation, the waste gases are passed through one or more scrubbers and vented through one or more separate stacks.

It is very common to use intermediate cyclones to clean the gas stream in the straight grate and grate-kiln pelletizers, as it is ducted to various locations in the grate. The cyclones protect the blades of gas movers (fans) and recover good materials (particles of high iron content). Inclined plates are also used along with periodic water wash to remove ''solid spills'' under the grate to recover the iron units. These measures also help reduce dust loading near the waste gas stack, even though they are not considered air pollution control equipment.

B. BART Five-Factor Determinations and Proposed FIP Emission Limits for NO_X and SO_2

EPA proposes to find that BART for NO_X for indurating furnaces is low NO_X burners for both straight-grate and grate-kilns. The feasibility of using low NO_X burners on grate-kilns is based on an October 26, 2011 ''Summary Report for USS On NO_X reduction for Kilns #6 and 7'' by S. Londerville, which documents a baseline of 4 pounds per million British Thermal Units (lbs/MMBtu) when burning gas; the December 1, 2011 ''U.S. Steel Minntac Line 6 Low NO_X Main Burner Final Report & Facility NO_X Management,'' which states that there has been neither an increase in fuel consumption nor degradation of pellet quality with the use of a low NO_X burner; and continuous emission monitoring system (CEMS) data from U.S. Steel Minntac Line 6. These data support a limit of 1.2 lbs/MMBtu on a 30-day rolling average. Also, cost-calculations for Minntac's Line 6 result in cost-effectiveness values of $441/ton of NO_X reduced when burning coal and gas and $210/ton of NO_X reduced when burning gas.

In a July 2, 2012, conversation with U.S. Steel and COEN, EPA discussed the potential for any negative issues associated with the use of Minntac's low NO_X burners. During this conversation it was stated that although there was initially an increase in fuel use, that increase has been eliminated so there is not an increase in MMBtu/ton of NO_X emitted. There is also no increase in combustion related emissions, such as carbon monoxide or volatile organic compounds, and there is no reason for SO_2 emissions to increase through use of a low NO_X burner. There is a small (less than 1 MW/hr) increase in electricity use and no increase in water use. U.S. Steel was certain that there was absolutely no product/pellet degradation. Some of their pellets are shipped to other (non-U.S. Steel) customers and some are shipped a long distance so there can be no slip (*e.g.* pellet degradation) in quality. The July 2, 2012 conversation also included discussion of installation schedules

during which it was stated that engineering for adding additional burners would be expected to take about 6 months, although engineering could be combined for installation of more than one burner. Installation of new low NO_X burners would need to be timed with line outages, which typically occur about 6 months apart, and could take about a year.

The feasibility of low NO_X burners on straight-grate kilns is documented in a September 19, 2011 summary of findings presented to the Minnesota Pollution Control Board titled ''Results of Testing at ¼-Scale of LE Low NO_X Burner Prototype for Straight-Grate Pelletizing Furnaces'' by Fives North American Combustion, Inc. (Fives) for Essar (formerly Minnesota) Steel (Essar), and in presentations made at the April 17 and 18, 2012 Society for Mining, Metallurgy and Exploration meeting in Duluth, Minnesota. These presentations were ''Reducing NO_X from Pelletizing Furnaces,'' by Fives and ''Environmental Benefits for the Adaptation of Commonly Used Low-NO_X Burner Technology to a Straight-Grate Natural Gas Fired Taconite Indurating Furnace,'' by Lori L. Stegink, from Barr Engineering and Kevin Kangas from Essar. These presentations revealed that Essar and Fives first examined the applicability of numerous traditional methods for reducing NO_X from combustion as well as post-treatment methods for NO_X removal. This was followed by successful bench-scale testing of Fives low NO_X LE burners to achieve NO_X reductions greater than 70 percent in a straight-grate pelletizing furnace. Therefore Essar and Fives proceeded with a joint $2 million investment in a test rig to simulate a straight-grate pelletizing furnace. In the ¼-scale test rig, the cross sectional area scaling was very representative of actual furnace geometry, as were the energy inputs and flows. This testing demonstrated a 90 percent reduction in NO_X emissions and a rate of 0.25 lbs. NO_X/MMBtu at an estimated cost-effectiveness of $370/ton. Based on the results of this test program, it was concluded that NO_X emissions in the actual furnace should be consistent with those measured in the ¼ scale test conditions. Subsequent conversations with representatives of Essar and Fives indicated that an increase in fuel use and emissions from other pollutants is not anticipated and that the type of furnace that Essar will be using is the most difficult design for NO_X control. Based on the range of cost-effectiveness values provided, a conservative value of $500/ton will be used as the cost-effectiveness value for low NO_X burners.

EPA proposes to determine that BART for SO_2 for straight-grate kilns is existing controls because these furnaces do not burn coal. EPA also proposes to find that BART for SO_2 is existing controls at Keetac and Minntac because the cost-effectiveness of additional controls is excessive due to the amount of coal fired, the sulfur content of the coal used there and their existing controls.

For Tilden Line 1 and United Taconite's Lines 1 and 2, EPA is proposing to determine that a dry flue-gas desulfurization (FGD) system (for United Taconite's Lines 1 and 2), and either a wet or dry FGD system at Tilden, with an emission rate of 5 parts per million by volume (ppmv) of SO_2, or a 95 percent emission reduction requirement, on a 30-day rolling average, has been determined to be BART for SO_2. The cost-effectiveness of these controls has been determined based upon EPA's Air Pollution Control Cost Manual, information provided in Tilden's and United Taconite's BART determinations, information on existing operating costs supplied by United Taconite and a summary of information provided on capital and operating costs as well as the SO_2 emission rate provided by FGD manufacturers.

Also, there is no indication that the useful life of any of these facilities is less than 20 years.

BART analyses conducted for each of the subject facilities are presented below. EPA will carefully consider any comments that disagree with any of its facts or conclusions. It should be noted, however, that more weight will be provided to fact-based comments such as test results or vendor quotes and less to unsubstantiated engineering estimates or opinions.

Please note that in the following analyses, unless otherwise specified, information related to the technical and economic feasibility of various controls was provided in Minnesota's December 30, 2009 Regional Haze SIP submission and reflects information provided in the company specific BART analyses. The same is also true for Michigan and Tilden.

1. U.S. Steel Minntac

U.S. Steel Minnesota Ore Operations (Minntac) operates five grate-kiln indurating furnaces which are identified in table V–B.1 below.

TABLE V–B.1 MINNTAC EMISSION UNITS

Emission unit name	EU No.[7]	Control equipment and stack numbers
Line 3 Indurating Furnace	EU225	CE146/SV103
Line 4 Indurating Furnace	EU261	CE103/SV118
Line 5 Indurating Furnace	EU282	CE113/SV127
Line 6 Indurating Furnace	EU315	CE126/SV144
Line 7 Indurating Furnace	EU334	CE136/SV151

a. *NO_X BART Analysis*

Step 1: Identify all Available Retrofit Control Technologies

The following NO_X retrofit control technologies have been identified as being available for indurating furnaces:

- External Flue Gas Recirculation,
- Low NO_X Burners,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Ported Kilns,
- Alternate Fuels, and
- Selective Catalytic Reduction (SCR).

Step 2: Eliminate Technically Infeasible Options

Minntac eliminated External Flue Gas Recirculation and Induced Flue Gas Recirculation Burners from consideration since they were technically infeasible for the specific application to pellet furnaces due to the high oxygen content of the flue gas. Minntac eliminated Energy Efficiency Projects due to the difficulty of assigning a general potential emission reduction for this category. Minntac noted in their analysis that the facility has already implemented several energy efficiency projects and that it will continue to evaluate and implement

[7] The MPCA organizes conditions and illustrates associations in its permits using the Emission Unit (EU), Control Equipment (CE), and Stack/Vent (SV) numbers.

energy efficiency projects. Minntac eliminated Alternative Fuels because the environmental and economic benefits of such a change are uncertain and Minntac believes that this option is not mandated by EPA. Also, U.S. Steel documented the infeasibility of SCR controls. Two SCR vendors declined to bid on NO_X reduction testing at Minntac. EPA agrees that SCR controls are infeasible for indurating furnaces. The remaining technologies, considered by Minntac to be technically feasible, include:

- Low NO_X burners,
- Low NO_X burners + Ported kilns (Lines 4 and 5), and
- Ported kilns (Lines 3, 4, and 5—kilns on lines 6 and 7 are already ported).

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

The following tables illustrate the assumed control efficiencies and the projected NO_X emission reductions projected by Minntac with the technically feasible control technologies.

TABLE V–B.2—PELLET FURNACE PROJECTED NO_X EMISSION REDUCTIONS

[TPY]

NO_X Control technology	Assumed control efficiency (percent)	Line 3	Line 4	Line 5	Line 6	Line 7
None (Baseline)		1,345	1,812	1,820	1,776	1,928
Low NO_X burners + Ported kilns	15	na	249	273	na	na
Low NO_X burners	10	na	181	182	na	193
Ported kilns	5	67	91	91	na	na

Step 4: Evaluate Impacts and Document the Results

Minntac's estimates of the annualized pollution control cost of operating the various control technologies are shown in the following table.

TABLE V–B.3—PELLET FURNACE PROJECTED NO_X CONTROL COST

[$/Ton]

NO_X Control technology	Line 3	Line 4	Line 5	Line 6	Line 7
Low NO_X burners + Ported kilns	na	$5,844	$5,974	na	na
Low NO_X Burners	na	768	765	na	$588
Ported kilns	$5,076	5,209	5,186	na	na

Step 5: Evaluate Visibility Impacts

See Section V.C.

Step 6: Propose BART

EPA is proposing a limit of 1.20 lbs/MMBtu on a 30-day rolling average for all lines to be achieved as follows: 1 year after the effective date of this rule for line 6, 2 years after the effective date for Line 7, 3 years after the effective date for Line 4, 4 years after the effective date for Line 5 and 4 years, and 11 months after the effective date for Line 3.

b. *SO_2 BART Analysis*

Lines 3, 4, and 5 can burn natural gas, wood and fuel oil, but natural gas and wood are used most frequently. Since these fuels are low in sulfur, the primary source of sulfur in these furnaces is the iron ore used to form the pellets. Additional sulfur may be present in the additives used in the pellets. In addition to natural gas, wood, and fuel oil, coal is used in Lines 6 and 7.

The lines are controlled by wet scrubbers designed to remove PM. Since collateral SO_2 reductions occur within the existing wet scrubbers, they are considered low efficiency SO_2 scrubbers. Minntac estimates that these existing scrubbers remove 15 to 30 percent of the SO_2 in the exhaust gas from these lines.

Step 1: Identify all Available Retrofit Control Technologies

Minntac identified the following SO_2 retrofit control technologies:[8]

- Wet Walled Electrostatic Precipitator (WWESP),
- Wet Scrubbing (High and Low Efficiency),
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption,
- Energy Efficiency Projects,
- Alternate Fuels, and
- Coal Processing.

Step 2: Eliminate Technically Infeasible Options

Minntac eliminated Dry Sorbent Injection, Spray Dryer Absorption, Alternative Fuels, and Coal Drying from consideration due to technical infeasibility. With Dry Sorbent Injection and Spray Dryer Absorption, the high moisture content of the exhaust would lead to saturation of the baghouse filter cake and plugging of the filters and the dust collection system. To achieve a reduction of SO_2 emissions through alternative fuel usage, the source must switch from a high sulfur fuel to a lower sulfur fuel. Lines 3, 4, and 5 are burning natural gas and wood, both of which are low in sulfur. Lines 7 and 8 are allowed to burn coal. Due to the uncertainty of alternative fuel costs, the potential of replacing one visibility impairment pollutant for another, and the fact that BART cannot mandate a fuel switch, Minntac did not evaluate this option further. Coal drying requires a source of excess heat or low pressure steam. This heat source is not available at the Minntac facility so coal drying was found to be technically infeasible.

In addition, Minntac has already implemented Energy Efficiency Projects. The company indicated that the potential fuel reductions and the

[8] See September 8, 2006 BART analysis submitted to MPCA by U.S. Steel, *http://www.pca.state.mn.us/index.php/view-document.html?gid=2228.*

commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details; since no particular project has been envisioned, the company did not evaluate this option any further.

Minntac evaluated the possibility of improving the SO_2 removal efficiency of the existing scrubbers through the additions of caustic, lime, or limestone in the scrubber water to raise the pH. The existing scrubbers on lines 3–7 currently operate at a neutral pH. The scrubbers, piping, pumps, and water tanks were not designed to operate at a higher pH so corrosion of the system would be a concern. Also, the additions and increased SO_2 removal would create additional solids and sulfates in the scrubber discharged to the tailings basin. This would require substantial and expensive treatment to maintain an acceptable water quality which could be discharged through the existing National Pollutant Discharge Elimination System permit. The new scrubber on Line 3 is a recirculating scrubber which operates at a pH that is typically less than 7. The scrubber was operated temporarily at a higher pH, but plugging and other operational problems resulted. Based on these concerns, Minntac found the improvement of SO_2 removal efficiency of the existing scrubbers to be impractical and did not further consider this option.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Minntac estimated the control efficiency of WWESPs to be approximately 80 percent. A secondary wet scrubber was estimated to control roughly 60 percent of the SO_2 remaining after the existing scrubber. The following tables illustrate the SO_2 emission reductions projected by Minntac with the technically feasible control technologies.

TABLE V–B.4—ANNUAL SO_2 EMISSIONS

[TPY]

	Line 3	Line 4	Line 5	Line 6	Line 7	Total
Baseline SO_2 Emissions	329.4	447.5	447.5	544.8	544.8	2314

TABLE V–B.5—PROJECTED SO_2 EMISSION REDUCTIONS

[TPY]

SO_2 Control technology	Line 3	Line 4	Line 5	Line 6	Line 7	Total
WWESP	263.5	358.0	358.0	435.9	435.9	1851.3
Secondary Wet Scrubber	197.6	268.5	268.5	326.9	326.9	1388.4

Step 4: Evaluate Impacts and Document the Results

Cost of Control

Minntac estimated the annualized pollution control cost of installing and operating WWESPs on Lines 3, 4, and 5 to be between $20,000 and $24,000 per ton of SO_2 removed. The cost of installing and operating a secondary wet scrubber on these lines was estimated to be between $14,000 and $16,000 per ton of SO_2 removed. The annualized pollution control cost of installing and operating WWESPs on Lines 6 and 7 was estimated to be approximately $18,000 per ton of SO_2 removed. The cost of installing and operating a secondary wet scrubber on these lines was estimated to be between approximately $12,000 per ton of SO_2 removed.

Energy and Non-Air Quality Environmental Impacts

There are no energy or non-air quality impacts because, as discussed above and in the Step 6 discussion, no additional controls were determined to be required.

Step 5: Evaluate Visibility Impacts

Additional SO_2 controls for Minntac are not reasonably cost effective, so visibility impacts were not modeled for additional SO_2 controls.

Step 6: Propose BART

Although we do not agree that the Minnesota Pollution Control Agency (MPCA) and Minntac have adequately documented the infeasibility of all of the SO_2 controls described above, we agree that additional SO_2 controls are not economically reasonable and are, therefore, not necessary for BART. EPA is proposing to determine that BART is existing controls. Based on CEM data provided by Minntac for 2010, 2011, and part of 2012, EPA is proposing the following limits: 71.3 lb SO_2/hr for Line 3, 56.1 lb SO_2/hr for Line 4, 67.9 lb SO_2/hr for Line 5, 64.5 lb SO_2/hr for Line 6, and 67.1 lb SO_2/hr for Line 7. These limits are measured on a 30-day rolling average and compliance is required within 30 days after the effective date of this rule.

c. Non-Furnace BART Analysis

Minntac also operates four heating boilers that are subject to a full BART analysis. The facility's two Step I Heating Boilers (#1 and #2) are each rated at 104 MMBtu/hr and the two Step III Heating Boilers (#4 and #5) are rated at 153 MMBtu/hr. Each boiler is capable of burning natural gas and fuel oil.

Step 1: Identification of Available Retrofit Control Technologies

The following NO_X retrofit control technologies have been identified as being available for the heating boilers:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- LNB with Overfire Air (LNB/OFA),
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Alternate Fuels,
- Low Temperature Oxidation,
- Selective Catalytic Reduction,
- Regenerative SCR, and
- Selective Non-Catalytic Reduction.

Step 2: Eliminate Technically Infeasible Options

Minntac eliminated External Flue Gas Recirculation from consideration since it was technically infeasible for the boilers based on Minntac staff judgment that the existing fireboxes for the boilers would be unable to accommodate longer flame length to avoid flame impingement. Minntac eliminated energy efficiency projects due to the difficulty of assigning a general potential emission reduction for this category, but stated that Minntac will continue to evaluate and implement energy efficiency projects. Minntac eliminated alternative fuels because the

environmental and economic benefits of such a change are uncertain, the limited fuel options available, and the fact that natural gas is the typical fuel burned in the boilers. Minntac stated that it would continue to evaluate and implement alternative fuel usage as feasible.

Step 3: Evaluation of the Control Effectiveness of the Remaining Control Technologies

The following table illustrates the assumed control efficiencies and the projected NO_X emission reductions projected by Minntac with the technically feasible control technologies.

TABLE V–B.6—HEATING BOILER PROJECTED NO_X EMISSION REDUCTIONS

[TPY]

NO_X Control technology	Control efficiency	Boilers #1, #2, #4, #5	Emissions	Cost
None (Baseline)		13.8–14.8	56.7	
Low Temperature Oxidation	90%	12.4–13.3	5.7	$23,668–$27,713
SCR	80%	11.0–11.8	11.3	$50,632-$60,211
LNB/Flue gas recirculation	75%	10.4–11.1	14.2	$15,558–$20,299
Regenerative SCR	70%	9.7–10.4	17.0	$22,879–$30,710
LNB/Overfire Air	67%	9.2–9.9	18.7	$14,282–$18,634
Low NO_X Burner	50%	6.9–7.4	28.3	$6,653–$8,646
Selective Non-Catalytic Reduction	50%	6.9–7.4	28.3	$42,037–$51,494

Step 4: Evaluate Impacts and Document the Results

The NO_X emissions generated by the four heating boilers at the Minntac facility total 56.7 TPY. The most cost efficient control is low NO_X burners at $6,653 to $8,646 per ton, which would yield a 28.4 TPY reduction.

Step 5: Evaluate Visibility Impacts

Additional NO_X controls are not required because they are not reasonably cost-effective. Therefore there are no resulting visibility impacts.

Step 6: Propose BART

Given that the control options result in modest reductions in NO_X emissions on a TPY basis, that modest reduction would need to provide a strong visibility improvement or be trivial in cost to justify a BART limit indicative of additional control. That is not the case for the Minntac heating boilers. Minntac's current Title V permit (13700005—002) does not include NO_X emission limits for the heating boilers. Thus, EPA is not proposing a NO_X emission limit for the Minntac heating boilers. EPA is proposing to determine that the existing operational requirements, including fuels (natural gas with fuel oil as back up) and compliance requirements in the existing permits are NO_X BART for the Minntac heating boilers.

2. Northshore Mining

Northshore operates two straight-grate indurating furnaces which are identified in Table V–B.7 below.

TABLE V–B.7—NORTHSHORE EMISSION UNITS

Emission unit name	EU No.	Control equipment and stack numbers
Indurating Furnace #11—Hood Exhaust	EU100	CE101/SV101, CE102/SV102, CE103/SV103.
Indurating Furnace #11—Waste Gas	EU104	CE104/SV104, CE105/SV105.
Indurating Furnace #12—Hood Exhaust	EU110	CE111/SV111, E112/SV112, CE113/SV113.
Indurating Furnace #12—Waste Gas	EU114	CE114/SV114, CE115/SV115.

a. NO_X BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

The following NO_X retrofit control technologies have been identified as being available for indurating furnaces:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Ported Kilns,
- Alternate Fuels, and
- Selective Catalytic Reduction.

Step 2: Eliminate Technically Infeasible Options

Northshore eliminated External Flue Gas Recirculation and Induced Flue Gas Recirculation Burners from consideration since they were technically infeasible for the specific application to pellet furnaces due to the high oxygen content of the flue gas. Northshore eliminated Energy Efficiency Projects due to the difficulty of assigning a general potential emission reduction for this category. The company has already implemented several energy efficiency projects and will continue to evaluate and implement energy efficiency projects. Northshore's use of straight grate indurating furnaces makes the use of Ported Kilns infeasible, since they can be used only at grate-kiln furnaces. Northshore eliminated Alternative Fuels because the environmental and economic benefits of such a change are uncertain and Northshore believes that this option is not mandated by EPA. In addition, Northshore's furnace is currently incapable of handling solid fuels. Also, U.S. Steel documented the infeasibility of SCR controls. (see section V.B.1.a., above).

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

The following table illustrates the NO_X emission baseline for Northshore and the reductions achievable using low NO_X burners.

TABLE V–B.8—PROJECTED ANNUAL NO_X EMISSION REDUCTION

[TPY]

NO_X Control	Assumed control	Furnace 11		Furnace 12	
		Hood exhaust	Waste gas	Hood exhaust	Waste gas
None (Baseline)		112.4	273.7	109.9	267.7
Low NO_X Burners	70%	79	192	77	187

Step 4: Evaluate Impacts and Document Results

Cost of Control

TABLE V–B.9—PELLET FURNACE PROJECTED NO_X CONTROL

[Cost per ton of pollutant removed]

NO_X Control Technology	Furnace 11 (hood)	Furnace 11 (waste)	Furnace 12 (hood)	Furnace 12 (waste)
Low NO_X Burners	$500	$500	$500	$500

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

EPA is proposing a limit of 1.2 lbs/MMBtu on a 30-day rolling average for all lines to be achieved as follows: 1 year and 6 months after the effective date for Line 11 and 2 years and 6 months after the effective date for Line 12.

b. SO_2 BART Analysis

Although the indurating furnaces can burn both natural gas and fuel oil, natural gas is the primary fuel. Since natural gas is low in sulfur, the primary source of SO_2 emissions is from trace amounts of sulfur in the iron concentrate and binding agents. Sulfur is also present in distillate fuel oil.

Both lines are controlled by wet-walled electrostatic precipitators using caustic reagent.

Step 1: Identify All Available Retrofit Control Technologies

Northshore identified the following SO_2 retrofit control technologies:[9]

- Wet-Walled Electrostatic Precipitator,
- Wet Scrubbing (High and Low Efficiency),
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption,
- Energy Efficiency Projects,
- Alternate Fuels, and
- Coal Processing.

Step 2: Eliminate Technically Infeasible Options

Northshore eliminated Dry Sorbent Injection, Spray Dryer Absorption, Alternative Fuels, and Coal Drying from consideration due to technical infeasibility. With Dry Sorbent Injection and Spray Dryer Absorption, the high moisture content of the exhaust would lead to saturation of the baghouse filter cake and plugging of the filters and the dust collection system. Alternative Fuels were eliminated because Northshore is prohibited from burning solid fuels. Coal Drying is technically infeasible because Northshore does not burn coal.

Northshore indicated that the potential fuel reductions and the commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details. Since no particular project has been envisioned, the company did not evaluate this option any further.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Northshore estimated the control efficiency of a secondary WWESP to be approximately 80 percent. A secondary wet scrubber was estimated to control roughly 60 percent of the SO_2 remaining after the existing scrubber. The following tables illustrate the SO_2 emission reductions projected by Northshore with the technically feasible control technologies.

TABLE V–B.10—ANNUAL SO_2 EMISSIONS

[TPY]

	Furnace 11		Furnace 12		Total
	Hood exhaust	Waste gas	Hood exhaust	Waste gas	
Baseline SO_2 Emissions	28.6	9.5	26.3	8.8	73.2

[9] See BART analysis submitted to MPCA by Northshore Mining Company in September 2006, *http://www.pca.state.mn.us/index.php/view-document.html?gid=2225.*

TABLE V–B.11—PROJECTED SO_2 EMISSION REDUCTIONS

[TPY]

SO_2 control technology	Furnace 11		Furnace 12		Total
	Hood exhaust	Waste gas	Hood exhaust	Waste gas	
WWESP	22.9	7.6	21.0	7.0	58.5
Secondary Wet Scrubber	17.2	6.7	15.8	5.3	45.0

Step 4: Evaluate Impacts and Document the Results

Cost of Control

Northshore estimated the annualized pollution control cost of installing and operating secondary WWESPs ranged from roughly $180,000 to $540,000 per ton of SO_2 removed. The cost of installing and operating a secondary wet scrubber was estimated to be between $140,000 and $420,000 per ton of SO_2 removed.

Energy and Non-air Quality Environmental Impacts

Because the cost of additional SO_2 controls for Northshore does not meet a reasonable definition of cost-effective technology, no further evaluation of these alternatives was conducted.

Step 5: Evaluate Visibility Impacts

Additional SO_2 controls for Northshore are not reasonably cost effective, so visibility impacts were not modeled for additional SO_2 controls.

Step 6: Propose BART

Although we do not agree that MPCA and Northshore have adequately documented the infeasibility of all of the SO_2 controls described above, we agree that, because Northshore is burning natural gas and fuel oil, additional SO_2 controls are not economically reasonable and are, therefore, not necessary for BART. EPA is proposing to determine that BART is existing controls. In its regional haze submittal, MPCA also concluded that BART was existing controls and set a limit of 0.0651 lb SO_2/long ton of pellets fired (finished) measured on a 30-day rolling average. Northshore provided 2011 performance testing data which showed an average production rate of 250 long ton of pellets fired (finished)/hr for Furnace 11 and 263 long ton of pellets fired (finished)/hr for Furnace 12. Based on these production rates and MPCA's limit, EPA is proposing the following limits: 16.3 lb SO_2/hr for Furnace 11 and 17.1 lb SO_2/hr for Furnace 12, measured on a 30-day rolling average. These limits do not apply when the subject emissions unit is burning fuel oil. In addition, EPA is proposing to require that the emissions from SV101, SV102, SV103, SV104, SV105, SV111, SV112, SV113, SV114, and SV115 for Furnaces 11 and 12 be subject to an 80.0 percent emission reduction requirement. Compliance is to be achieved with these limits within 6 months after the effective date of this rule.

c. Non-Furnace BART Analysis

Northshore also operates two process boilers that are subject to BART. Both process boilers were installed in 1965 and are rated at 79 MMBtu/hr. The boilers are capable of burning fuel oil and natural gas.

Step 1: Identification of Available Retrofit Control Technologies

The following NO_X retrofit control technologies have been identified as being available for the process boilers:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Overfire Air,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Alternate Fuels,
- Non-Selective Catalytic Reduction,
- Selective Catalytic Reduction,
- Regenerative SCR, and
- Selective Non-Catalytic Reduction.

Step 2: Elimination of Technically Infeasible Options

Northshore found External Flue Gas Recirculation to be technically infeasible and eliminated it from further consideration because Northshore's process boilers lack the capability needed to controlled combustion conditions at the boiler tip. Overfire air was eliminated due to the small size of Northshore's process boilers and the number of burners. Northshore eliminated energy efficiency projects due to the difficulty of assigning a general potential emission reduction for this category. However, it has already implemented energy efficiency projects and it will continue to evaluate and implement energy efficiency projects. Northshore also rejected alternate fuels, as the process boilers burn distillate fuel oil and natural gas only. As those fuels have low nitrogen content, even a fuel alternative with no nitrogen content would provide little benefit. Northshore also believes that this option is not mandated by EPA and furthermore, Northshore's boilers are incapable of handling solid fuels.

Northshore identified low-NO_X burners, induced flue gas recirculation burners, selective catalytic reduction, and selective non-catalytic reduction as the only technically feasible alternative from the list above. These technologies were then evaluative for cost-effectiveness.

Step 3: Evaluation of the Control Effectiveness of the Remaining Control Technologies

The following table illustrates the NO_X emission reductions projected by Northshore with the technically feasible technologies.

TABLE V–B.12—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

[TPY]

NO_X Control technology	Control efficiency (percent)	Emissions	Cost
None (Baseline)	.....	41.2	.....
Selective Catalytic Reduction	90	4.1	$30,160
Low-NO_X Burners w/Induced Flue Gas Recirculation	75	10.3	10,675
Low-NO_X Burners	50	20.6	723

TABLE V–B.12—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS—Continued

[TPY]

NO_X Control technology	Control efficiency (percent)	Emissions	Cost
Selective Non-Catalytic Reduction	50	20.6	12,126

Step 4: Evaluate Impacts and Document Results

The NO_X emissions generated by the two process boilers are of modest size, totaling 41.2 TPY. The most cost efficient control is low NO_X burners at $723 per ton, which would produce a 20.6 TPY emission reduction for each unit.

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

Low NO_X burners will reduce emissions from the process boilers at a modest cost, estimated at $723 per ton by Northshore. This control will reduce 20.6 TPY of NO_X emissions from each process boiler unit. Although the total 41.2 ton annual reduction is modest, the low cost of adding the control, on a per ton and total cost bases, makes it reasonable. Thus, EPA is proposing a NO_X emission limit of 0.085 lb/MMBtu on a 30-say rolling average for Northshore Mining's Process Boiler #1 and Process Boiler #2. Compliance is to be achieved with this limit within 5 years after the effective date of this rule. This represents the BART emission limit when low NO_X burners are added to each boiler unit.

3. United Taconite

United Taconite operates two grate-kilns which are identified in Table V–B.13 below.

TABLE V–B.13—UNITED TACONITE EMISSION UNITS

Emission unit name	EU No.	Control equipment and stack numbers
Line 1 Pellet Induration	EU40	SV046
Line 2 Pellet Induration	EU42	SV048, SV049

a. NO_X BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

United Taconite identified the following NO_X retrofit control technologies as being available for indurating furnaces:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Ported Kilns,
- Alternate Fuels, and
- Selective Catalytic Reduction.

Step 2: Eliminate Technically Infeasible Options

United Taconite eliminated External Flue Gas Recirculation and Induced Flue Gas Recirculation Burners from consideration since they were technically infeasible for the specific application to pellet furnaces due to the high oxygen content of the flue gas. United Taconite eliminated Energy Efficiency Projects due to the difficulty of assigning a general potential emission reduction for this category. The company has already implemented several energy efficiency projects and it will continue to evaluate and implement energy efficiency projects. United Taconite eliminated Alternative Fuels because the environmental and economic benefits of such a change are uncertain and United Taconite believes that this option is not mandated by EPA. Also, U.S. Steel documented the infeasibility of SCR controls. (see section V.B.1.a., above).

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Table V–B.14 illustrates the NO_X emission baseline for United Taconite and the reductions achievable using low NO_X burners.

TABLE V–B.14—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

[TPY]

NO_X Control	Assumed control	Line 1	Line 2
None (Baseline)		1643	3687
Low NO_X Burners	70%	1150	2581

Step 4: Evaluate Impacts and Document Results

TABLE V–B.15—PELLET FURNACE PROJECTED NO_X

NO_X Control	Line 1	Line 2
Low NO_X Burners	$500	$500

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

A limit of 1.2 lbs/MMBtu on a 30-day rolling average for all lines to be achieved as follows: 1 year and 6 months after the effective date for Line 2 and 2 years and 6 months after the effective date for Line 1.

b. SO_2 BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

In its BART analysis, United Taconite identified the following SO_2 reduction

technologies as generally available to pellet furnaces:

- Wet scrubbing (high efficiency),
- Wet scrubbing (low efficiency),
- Wet walled electrostatic precipitator (WWESP),
- Dry sorbent injection,
- Spray dryer absorption,
- Alternative Fuels, and
- Energy efficiency projects.

Step 2: Eliminate Technically Infeasible Options

United Taconite eliminated dry sorbent injection and spray dryer absorption as technically infeasible technologies. United Taconite identified the use of alternative fuels and energy efficiency projects as technically feasible, but did not evaluate the costs associated with these options. United Taconite justified its failure to evaluate the costs associated with the use of alternative fuels and with energy efficiency projects stating that a BART analysis does not require analysis of such options. The company noted EPA's intent ''for facilities to consider alternate fuels as an option, not to direct fuel choice'' as its rationale for failing to conduct the cost analyses.

EPA disagrees with United Taconite's assessment of the feasibility of Flue-gas desulfurization, which will be discussed more fully elsewhere.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies and

Step 4: Evaluate Impacts and Document Results

TABLE V–B.16—SULFUR DIOXIDE REMOVAL ALTERNATIVES FOR UNITED TACONITE LINE 2

Control technology	Uncontrolled SO_2 emissions rate (lb/MMBtu)	Existing SO_2 removal efficiency (percent)	Additional control (BART analysis App A) (percent)	lb/MMBtu SO_2	Max hourly emission rate (total) (lb/hr)	Tons SO_2 emitted	Tons SO_2 removed	Total annualized cost	$/Ton SO_2 removed
Existing Scrubber	5.32	25	N/A	3.99	1037	3,900			
WWESP	5.32	25	80	0.80	207	780	3,120	$20,291,473	$6,504
Polishing Scrubber	5.32	25	60	1.60	415	1,560	2,340	9,166,715	3,917
Replacement Scrubber	5.32	N/A	60	2.13	553	2,080	1,820	7,107,434	3,905
Fuel Blend Changes	2.26	25	N/A	1.70	442	1,660	2,240	1,341,482	599
Fuel Blending + Polishing Scrubber	2.26	25	60	0.68	176	663	3,237	9,650,715	2,981

Table V–B.16 above identified alternatives for controlling SO_2 and their associated emissions rate, which MPCA determined were all cost-effective. At the time this table was prepared by MPCA, Line 1 was not equipped to burn coal. Line 1 can now burn coal and so presumably the above table, or something similar, would also apply to Line 1.

TABLE V–B.17—PROJECTED ANNUAL SO_2 EMISSION REDUCTIONS AND RESULTING COST-EFFECTIVENESS

SO_2 Control	Assumed control	Line 1	Line 2
Dry FGD Reductions	90%	1164	2475
Cost-Effectiveness		$2,000–$3,000 per ton	$2,000–$3,000 per ton.

EPA has determined that dry FGD scrubbers are feasible for United Taconite's two indurating furnaces.

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

EPA is proposing a limit of 5 ppmv or a 95 percent reduction requirement, on a 30-day rolling average, to be achieved within 2 years after the effective date of this rule for Line 2 and 4 years after the effective date of this rule for Line 1.

4. ArcelorMittal

ArcelorMittal Minorca Mine Inc. operates one straight grate indurating furnace which is identified in Table V–B.18 below.

TABLE V–B.18 ARCELORMITTAL EMISSION UNITS

Emission unit name	EU No.	Control equipment and stack numbers
Indurating Furnace	EU026	CE014/SV014, CE015/SV015, CE016/SV016, CE017/SV017.

a. NO_X BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

ArcelorMittal identified the following NO_X retrofit control technologies as being available for indurating furnaces:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Ported Kilns, Alternate Fuels, and
- Selective Catalytic Reduction.

Step 2: Eliminate Technically Infeasible Options

ArcelorMittal eliminated External Flue Gas Recirculation and Induced Flue Gas Recirculation Burners from consideration since they were technically infeasible for the specific application to pellet furnaces due to the high oxygen content of the flue gas. ArcelorMittal eliminated Energy Efficiency Projects due to the difficulty of assigning a general potential emission reduction for this category. ArcelorMittal noted in its analysis that

the facility has already implemented several energy efficiency projects and that it will continue to evaluate and implement energy efficiency projects. Ported Kilns were eliminated by ArcelorMittal because they are applicable only to grate kiln furnaces not to the straight grate indurating furnaces that ArcelorMittal employs. ArcelorMittal eliminated Alternative Fuels because the environmental and economic benefits of such a change are uncertain and ArcelorMittal believes that this option is not mandated by EPA. Also, ArcelorMittal's permit currently limits its fuels to natural gas and fuel oil. Also, U.S. Steel documented the infeasibility of SCR controls above. (See section V.B.1.a., above).

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Table V–B.19 illustrates the NO_X emission reductions from use of Low NO_X burners.

TABLE V–B.19—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

[TPY]

NO_X Control technology	Assumed control efficiency	Total
None (Baseline) [6]		3639
Low NO_X Burners	70%	2547

Step 4: Evaluate Impacts and Document Results

The annualized pollution control cost of installing and operating low NO_X burners is in Table V–B.20 below.

TABLE V–B.20—PELLET FURNACE PROJECTED NO_X CONTROL COST-EFFECTIVENESS

NO_X Controls	Indurating furnace
Low NO_X Burners	$500/ton.

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

EPA is proposing a limit of 1.2 lbs/MMBtu on a 30-day rolling average to be achieved within 1 year and 6 months after the effective date of this rule for its indurating furnace.

b. SO_2 BART Analysis

Although the indurating furnaces can burn both natural gas and fuel oil, natural gas is the primary fuel. Since natural gas is low in sulfur, the primary source of sulfur at this furnace is the iron ore used to form the pellets. Additional sulfur may be present in the additives used in the pellets.

Furnace emissions are controlled by four wet scrubbers. The wet scrubbers are designed to remove PM and would be considered high efficiency PM wet scrubbers. Since collateral SO_2 reductions occur within the existing wet scrubbers, they are considered low efficiency SO_2 scrubbers. ArcelorMittal estimates that these existing scrubbers remove 15 to 30 percent of the SO_2 in the exhaust gas.

Step 1: Identify all Available Retrofit Control Technologies

ArcelorMittal identified the following SO_2 retrofit control technologies [10]:

- Wet Walled Electrostatic Precipitator (WWESP),
- Wet Scrubbing (High and Low Efficiency),
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption (SDA),
- Energy Efficiency Projects, and
- Alternate Fuels.

Step 2: Eliminate Technically Infeasible Options

ArcelorMittal eliminated Dry Sorbent Injection, Spray Dryer Absorption, Alternative Fuels, and Coal Drying from consideration because they were technically infeasible. With Dry Sorbent Injection and Spray Dryer Absorption, the high moisture content of the exhaust would lead to saturation of the baghouse filter cake and plugging of the filters and the dust collection system. Alternative Fuels were eliminated because ArcelorMittal is prohibited from burning solids fuels and natural gas is a low-sulfur fuel. ArcelorMittal indicated that the potential fuel reductions and the commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details; since no particular project has been envisioned, the company did not evaluate this option any further.

ArcelorMittal evaluated the possibility of improving the SO_2 removal efficiency of the existing scrubbers through the addition of caustic, lime, or limestone in the scrubber water to raise the pH. ArcelorMittal found this option to be impractical for several reasons. The scrubber currently operates at a neutral pH and the scrubbers, piping, pumps and water tanks were not designed to operate at a higher pH so corrosion of the system would be a concern. Also, the addition of caustic, lime, or limestone to increase SO_2 removal would create additional solids in the scrubber recirculation system which would require an increased blowdown rate and therefore an increased make-up water rate. Because the water balance at the facility is at maximum usage, additional make-up water is not available. Based on these concerns, ArcelorMittal did not further consider this option.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

ArcelorMittal estimated the control efficiency of WWESPs to be approximately 80 percent. A secondary wet scrubber was estimated to control roughly 60 percent of the SO_2 remaining after the existing scrubber. The following tables illustrate the SO_2 emission reductions projected by ArcelorMittal with the technically feasible control technologies.

TABLE V–B.21—ANNUAL SO_2 EMISSIONS

[TPY]

	Total
Baseline SO_2 Emissions	179.2

TABLE V–B.22—PROJECTED SO_2 EMISSION REDUCTIONS

[TPY]

SO_2 Control technology	Total
WWESP	143.2
Secondary Wet Scrubber	107.6

[10] See September 8, 2006 BART analysis submitted to MPCA by Mittal Steel USA—Minorca Mine, *http://www.pca.state.mn.us/index.php/view-document.html?gid=2224.*

Step 4: Evaluate Impacts and Document the Results

Cost of Control

ArcelorMittal estimated the annualized pollution control cost of installing and operating WWESPs to be about $116,000 per ton of SO_2 removed. The cost of installing and operating a secondary wet scrubber was estimated to be approximately $83,000 per ton of SO_2 removed.

Energy and Non-air Quality Environmental Impacts

Because the cost of additional SO_2 controls for ArcelorMittal does not meet a reasonable definition of cost effective technology, no further evaluation of these alternatives was conducted.

Step 5: Evaluate Visibility Impacts

Additional SO_2 controls for ArcelorMittal are not reasonably cost effective, so visibility impacts were not modeled for additional SO_2 controls.

Step 6: Propose BART

Although we do not agree that MPCA and ArcelorMittal have adequately documented the infeasibility of all of the SO_2 controls described above, we agree that, because ArcelorMittal is burning natural gas, additional SO_2 controls are not economically reasonable and are, therefore, not necessary for BART. EPA is proposing to determine that BART is existing controls. ArcelorMittal provided the results of emissions testing that was performed on the stacks associated with the furnace. Based on these test results, EPA is proposing a limit of 23.0 lb SO_2/hr, measured on a 30-day rolling average. This limit does not apply when the subject unit is burning fuel oil. Compliance is required within 30 days of the effective date of this rule.

5. Hibbing Taconite

Hibbing operates three straight grate indurating furnaces which are identified in Table V–B.23 below.

TABLE V–B.23—HIBBING EMISSION UNITS

Emission unit name	EU No.	Control equipment and stack numbers
Line 1 Pelletizing furnace	EU020	CE022/SV021, CE023/SV022, CE024/SV023, CE025/SV024.
Line 2 Pelletizing furnace	EU021	CE027/SV025, CE028/SV026, CE029/SV027, CE030/SV028.
Line 3 Pelletizing furnace	EU022	CE032/SV029, CE033/SV030, CE034/SV031, CE035/SV032.

a. NO_X BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

Hibbing identified the following NO_X retrofit control technologies as available and applicable to pellet furnaces:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Ported Kilns,
- Alternate Fuels, and
- Selective Catalytic Reduction with Reheat.

Step 2: Eliminate Technically Infeasible Options

Hibbing eliminated External Flue Gas Recirculation and Induced Flue Gas Recirculation Burners from consideration since they were technically infeasible for the specific application to pellet furnaces due to the high oxygen content of the flue gas. Hibbing eliminated Energy Efficiency Projects due to the difficulty of assigning a general potential emission reduction for this category. Hibbing noted in their Analysis that the facility has already implemented several energy efficiency projects and that it will continue to evaluate and implement energy efficiency projects. Ported Kilns were eliminated by Hibbing because they are applicable only to grate kiln furnaces not to the straight grate indurating furnaces that Hibbing employs. Hibbing eliminated Alternative Fuels because the environmental and economic benefits of such a change are uncertain and Hibbing believes that this option is not mandated by U.S. EPA. Also, Hibbing's permit currently limits its fuels to natural gas, fuel oil, and used oil. Also, U.S. Steel documented the infeasibility of SCR controls. (see section V.B.1.a., above).

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Table V–B.24 illustrates the NO_X emission reductions resulting from use of low NO_X burners.

TABLE V–B.24—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

[TPY]

NO_X Control technology	Assumed control efficiency	Line 1	Line 2	Line 3
None (Baseline)		2,143.5	2,143.5	2,247.1
Low NO_X Burners	70%	1,748	1,500	1,573

Step 4: Evaluate Impacts and Document Results

The annualized pollution control cost of installing and operating low NO_X burners is in Table V–B.25 below.

TABLE V–B.25—PELLET FURNACE PROJECTED NO_X CONTROL COST

[cost per ton of pollutant removed]

NO_X Control Technology	Line 1	Line 2	Line 3
Low NO_X Burners	$500	$500	$500

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

EPA is proposing a limit of 1.2 lbs/MMBtu on a 30-day rolling average for all lines to be achieved as follows: 1 year and 6 months after the effective date for Line 1, 2 years and 6 months after the effective date for Line 3 and 3 years and 6 months for Line 2.

b. SO_2 BART analysis

Hibbing operates three straight grate indurating furnaces which are identified in table V–B.26 below.

TABLE V–B.26—HIBBING SO_2 EMISSION UNITS

Emission unit name	EU No.	Control equipment and stack numbers
Line 1 Pelletizing Furnace	EU020	CE022/SV021, CE023/SV022, CE024/SV023, CE025/SV024.
Line 2 Pelletizing Furnace	EU021	CE027/SV025, CE028/SV026, CE029/SV027, CE030/SV028.
Line 3 Pelletizing Furnace	EU022	CE032/SV029, CE033/SV030, CE034/SV031, CE035/SV032.

Although the indurating furnaces can burn both natural gas and fuel oil, natural gas is the primary fuel. Since natural gas is low in sulfur, the primary source of sulfur at these furnaces is the iron ore used to form the pellets. Additional sulfur may be present in the additives used in the pellets.

Each line is controlled by four venture-rod scrubbers. The wet scrubbers are designed to remove PM and would be considered high efficiency PM wet scrubbers. Since collateral SO_2 reductions occur within the existing wet scrubbers, they are considered low efficiency SO_2 scrubbers. Hibbing estimates that these existing scrubbers remove 15 to 30 percent of the SO_2 in the exhaust gas from Lines 1, 2, and 3.

Step 1: Identify all Available Retrofit Control Technologies

Hibbing identified the following SO_2 retrofit control technologies [11]:

- Wet Walled Electrostatic Precipitator (WWESP),
- Wet Scrubbing (High and Low Efficiency),
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption,
- Energy Efficiency Projects, Alternate Fuels, and
- Coal Processing.

Step 2: Eliminate Technically Infeasible Options

Hibbing eliminated Dry Sorbent Injection, Spray Dryer Absorption, Alternative Fuels, and Coal Drying from consideration due to technical infeasibility. With Dry Sorbent Injection and Spray Dryer Absorption, the high moisture content of the exhaust would lead to saturation of the baghouse filter cake and plugging of the filters and the dust collection system. Alternative Fuels were eliminated because Hibbing is prohibited from burning solids fuels. Coal Drying is technically infeasible because Hibbing does not burn coal.

In addition, Hibbing has already implemented Energy Efficiency Projects. The company indicated that the potential fuel reductions and the commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details; since no particular project has been envisioned, the company did not evaluate this option any further.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Hibbing estimated the control efficiency of WWESPs to be approximately 80 percent. A secondary wet scrubber was estimated to control roughly 60 percent of the SO_2 remaining after the existing scrubber. Hibbing also expected that modifying the existing wet scrubber would control between 0 and 50 percent of the SO_2 currently emitted. The following tables illustrate the SO_2 emission reductions projected by Hibbing with the technically feasible control technologies.

TABLE V–B.27—ANNUAL SO_2 EMISSIONS

[TPY]

	Line 1	Line 2	Line 3	Total
Baseline SO_2 Emissions	202.2	179.5	188.1	569.8

TABLE V–B.28—PROJECTED SO_2 EMISSION REDUCTIONS

[TPY]

SO_2 Control technology	Line 1	Line 2	Line 3	Total
WWESP	161.8	143.6	150.5	455.9
Secondary Wet Scrubber	121.3	121.3	121.3	363.9

[11] See BART analysis submitted to MPCA by Hibbing Taconite Company in September 2006, *http://www.pca.state.mn.us/index.php/view-document.html?gid=2223.*

TABLE V–B.28—PROJECTED SO_2 EMISSION REDUCTIONS—Continued

[TPY]

SO_2 Control technology	Line 1	Line 2	Line 3	Total
Modification of Wet Scrubber	0–101.1	0–101.1	0–101.1	0–303.3

Step 4: Evaluate Impacts and Document the Results

Cost of Control

Hibbing estimated the annualized pollution control cost of installing and operating WWESPs to be about $37,000 per ton of SO_2 removed. The cost of installing and operating a secondary wet scrubber was estimated to be between $57,000 and $67,000 per ton of SO_2 removed. Given the space limitations and equipment additions that would be required to modify the existing wet scrubber, Hibbing determined that it would be more cost effective to construct a new, secondary scrubber; therefore, no cost estimate was provided for modifications to the existing wet scrubber.

Energy and Non-air Quality Environmental Impacts

There are no impacts because no additional controls are being proposed, as discussed in the Step 4 and Step 6 discussions.

Step 5: Evaluate Visibility Impacts

There are no visibility impacts because no additional controls are being proposed, as discussed in the Step 4 and Step 6 discussions.

Step 6: Propose BART

Although we do not agree that MPCA and Hibbing have adequately documented the infeasibility of all of the SO_2 controls described above, we agree that, because Hibbing is burning natural gas, additional SO_2 controls are not economically reasonable and are, therefore, not necessary for BART. EPA is proposing to determine that BART is existing controls. Hibbing provided the results of emissions testing that was performed in 2010 on the stacks associated with Lines 1, 2, and 3. Based on these test results, EPA is proposing the following limits: 56.0 lb SO_2/hr for Line 1, 63.0 lb SO_2/hr for Line 2, and 64.0 lb SO_2/hr for Line 3. These limits are measured on a 30-day rolling average and do not apply when the subject units are burning fuel oil. Compliance is required within 30 days of the effective date of this rule.

6. U.S. Steel Keewatin

U.S. Steel Keewatin (Keetac) operates one straight grate indurating furnace which is identified in Table V–B.29 below.

TABLE V–B.29—KEETAC EMISSION UNITS

Emission Unit Name	EU No.	Stack No.
Phase II Grate-Kiln Indurating Furnace	EU030	SV051

a. NO_X BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

Keetac identified the following NO_X retrofit control technologies as available and applicable to pellet furnaces:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Ported Kilns,
- Alternate Fuels, and
- Selective Catalytic Reduction with Reheat.

Step 2: Eliminate Technically Infeasible Options

Keetac eliminated External Flue Gas Recirculation and Induced Flue Gas Recirculation Burners from consideration since they were technically infeasible for the specific application to pellet furnaces due to the high oxygen content of the flue gas. The company indicated that the potential fuel reductions and the commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details; since no particular project has been envisioned, the company did not evaluate this option any further. Keetac eliminated Alternative Fuels because the furnace already uses solid fuels that result in lower flame temperature and, thus, lower NO_X emissions. Switching to another fuel such natural gas (which Keetac already is capable of using) could exchange one visibility impairing pollutant for another (NO_X for SO_2). Keetac also believes that this option is not mandated by EPA. Keetac identified Ported Kilns and Selective Catalytic Reduction with conventional Reheat as the only technologies that are technically feasible. Also, U.S. Steel documented the infeasibility of SCR controls (see section V.B.1.a., above).

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Table V–B.30 identifies the projected NO_X emission reductions resulting from use of low NO_X burners.

TABLE V–B.30—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

NO_X control technology	Assumed control efficiency (percent)	Phase II furnaces (TPY)
None (Baseline)		4,154.0
Low NO_X Burners	70	2,908
Ported Kiln	5	207.7

Step 4: Evaluate Impacts and Document Results

TABLE V–B.30
[COST PER TON OF POLLUTANT REMOVED]

NO_X control technology	Phase II furnace
Low NO_X burners	$500
Ported Kiln–diff. due to discrepancy in submittal	$2,938–$6,032

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

For NO_X, EPA is proposing a limit of 1.2 lbs/MMBtu on a 30-day rolling average for the Phase II furnace. Compliance is to be achieved within 1 year and 6 months after the effective date of this rule.

b. SO_2 BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

Keetac identified the following SO_2 retrofit control technologies as available and applicable to pellet furnaces:

- Wet Walled Electrostatic Precipitator (WWESP),
- Secondary Wet Scrubber,
- Modifications to Existing Wet Scrubber,
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption,
- Energy Efficiency Projects,
- Alternate Fuels, and
- Coal Processing.

Step 2: Eliminate Technically Infeasible Options

In considering control options for sulfur dioxide, Keetac eliminated Dry Sorbent Injection, Spray Dryer Absorption, Alternative Fuels, and Coal Processing from consideration since they were technically infeasible. With Dry Sorbent Injection and Spray Dryer Absorption, the high moisture content of the exhaust would lead to saturation of the baghouse filter cake and plugging of the filters and the dust collection system. The company indicated that the potential fuel reductions and the commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details; since no particular project has been envisioned, the company did not evaluate this option any further. Alternative Fuels were eliminated due to the uncertainty of alternative fuel costs, the potential of replacing one visibility pollutant for another, and Keetac's belief that BART does not intend to mandate a fuel switch. Coal Processing requires a source of excess or of low pressure stream to remove water from the washed coal. There is no such heat source at Keetac so this option is technically infeasible.

In addition, Keetac has already implemented a number of Energy Efficiency Projects. The potential fuel reductions and the commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details; since no particular project has been envisioned, the company decided not to evaluate this option any further.

Keetac evaluated modifying the existing scrubber to determine whether further SO_2 removal could be achieved. However, Keetac has recently installed new wet scrubbers to control SO_2 emissions. Since operation of the scrubber has been optimized, further improvement of the removal efficiency is not feasible and was not considered further in the report.

EPA disagrees with Keetac's assessment of the feasibility of Flue-gas desulfurization, which will be discussed more fully elsewhere.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Keetac evaluated WWESPs and Secondary Wet Scrubber as the two remaining retrofit technologies it deemed to be available and technically feasible. Keetac estimated the control efficiency of WWESPs to be approximately 80 percent. A secondary wet scrubber was estimated to control roughly 60 percent of the SO_2 remaining after the existing scrubber. The following table illustrates the SO_2 emission reductions projected by Keetac with the technically feasible control technologies.

TABLE V–B.32—PROJECTED SO_2 EMISSION REDUCTIONS
[TPY]

SO_2 Control technology	Phase II furnace
Baseline Emissions (existing scrubber)	850.5
WWESP (after existing scrubber)	760.4
Secondary Wet Scrubber (after existing scrubber)	570.3

Step 4: Evaluate Impacts and Document Results

Keetac's estimates of the annualized pollution control cost of installing and operating the WWESP and Secondary Wet Scrubber are shown in the table V–B.33 below.

TABLE V–B.33—PELLET FURNACE PROJECTED SO_2 CONTROL COST
[$ PER TON OF POLLUTANT REMOVED]

SO_2 Control technology	Phase II furnace
WWESP (after existing scrubber)	$15,165
Secondary Wet Scrubber (after existing scrubber)	8,870

Step 5: Evaluate Visibility Impacts

Visibility impacts were not modeled because additional reductions were not determined to be cost effective.

Step 6: Propose BART

Keetac's existing recirculating lime scrubber satisfies BART. Therefore, EPA is proposing that the scrubber be subject to a 57 percent SO_2 removal efficiency and a limit, based on CEMS data, of 225 lbs SO_2 per hour on a 30-day rolling average. In addition, EPA is proposing to require that the scrubber be operated at or above a pH of 7.5. Compliance with all SO_2 emission limits is required beginning 90 days from the effective date of this rule.

7. Tilden Mining Company LLC (TMC)

The BART-subject emission units include indurating furnace/grate-kiln EUKILN 1, EU PRIMARY CRUSHER, EU COOLER 1, EU DRYER 1, EU BOILER 1, and EU BOILER 2.

a. NO_X BART Analysis

Step 1: Identify All Available and Technically Feasible Retrofit Technologies

The following NO_X retrofit control technologies have been identified as being available and applicable for indurating furnaces:

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Induced Flue Gas Recirculation Burners,
- Energy Efficiency Projects,
- Ported Kilns,
- Alternate Fuels, and
- Selective Catalytic Reduction.

Step 2: Eliminate Technically Infeasible Options

Tilden eliminated External Flue Gas Recirculation and Induced Flue Gas Recirculation Burners from consideration since they were technically infeasible for the specific application to pellet furnaces due to the high oxygen content of the flue gas. Tilden eliminated Energy Efficiency Projects due to the difficulty of assigning a general potential emission reduction for this category. Ported Kilns were eliminated by Tilden because any reduction in NO_X would be minor. Tilden eliminated Alternative Fuels because the environmental and economic benefits of such a change are uncertain and Tilden believes that this option is not mandated by EPA. Also, U.S. Steel documented the infeasibility of SCR controls (see section V.B.1.a., above). Tilden also determined that non-selective catalytic reduction, regenerative selective reduction, selective non-catalytic reduction and low temperature oxidation are technically infeasible.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Table V–B.34 illustrates the NO_X emission reductions resulting from use of low NO_X burners.

TABLE V–B.34—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

NO_X Control Technology	Assumed control efficiency (percent)	Line 1 (tons per year)
None (Base-line)		4,613
Low NO_X burners	70	3,229

Step 4: Evaluate Impacts and Document Results

The annualized pollution control cost of installing and operating low NO_X burners is in Table V–B.35 below.

TABLE V–B.35—PELLET FURNACE PROJECTED NO_X CONTROL COST

[COST PER TON OF POLLUTANT]

NO_X Control technology	Indurating furnace
Low NO_X burners	$ 500/ton.

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

For Line 1, EPA is proposing a limit of 1.2 lbs/MMBtu on a 30-day rolling average to be achieved within 1 year and 6 months after the effective date of this rule.

b. SO_2 BART Analysis

Step 1: Identify All Available Retrofit Control Technologies

Tilden identified the following SO_2 retrofit control technologies as available and applicable to pellet furnaces:

- Wet Walled Electrostatic Precipitator (WWESP),
- Wet Scrubbing,
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption (SDA),
- Energy Efficiency Projects,
- Alternate Fuels, and
- Coal Processing.

Step 2: Eliminate Technically Infeasible Options

Tilden indicated that the potential fuel reductions and the commensurate emission reductions for future Energy Efficiency Projects cannot accurately be predicted without specific details. Therefore, due to the uncertainty and generalization of this category, energy efficiency projects were not subject to further analysis. Alternative Fuels were eliminated due to the uncertainty of alternative fuel costs, the potential of replacing one visibility pollutant for another, and Tilden's belief that BART does not intend to mandate a fuel switch. Using processed fuels at a taconite plant would require research, test burns, and extended trials to identify potential impacts on plant systems, including the furnaces, material handling, and emission control systems. Therefore, processed fuels are not considered commercially available and were not subject to further analysis by Tilden.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

Tilden evaluated a WWESP and wet scrubber after its existing ESP, spray dry absorption, and dry sorbent injection as the remaining retrofit technologies it deemed to be available and technically feasible. Tilden estimated the control efficiency of WWESPs and a wet scrubber to be about 80 percent, dry sorbent injection to be 55 percent and spray dry absorption to be 90 percent. The following table illustrates the SO_2 emission reductions projected by Tilden technologies.

TABLE V–B.36—PROJECTED SO_2 EMISSION REDUCTIONS

[TPY]

SO_2 Control technology	Line 1
Spray Dry Absorption	1,037.8
Wet Walled ESP	922.5
Wet Scrubber	922.5
Dry Sorbent Injection	634.2

Step 4: Evaluate Impacts and Document Results

EPA has determined the cost-effectiveness of a 90 percent FGD scrubber to be $4500-$5500/ton using EPA's Air Pollution Control Cost Manual.

Step 5: Evaluate Visibility Impacts

See section V.C.

Step 6: Propose BART

For Line 1, EPA is proposing a limit of 5 ppmv or a 95 percent emission reduction, on a 30-day rolling average, to be achieved within 2 years after the effective date of this rule.

c. Non-Furnace BART Analysis

Process Boiler #1 and Process Boiler #2

Two natural gas and fuel oil fired process boilers (Process Boiler #1 and Process Boiler #2) require BART analysis. These boilers provide steam required to operate the taconite plant, as needed. The boilers are permitted to burn only natural gas and used oil.

SO_2 Analysis

Step 1: Identification of Available Retrofit Control Technologies

- Wet Walled Electrostatic Precipitator,
- Wet Scrubber,
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption (SDA),
- Energy Efficiency Projects,
- Alternate Fuels, and
- Coal Processing.

Step 2: Elimination of Technically Infeasible Options

Tilden's process boilers cannot burn solid fuel, which eliminates coal processing. Due to the increased price of fuel, Tilden has already implemented energy efficiency projects. Each project carries its own fuel usage reductions and potentially emission reductions. Due to the uncertainty and generalization of this category, this option was eliminated. Similarly, Tilden eliminated alternative fuels because the environmental and economic benefits of such a change are uncertain, the limited fuel options available, and the fact that natural gas and oil are the fuels burned in the boilers.

Step 3: Evaluation of the Control Effectiveness of the Remaining Control Technologies

The following table illustrates the SO_2 emission reductions projected by Tilden with the technically feasible technologies.

TABLE V–B.37—PROJECTED ANNUAL SO_2 EMISSION REDUCTIONS

[TPY]

Control technology	Control efficiency (percent)	Emissions	Cost
None (Baseline)		0.25	
SDA	90	0.03	$38,403,000
Wet Scrubber	80	0.05	7,448,000
WWESP	80	0.05	15,733,000
Dry Scrubber	55	0.11	35,381,000

Step 4: Evaluate Impacts and Document Results

The two process boilers have very modest SO_2 emissions at 0.25 TPY. A wet scrubber would reduce emissions by 80 percent, but at an annual cost of about $1.5 million and a cost-effectiveness of $7,448,000 per ton.

Step 5: Evaluate Visibility Impacts

Visibility impacts were not modeled because additional reductions are not cost-effective.

Step 6: Propose BART

This BART analysis shows that adding a control device to control SO_2 emissions from the boilers would yield a very modest emission reduction at a multi-million dollar per ton cost. Thus, EPA is proposing retaining the 1.2% by weight sulfur content limit on the boilers when oil is burned.

NO_X Analysis

Step 1: Identification of Available Retrofit Control Technologies

- External Flue Gas Recirculation,
- Low-NO_X Burners,
- Low-NO_X Burners with Overfire Air,
- Induced Flue Gas Recirculation Burners,
- Low Excess Air,
- Reburning,
- Energy Efficiency Projects,
- Alternate Fuels,
- Non-Selective Catalytic Reduction,
- Selective Catalytic Reduction (SCR),
- Regenerative SCR,
- Selective Non-Catalytic Reduction, and
- Low Temperature Oxidation.

Step 2: Elimination of Technically Infeasible Options

External flue gas recirculation was eliminated as process boilers #1 and #2 do not have the capability of control at the burner tip, which is needed for this control technology. As noted in SO_2 determination, Tilden has already implemented energy efficiency projects. Each project carries its own fuel usage reductions and potentially emission reductions. Due to the uncertainty and generalization of this category, this option was eliminated. Similarly, Tilden eliminated alternative fuels because the environmental and economic benefits of such a change are uncertain and limited fuel options are available for the boilers. Operating a boiler with low excess air minimizes NO_X production during combustion. Tilden already operates process boiler #1 and #2 with low excess air. This option was thus not evaluated further as the benefit has already been achieved. Reburning is infeasible as the Tilden boilers do not burn solid fuel.

Regenerative SCR has only been used on wood-fired boilers. This technology has not been applied to liquid or natural gas fired boilers. Regenerative SCR is currently infeasible for the Tilden boilers. Low temperature oxidation is a post-combustion technology that uses an oxidant to oxide pollutants including NO_X. A scrubbing system is then used to remove the nitrates. Low temperature oxidation is an emerging technology that is currently infeasible as BART control on the Tilden boilers.

Step 3: Evaluation of the Control Effectiveness of the Remaining Control Technologies

The following table illustrates the NO_X emission reductions projected by Tilden with the technically feasible technologies.

TABLE V–B.38—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

[TPY]

Control technology	Control efficiency (percent)	Emissions	Cost
None (baseline)		79.23	
SCR	80	15.85	$39,888
LNB/Flue Gas Recirculation	75	19.81	5,112
LNB/OFA	67	26.15	7,361
LNB	50	36.61	7,244
Selective Non-Catalytic Reduction	50	36.61	11,833

Step 4: Evaluate Impacts and Document Results

The two process boilers have modest NO_X emissions at about 80 TPY each. The combustion control technologies produce good control efficiencies at a lower cost compared to the post-combustion options. All the combustion control options have similar costs. A low NO_X burner coupled with flue gas recirculation produces a 59.42 TPY NO_X reduction per unit, the greatest control, at a cost of $5,122 per ton.

Step 5: Evaluate Visibility Impacts

Visibility impacts were not modeled because no additional reductions are required.

Step 6: Propose BART

Given that the control options are modest reductions in NO_X emission on a TPY basis, that modest reduction would need to provide a strong visibility improvement or be trivial in cost to justify a BART limit indicative of additional control. That is not the case for the process boilers. Thus, EPA is proposing the current good combustion practice as the NO_X emission restrictions for both Process Boiler #1 and Process Boiler #2.

Line 1 Dryer

The Line 1 Dryer includes a combustion box in which natural gas and used oil is burned as fuel. The flue gas from the combustion box flows into a rotary dryer that repeatedly tumbles wet taconite ore concentrate through the flue gas stream to reduce the amount of entrained moisture in the taconite ore concentrate. The particulate emissions from the dryer are controlled by cyclones and impingement scrubbers in series. The dryer is only permitted to use natural gas and used oil for fuel. The Line 1 Dryer has low emissions of SO_2 due to the low sulfur content of the permitted fuels. In addition, collateral SO_2 reductions occur within the existing impingement scrubbers, and therefore the existing scrubber is considered a low-efficiency SO_2 scrubber.

SO_2 Analysis

Step 1: Identification of Available Retrofit Control Technologies

- Wet Walled Electrostatic Precipitator,
- Wet Scrubber,
- Dry Sorbent Injection (Dry Scrubbing Lime/Limestone Injection),
- Spray Dryer Absorption (SDA),
- Energy Efficiency Projects,
- Alternate Fuels, and
- Coal Processing.

Step 2: Elimination of Technically Infeasible Options

The Line 1 Dryer cannot burn solid fuel, which eliminates coal processing. Tilden has already implemented energy efficiency projects on the dryer. Each project carries its own fuel usage reductions and potentially emission reductions. Due to the uncertainty and generalization of this category, this option was eliminated. Dry sorbent injection uses a fabric filter, ''baghouse,'' as part of the control system. The Line 1 Dryer exhaust is saturated with moisture. Such moisture would foul the baghouse. The same is true if the baghouse is placed following the wet scrubber into which the dryer currently exhausts. The dry sorbent injection system is thus technically infeasible for the Line 1 Dryer. The SDA system also uses a baghouse to capture the dry solids. The moisture in the dryer exhaust similarly creates problems with the baghouse. Thus, SDA is infeasible for Tilden's Line 1 Dryer. Alternative fuels are infeasible because the environmental and economic benefits of such a change are uncertain, the limited fuel options available, and the fact that natural gas and oil are the fuels used for the dryer.

Step 3: Evaluation of the Control Effectiveness of the Remaining Control Technologies

The following table illustrates the SO_2 emission reductions projected by Tilden with the technically feasible technologies.

TABLE V–B.39—PROJECTED ANNUAL SO_2 EMISSION REDUCTIONS

[TPY]

Control technology	Control efficiency (percent)	Emissions	Cost
None (baseline)		34.07	
Wet Scrubber	80	6.81	$25,103
WWESP	80	6.81	52,432

Step 4: Evaluate Impacts and Document Results

The Line 1 Dryer has SO_2 emissions of 34.07 TPY. The moisture in the dryer exhaust limits the control options for this unit. A wet scrubber would reduce emissions by 27.26 TPY or 80 percent at an annual cost of about $25,000. The SO_2 emissions from this unit are already limited by fuel restrictions and the existing low-efficiency SO_2 scrubber.

Step 5: Evaluate Visibility Impacts

Visibility impacts were not modeled because no additional reductions are required.

Step 6: Propose BART

This BART analysis shows that adding a control device to control SO_2 emissions from the boilers would yield a modest emission reduction at a cost that could exceed $25,000 per ton. Thus, EPA is proposing retaining the fuel restriction of 1.5% by weight sulfur content limit when oil is burned.

NO_X Analysis

Step 1: Identification of Available Retrofit Control Technologies

- External Flue Gas Recirculation,
- Low-NO_X Burners (LNB),
- Low-NO_X Burners with Overfire Air,
- Induced Flue Gas Recirculation Burners,
- Low Excess Air,
- Reburning,
- Energy Efficiency Projects,
- Alternate Fuels,
- Non-Selective Catalytic Reduction,
- Selective Catalytic Reduction (SCR),
- Regenerative SCR,
- Selective Non-Catalytic Reduction, and
- Low Temperature Oxidation.

Step 2: Elimination of Technically Infeasible Options

External flue gas recirculation was eliminated as the configuration of the Line 1 Dryer burner does have the capability of control at the burner tip, which is needed for this control technology. As noted in the SO_2 determination, Tilden has already implemented energy efficiency projects. Each project carries its own fuel usage reductions and potentially emission reductions. Due to the uncertainty and generalization of this category, this option was eliminated. Similarly, Tilden eliminated alternative fuels because the environmental and economic benefits of such a change are uncertain and limited fuel options are available for the boilers. Induced flue gas recirculation burner technology is infeasible for the Line 1 Dryer. Operating a boiler with low excess air minimizes NO_X production during combustion. Similar to process boiler #1 and #2, the dryer is already operated with low excess air. This option was thus not evaluated further as the benefit has already been achieved. Reburning is infeasible as the Line 1 Dryer does not burn solid fuel.

Regenerative SCR has only been used on wood-fired boilers. This technology has not been applied to liquid or natural gas fired burners. Regenerative SCR is currently infeasible for the Line 1 Dryer. Low temperature oxidation is a post-combustion technology that uses an oxidant to oxide pollutants including NO_X. A scrubbing system is then used to remove the nitrates. Low temperature oxidation has not been applied on a taconite dryer. It is currently considered infeasible as BART control option on the dryer unit.

Step 3: Evaluation of the Control Effectiveness of the Remaining Control Technologies

The following table illustrates the NO_X emission reductions projected by Tilden with the technically feasible technologies.

TABLE V–B.40—PROJECTED ANNUAL NO_X EMISSION REDUCTIONS

[TPY]

Control technology	Control efficiency percent	Emissions	Cost
None (baseline)		15.1	
SCR	80	3.02	$83,472
LNB/Flue Gas Recirculation	75	3.77	11,891
LNB/OFA	67	4.98	11,535
LNB	50	7.55	8,090
Selective Non-Catalytic Reduction	50	7.55	36,949

Step 4: Evaluate Impacts and Document Results

The Line 1 Dryer has modest NO_X emissions of 15.1 TPY. The combustion control technologies produce good control efficiencies at a lower cost compared to the post-combustion options. A low NO_X burner produces a 7.55 TPY NO_X reduction at a cost of $8,090 per ton.

Step 5: Evaluate Visibility Impacts

Visibility impacts were not modeled because no additional reductions are required.

Step 6: Propose BART

Given that the control options are modest reductions in NO_X emission on a TPY basis, that modest reduction would need to provide a strong visibility improvement or be trivial in cost to justify a BART limit indicative of additional control. That is not the case for the Tilden Line 1 Dryer. Thus, EPA is proposing the current good combustion practice as the NO_X emission restrictions for the Line 1 Dryer.

C. Bart Visibility Improvement Analysis

1. Background

There are five factors considered in a case-by-case BART analysis once a source has been determined to be subject to BART. The first four pertain to identifying and evaluating available control technologies based on technical feasibility, emission control levels, control cost effectiveness, and energy and non-air quality environmental impacts. The first four factors have been discussed elsewhere in this proposed rulemaking. The fifth factor covers the visibility improvements resulting from the BART emission controls. The ''Final Regional Haze Regulations and Guidelines for Best Available Retrofit Technology Determinations'' document discussed in EPA's ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations'' final rule (70 FR 39104) (Regional Haze Rule) addresses application of the fifth factor. Although it is a required element of a BART analysis, there is substantial flexibility allowed in determining how the visibility impacts factor is implemented and how much weight and significance is assigned to this factor.

2. Visibility Improvement Modeling

EPA is relying on visibility improvement modeling conducted previously by the MPCA and documented in MPCA's document ''Visibility Improvement Analysis of Controls Implemented Due to BART Determinations on Emission Units

Subject-to-BART,'' October 23, 2009, and also detailed in ''Appendix 9.5: BART Visibility Modeling,'' included as part of MPCA's December 2009 regional haze SIP submittal.

The visibility improvement modeling conducted by MPCA examined the degree of visibility improvement in the Class I areas of Voyageurs National Park (Voyageurs), Boundary Waters Canoe Area Wilderness (Boundary Waters), and Isle Royale National Park (Isle Royale), determined to be impacted by NO_X and SO_2 sources and State-estimated BART emission reductions covered in MPCA's BART analysis. The sources investigated by the MPCA, and of interest in our BART proposed rule, were Minnesota Power-Boswell Energy Center, Minnesota Power-Taconite Harbor, Northshore Mining-Silver Bay, and United Taconite-Fairlane Plant (now named United Taconite). These sources are located in the same general area as the sources addressed by BART determinations in this proposed rule. The discussion below uses MPCA's emissions data and modeled visibility impact data to derive visibility impact ratios as a function of changes in emissions of NO_X and SO_2 at MPCA-modeled facilities. These visibility-emissions ratios were then applied to the BART-based emission changes for the sources subject to this BART rule to derive possible visibility impacts.

The modeling system used by MPCA for BART visibility analyses is discussed in detail in ''Technical Support Document of the Minnesota State Implementation Plan for Regional Haze,'' May 2009, and in Appendix 9.5 of MPCA's December 2009 regional haze SIP submittal. The system utilizes:

- Comprehensive Air Quality Model (CAMx) as the photochemical modeling tool,
- The Pennsylvania State University/National Center for Atmospheric Research (PSU/NCAR) Mesoscale Meteorological Model (MM5) as the meteorological model,
- Emissions Modeling System (EMS–2003) as the emissions model. The base period modeling for the MPCA work included emissions from 2002.

The Particulate Source Apportionment Technology (PSAT) tool in CAMx, along with the new IMPROVE visibility extinction formula (to calculate light extinction resulting from monitored or modeled nitrate, sulfate, and $PM_{2.5}$ concentrations and assumed relative humidity (pH) extinction factors) was used to evaluate air quality/visibility impacts from the individual sources. The modeling domain featured a 36 kilometer resolution grid extending over the eastern two-thirds of the United States, and encompassed a smaller 12 kilometer resolution nested modeling domain, with Plume-in-Grid (PiG) concentration estimates, covering all of Minnesota. Visibility was assessed in each of the three Class I areas using 15 modeling receptors in Voyageurs, 62 modeling receptors in Boundary Waters, and 15 modeling receptors in Isle Royale.

The MPCA modeling examined the impact of the BART controls on both the number of days (ΔDays) with a change (increase) in deciview [12] above 0.5 (ΔDays > 0.5) and the 98th percentile change in deciview values (Δdv).

Only one of the sources examined by MPCA and addressed here included emission changes from furnaces at a taconite facility. This facility, United Taconite, is located in St. Louis County, Minnesota, roughly 60–80 kilometers from the Class I areas in Northern Minnesota, Voyageurs and Boundary Waters, and approximately 120 kilometers from Isle Royale. The MPCA modeling compared the 2002 actual emissions used in Minnesota's regional haze SIP modeling to the emissions assumed based on the state-determined BART emission controls with corresponding modeled emission reductions for NO_X and sulfur dioxide. Modeling was conducted for the meteorological years of 2002 and 2005. The results are shown in MPCA's BART analysis in terms of the change in Δdv and ΔDays for $PM_{2.5}$,[13] sulfate (SO_4), and nitrate (NO_3).

The MPCA visibility modeling documentation details visibility due to the implementation of BART controls for all of the sources considered by the State. However, the FIP covered by this proposed rule only addresses BART control of furnaces located at taconite facilities. Therefore, we have given special attention to the visibility modeling results for the one taconite facility addressed in detail in MPCA's BART visibility modeling discussion, United Taconite.

The detailed modeling information for United Taconite, as presented in MPCA's visibility modeling documentation is duplicated below:

TABLE V–C.1—EMISSIONS (UNITED TACONITE)

[Actual 2002 Emissions in Tons Modeled]

Description	Stack ID	NO_X	SO_2	$PM_{2.5}$	PM_{10}
Facility Elevated Stack Total*		1,765	3,222	183	473.
BART Unit Stack Total	SV049	1,764	3,222	13	367.
BART Unit Stack Percent of Facility Total Emissions*.		100%	100%	7%	78%.
BART Unit Stack Total with BART Controls.		1,764	1,385	No BART Controls.	
BART Unit Stack Emission Reduction due to BART Controls.		0%	−57%		

* Facility total only accounts for emissions from elevated stacks. The criteria for elevated stacks is those with a plume rise of 50 meters or more as calculated by the emissions model.

[12] The deciview is a visual index designed to be linear with respect to perceived visibility changes over its entire range in a way that is analogous to the decibel index for sound. The deciview scale is zero for pristine conditions and increases as visibility degrades.

[13] All fine particulates, including sulfates, nitrates, and other fine particulate components.

TABLES V–C.2 THROUGH V–C.4—NUMBER OF DAYS WITH VISIBILITY DEGRADATION > 0.5 DV AND 98TH PERCENTILE DECIVIEW IMPACT VALUES (UNITED TACONITE)

Parameter	Met Year	Class I Area								
		Boundary Waters			Voyageurs			Isle Royale		
		Base	BART	Change	Base	BART	Change	Base	BART	Change
$PM_{2.5}$										
Days > 0.5 dv	2002	59	44	−15	32	20	−12	8	1	−7
	2005	40	24	−16	22	11	−11	3	2	−1
	'02 & 05	99	68	−31	54	31	−23	11	3	−8
98th Percentile dv	2002	3.0	1.7	−1.3	1.8	0.8	−0.9	0.6	0.3	−0.3
	2005	1.5	1.1	−0.4	1.0	0.7	−0.3	0.4	0.2	−0.2
	'02 & 05	3.1	1.9	−1.2	1.9	1.1	−0.8	0.6	0.3	−0.3
SO_4										
Days > 0.5 dv	2002	47	29	−18	29	17	−12	8	0	−8
	2005	32	15	−17	20	6	−14	3	0	−3
	'02 & 05	79	44	−35	49	23	−26	11	0	−11
98th Percentile dv	2002	3.0	1.6	−1.4	1.7	0.8	−0.9	0.5	0.3	−0.3
	2005	1.4	0.7	−0.7	0.9	0.5	−0.4	0.4	0.2	−0.2
	'02 & 05	3.0	1.7	−1.3	1.9	1.0	−0.9	0.6	0.3	−0.3
NO_3										
Days > 0.5 dv	2002	5	8	3	0	1	1	0	0	0
	2005	7	11	4	1	4	3	0	1	1
	'02 & 05	12	19	7	1	5	4	0	1	1
98th Percentile dv	2002	0.4	0.5	0.1	0.1	0.1	0.0	0.1	0.1	0.0
	2005	0.5	0.6	0.1	0.2	0.2	0.1	0.1	0.1	0.0
	'02 & 05	0.6	0.7	0.2	0.2	0.3	0.1	0.1	0.1	0.0

As the tables indicate, while there were no NO_X emission reductions associated with the State's assessed BART emission controls at United Taconite, the SO_2 emission reductions resulted in reductions in the number of days with deciview changes above 0.5 at all three Class I areas, including ΔDays reductions in excess of 10 at Boundary Waters and Voyageurs. Additionally, the 98th percentile deciview values were reduced (Δdv) for each Class I area. These improvements were associated with a 1,837 tons per year reduction in SO_2 emissions at this facility. Because there were no reductions in NO_X at United Taconite associated with the State-determined BART emission controls, the improvement in visibility due to SO_2 emission reductions are offset by visibility degradation resulting from small nitrate increases. According to MPCA, the reduced levels of SO_2 downwind from United Taconite would allow more ammonia in the atmosphere to become available to react with NO_X to form ammonium nitrate, a compound that can contribute to visibility impairment.

The modeled SO_2 emission reduction and visibility impacts for $PM_{2.5}$ can be used to derive visibility impact/emission reduction ratios at each of the Class I areas. Table V–C.5 presents the modeled emission reductions and derived visibility impact ratios for fine particulates for United Taconite at each of the Class I areas. Note that the $\Delta DaysPM_{2.5}$ numbers used in this table (and in subsequent tables) are annual averages. Also note that, in this table and in subsequent tables, we have considered Δdv and ΔDays values for $PM_{2.5}$, which include the visibility impacts of both nitrates and sulfates, as well as other fine particulate components.

TABLE V–C.5—BART NO_X AND SO_2 EMISSION REDUCTIONS AND MODELED VISIBILITY IMPACT/EMISSION REDUCTION RATIOS FOR FINE PARTICULATES AT CLASS I AREAS FOR UNITED TACONITE

Parameter	Boundary Waters	Voyageurs	Isle Royale
NO_X Emissions Decrease	0 tons/year		
SO_2 Emissions Decrease (ΔSO_2)	1,837 tons/year		
$\Delta dv_{PM2.5}$	−1.2	−0.8	−0.3
$\Delta dv_{PM2.5}/\Delta SO_2$	−0.00065	−0.00043	−0.000098
$\Delta Days_{PM2.5}$	−10	−8	−3
$\Delta Days_{PM2.5}/\Delta SO_2$	−0.0054	−0.0044	−0.0016

Other sources addressed in MPCA's modeling study would reduce both NO_X and SO_2 emissions through the implementation of BART emission controls. Three examples of sources considered for BART controls are located near the Class I areas of interest, Minnesota Power-Taconite Harbor, Minnesota Power-Boswell Energy Center, and Northshore Mining-Silver Bay. Both Minnesota Power-Taconite Harbor and Northshore Mining-Silver Bar are located near Lake Superior and east of the Minnesota taconite facilities considered in this FIP proposed rule. Minnesota Power-Boswell Energy Center is located in northern Minnesota and west of the area encompassing the Minnesota taconite facilities considered in this FIP proposed rule. All three of these source facilities addressed by the MPCA would have both NO_X emission reductions and SO_2 emission reductions

under MPCA's-determined BART emission controls.

We have used the State's modeled BART emission reductions and visibility impacts for fine particulates to determine the sensitivity of visibility parameters for the Class I areas to changes in NO_X and SO_2 emissions. The modeled emission changes, Δdv, and ΔDays values used to calculate the sensitivity of visibility parameters to emission changes were taken from Appendix 9.5 of Minnesota's December 2009 SIP revision submittal.

Table V–C.6 presents the modeled emission reductions and derived visibility impact ratios for Minnesota Power-Boswell Energy Center at each of the Class I areas.

TABLE V–C.6—BART NO_X AND SO_2 EMISSION REDUCTIONS AND MODELED VISIBILITY IMPACT/EMISSION REDUCTION RATIOS FOR FINE PARTICULATES AT CLASS I AREAS FOR MINNESOTA POWER-BOSWELL ENERGY CENTER

Parameter	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Decrease (ΔNO_X)	3,978 tons/year		
SO_2 Emissions Decrease (ΔSO_2)	11,952 tons/year		
$\Delta dv_{PM2.5}$	−2.1	−2.0	−0.9
$\Delta dv_{PM2.5}/\Delta NO_X$	−0.00053	−0.00050	−0.00023
$\Delta dv_{PM2.5}/\Delta SO_2$	−0.00018	−0.00017	−0.000075
$\Delta Days_{PM2.5}$	−30	−21	−15
$\Delta Days_{PM2.5}/\Delta NO_X$	−0.0075	−0.0053	−0.0038
$\Delta Days_{PM2.5}/\Delta SO_2$	−0.0025	−0.0018	−0.0013

Table V–C.7 presents the modeled emission reductions and derived visibility impact ratios for fine particulates for Minnesota Power-Taconite Harbor at each of the Class I areas.

TABLE V–C.7—BART NO_X AND SO_2 EMISSION REDUCTIONS AND MODELED VISIBILITY IMPACT/EMISSION REDUCTION RATIOS FOR FINE PARTICULATES AT CLASS I AREAS FOR MINNESOTA POWER-TACONITE HARBOR

Parameter	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Decrease (ΔNO_X)	399 tons/year		
SO_2 Emissions Decrease (ΔSO_2)	566 tons/year		
$\Delta dv_{PM2.5}$	−0.4	−0.1	−0.3
$\Delta dv_{PM2.5}/\Delta NO_X$	−0.0010	−0.00025	−0.00075
$\Delta dv_{PM2.5}/\Delta SO_2$	−0.00071	−0.00018	−0.00053
$\Delta Days_{PM2.5}$	−4	−2	−3
$\Delta Days_{PM2.5}/\Delta NO_X$	−0.010	−0.0050	−0.0075
$\Delta Days_{PM2.5}/\Delta SO_2$	−0.0071	−0.0035	−0.0053

Table V–C.8 presents the modeled emission reductions and derived visibility impact ratios for fine particulates for Northshore Mining-Silver Bay at each of the Class I areas.

TABLE V–C.8. BART NO_X AND SO_2 EMISSION REDUCTIONS AND MODELED VISIBILITY IMPACT/EMISSION REDUCTION RATIOS FOR FINE PARTICULATES AT CLASS I AREAS FOR NORTHSHORE MINING-SILVER BAY

Parameter	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Decrease (ΔNO_X)	678 tons/year		
SO_2 Emissions Decrease (ΔSO_2)	444 tons/year		
$\Delta dv_{PM2.5}$	−0.2	−0.1	−0.2
$\Delta dv_{PM2.5}/\Delta NO_X$	−0.00029	−0.00023	−0.00029
$\Delta dv_{PM2.5}/\Delta SO_2$	−0.00045	−0.00023	−0.00045
$\Delta Days_{PM2.5}$	−5	−1	−3
$\Delta Days_{PM2.5}/\Delta NO_X$	−0.0074	−0.0015	−0.0044
$\Delta Days_{PM2.5}/\Delta SO_2$	−0.011	−0.0023	−0.0068

The above visibility factor/emission change ratio data show significant variation from source-to-source and between impacted Class I areas. This variation is caused by differences in the relative locations of the sources (relative to the locations of the Class I areas), variations in background sources, variations in transport patterns on high haze factors, and other factors that we cannot assess without detailed modeling of the visibility impacts for the sources as a function of pollutant emission type. The above data, however, can be used to approximate possible visibility

impacts due to the production of fine particulates downwind of the taconite facilities addressed in this FIP proposed rule. To estimate the visibility impacts, we have averaged the fine particulate Δdv and ΔDays emission change ratios for NO_X and SO_2 for the four sources documented in Tables V–C.5 through V–C.8 above for each of the Class I areas. These averaged visibility factor/emission change ratios are summarized in Table V–C.9.

TABLE V–C.9—AVERAGED VISIBILITY IMPACT/EMISSION CHANGE RATIOS FOR ANALYZED/IMPACTED CLASS I AREAS

Parameter ratio	Boundary Waters	Voyageurs	Isle Royale
$\Delta dv_{PM2.5}/\Delta NO_X$	−0.00061	−0.00033	−0.00040
$\Delta dv_{PM2.5}/\Delta SO_2$	−0.00050	−0.00025	−0.00029
$\Delta Days/\Delta NO_X$	−0.0083	−0.004	−0.005
$\Delta Days/\Delta SO_2$	−0.0067	−0.0030	−0.0033

To calculate the visibility impacts for the Minnesota source facilities covered by this FIP proposed rule, we multiplied the total estimated BART NO_X and SO_2 emission reductions for each subject facility by the appropriate visibility factor/emission change ratios in Table V–C.9 and combined the results to estimate the total visibility impacts that would result from the reduction of $PM_{2.5}$ concentrations. The estimated visibility factor changes by Class I area for each of the subject taconite facilities in Minnesota are given in Tables V–C.10 through V–C.15.

TABLE V–C.10—ESTIMATED EMISSION REDUCTIONS AND RESULTING CHANGES IN VISIBILITY FACTORS FOR ARCELORMITTAL

Visibility factor or pollutant emissions reduction	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Reduction	2,859 tons/year		
Δdv	−1.7	−0.9	−1.1
ΔDays > 0.5 dv	−24	−11	−18

TABLE V–C.11—ESTIMATED EMISSION REDUCTIONS AND RESULTING CHANGES IN VISIBILITY FACTORS FOR HIBBING TACONITE

Visibility factor or pollutant emissions reduction	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Reduction	5,259 tons/year		
Δdv	−3.2	−1.7	−2.1
ΔDays > 0.5 dv	−44	−21	−26

TABLE V–C.12—ESTIMATED EMISSION REDUCTIONS AND RESULTING CHANGES IN VISIBILITY FACTORS FOR NORTHSHORE MINING

Visibility factor or pollutant emissions reduction	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Reduction	926 tons/year		
Δdv	−0.6	−0.3	−0.4
ΔDays > 0.5 dv	−8	−4	−5

TABLE V–C.13—ESTIMATED EMISSION REDUCTIONS AND RESULTING CHANGES IN VISIBILITY FACTORS FOR UNITED TACONITE

Visibility factor or pollutant emissions reduction	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Reduction	3,208 tons/year		
SO_2 Emissions Reduction	3,639 tons/year		
Δdv	−1.9	−0.99	−1.16
ΔDays > 0.5 dv	−29	−12	−14

TABLE V–C.14—ESTIMATED EMISSION REDUCTIONS AND RESULTING CHANGES IN VISIBILITY FACTORS FOR U.S. STEEL-KEETAC

Visibility factor or pollutant emissions reduction	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Reduction	2,908 tons/year		
Δdv	−1.8	−1.0	−1.2
ΔDays > 0.5 dv	−28	−12	−15

TABLE V–C.15—ESTIMATED EMISSION REDUCTIONS AND RESULTING CHANGES IN VISIBILITY FACTORS FOR U.S. STEEL-MINNTAC

Visibility factor or pollutant emissions reduction	Boundary Waters	Voyageur	Isle Royale
NO_X Emissions Reduction	6,077 tons/year		
SO_2 Emissions Reduction	980 tons/year		
Δdv	−3.3	−1.7	−2.1
ΔDays > 0.5 dv	−45	−21	−26

From Tables V–C.10 through V–C.15, it can be seen that the BART emission controls determined for the Minnesota taconite facilities have the potential to produce significant improvements in visibility at all three Class I areas.

The State of Michigan has provided some emissions, air quality, and visibility modeling data for Tilden that may be used to provide an estimate of the visibility impact for the implementation of BART emission controls at Tilden. The Michigan SIP submittal for regional haze, dated October 2010, does include BART assessment data for Tilden, and Tilden NO_X and SO_2 emissions have been modeled, along with the emissions for many other source facilities to derive visibility impacts at two Class I areas, Isle Royale National Park and Seney National Wildlife Refuge (Seney). Maximum visibility impacts have been determined for each modeled source facility at the two Class I areas. To model the visibility impacts, air quality impacts were estimated for each pollutant emitted using the CALPUFF model for 2000–2004 emissions. The modeled air quality impacts were entered through the IMPROVE visible extinction equation to calculate the visual extinction coefficient for each modeled facility. The facility-specific visual extinction coefficients were used to calculate the facility-specific visibility impact in deciviews. The modeling results for Tilden are discussed in Appendices 9H: ''Tilden Mining Company BART Technical Analysis,'' 10E: ''Calpuff Modeling, Q/D And Visibility For Seney,'' and 10D: ''Calpuff Modeling, Q/D And Visibility For Isle Royale'' for Michigan's October 2010 haze SIP submittal.

The visibility modeling for Tilden shows that it contributed 0.674 deciviews, with 41 days exceeding 0.5 deciviews from 2002–2004, at Isle Royale National Park. Over 96 percent of the modeled SO_2 and NO_X emissions from Tilden were from its indurating furnace. Michigan's post control modeling scenario no. 3 reflects both 80 percent NO_X and SO_2 emission reductions, which are similar to the controls being proposed as BART and these reductions result in a 0.501 deciview improvement at IRNP. The visibility impact resulting from 70 percent reduction for both SO_2 and NO_X can be approximated by taking 7/8 of 0.501, which results in an improvement of 0.438 deciviews.

In conclusion, the available information indicates that control of emissions from taconite plants in Minnesota and Michigan can be expected to yield significant benefits in reducing visibility impairment in the Class I areas in the two states. Extrapolating from modeling results provided by the two states, the impacts of candidate control options range from about 0.5 deciviews to 3.3 deciviews, with between about 10 and about 130 fewer days over three years with impacts above 0.5 deciviews. While these estimates are not based on direct modeling of the scenarios of interest, the scenarios being addressed here are sufficiently similar to the scenarios addressed in state modeling that EPA considers these estimates to provide adequate indication of the benefits of these controls. Each BART determination is a function of consideration of visibility improvements and other factors for the individual unit, but in general EPA's assessment of visibility impacts finds that technically feasible controls that are available at a reasonable cost for taconite plants can be expected to provide a visibility benefit that makes those controls warranted.

D. Testing and Monitoring, Recordkeeping, and Reporting Requirements.

To ensure compliance with the proposed BART limits, EPA has proposed testing and monitoring requirements for the taconite plants subject to this rule. The proposed FIP also includes recordkeeping and reporting requirements for these sources.

VI. Proposed Action

We are proposing to approve the following NO_X and SO_2 BART limits for the taconite plants in Minnesota and Michigan that are subject to BART.

U.S. Steel Minntac

NO_X—A limit of 1.2 lbs/MMBtu on a 30-day rolling average for all lines to be achieved as follows: 1 Year after the effective date of this rule for line 6, 2 years after the effective date for Line 7, 3 years after the effective date for Line 4, 4 years after the effective date for Line 5, and 4 years and 11 months after the effective date for Line 3.

SO_2—71.3 lbs SO_2/hr for Line 3, 56.1 lbs SO_2/hr for Line 4, 67.9 lbs SO_2/hr for Line 5, 64.5 lbs SO_2/hr for Line 6, and 67.1 lbs SO_2/hr for Line 7. Compliance is to be achieved with these limits within three months after the effective date of this rule. These limits are measured on a 30-day rolling average.

Northshore Mining

NO_X—A limit of 1.2 lbs/MMBtu on a 30-day rolling average for all lines to be

achieved as follows: 1 Year and 6 months after the effective date for Line 11 and 2 years and 6 months after the effective date for Line 12. An emission limit of 0.085 lb/hr as a 30-day rolling average shall apply to each of the boilers, Process Boiler #1 and Process Boiler #2, beginning no later than 5 years from the effective date of this rule. The process boiler limits shall apply at all times a unit is operating.

SO_2—A limit of 16.3 lbs SO_2/hr for Furnace 11 and 17.1 lbs SO_2/hr for Furnace 12, measured on a 30-day rolling average. These limits do not apply when the subject emissions unit is burning fuel oil. An 80.0 percent SO_2 reduction requirement is also required for the stacks serving Furnaces 11 and 12. Compliance is to be achieved with these limits within 6 months after the effective date of this rule.

United Taconite

NO_X—A limit of 1.2 lbs/MMBtu on a 30-day rolling average for all lines to be achieved as follows: 1 Year and 6 months after the effective date of this rule for Line 2 and 2 years and 6 months after the effective date for Line 1.

SO_2—A limit of 5 ppmv, on a 30-day rolling average, to be achieved within 2 years after the effective date of this rule for Line 2 and 4 years after the effective date of this rule for Line 1. As an alternative, the owner or operator may meet a 95 percent SO_2 removal efficiency limit, on a 30-day rolling average, for Line 1, Line 2, or both lines instead of complying with the 5 ppmv limit. The owner or operator shall comply with the limit within 2 years after the effective date of this rule for Line 2 and within 4 years after the effective date of this rule for Line 1.

ArcelorMittal

NO_X—A limit of 1.2 lbs/MMBtu on a 30-day rolling average to be achieved within 1 year and 6 months after the effective date of this rule for its indurating furnace.

SO_2—23.0 lbs SO_2/hr, on a 30-day rolling average, for its indurating furnace. This limit does not apply when the subject source is burning fuel oil. Compliance is to be achieved with this limit within three months after the effective date of this rule.

Hibbing Taconite

NO_X—A limit of 1.2 lbs/MMBtu on a 30-day rolling average for all lines to be achieved as follows: 1 Year and 6 months after the effective date for Line 1, 2 years and 6 months after the effective date for Line 3, and 3 years and 6 months for Line 2.

SO_2—A limit of 56.0 lbs SO_2/hr for Line 1, 63.0 lbs SO_2/hr for Line 2, and 64.0 lbs/hr for Line 3, measured on a 30-day rolling average. These limits do not apply when the subject source is burning fuel oil. Compliance is to be achieved with these limits within 3 months after the effective date of this rule.

U.S. Steel Keewatin

NO_X—A limit of 1.2 lbs/MMBtu on a 30-day rolling average to be achieved within 1 year and 6 months after the effective date of this rule for its Phase II furnace.

SO_2—Keetac's existing recirculating lime scrubber satisfies BART. This scrubber is subject to a 57 percent SO_2 removal efficiency and a limit, based on CEMS data, of 225 lbs SO_2 per hour on a 30-day rolling average. This scrubber is also required to operate at or above a pH of 7.5. Compliance is to be achieved with these limits within 90 days after the effective date of this rule.

Tilden

NO_X—A limit of 1.2 lbs/MMBtu on a 30-day rolling average to be achieved within 1 year and 6 months after the effective date of this rule for its Line 1.

SO_2—A limit of 5 ppmv, on a 30-day rolling average, to be achieved within 2 years after the effective date of this rule for Line 1. As an alternative, the owner or operator may meet a 95 percent SO_2 removal efficiency limit, on a 30-day rolling average, for Line 1 instead of complying with the 5 ppmv limit. The owner or operator shall comply with the limit within 2 years after the effective date of this rule. An emission limit of 1.20 percent sulfur content by weight shall apply to fuel combusted in Process Boiler #1 (EUBOILER1) and Process Boiler #2 (EUBOILER2) beginning 3 months from the effective date of this rule. An emission limit of 1.50 percent sulfur content by weight shall apply to fuel combusted in the Line 1 Dryer (EUDRYER1) beginning 3 months from the effective date of this rule.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). As discussed in detail in section C below, the proposed FIP applies to only six sources. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * * .'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just six facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed 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 this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. EPA's proposal adds additional controls to certain sources. The Regional Haze FIP that EPA is proposing for purposes of the regional haze program consists of imposing Federal control requirements to meet the BART requirement for NO_X and SO_2 emissions on specific units at six sources in Minnesota and one in Michigan. The net result of the FIP action is that EPA is proposing emission controls on the indurating furnaces at seven taconite facilities and none of these sources are owned by small entities, and therefore are not small entities.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any one year. In addition, this proposed rule does not contain a significant federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

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 addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. However, EPA did discuss this action in a June 28 conference call with the Michigan and Minnesota Tribes.

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

Executive Order 13045: *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 we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 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 implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of NO_X, SO_2, and PM, the rule will have a beneficial effect on children's health by reducing air pollution.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22,

2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (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.

The 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. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 13, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52, as proposed to be amended at 77 FR 46912, August 6, 2012, is proposed to be 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 52.1183 is amended by adding paragraphs (j), (k), (l), (m), and (n) to read as follows:

§ 52.1183 Visibility protection.

* * *

(j) The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by the state on November 5, 2010, does not meet the requirements of 40 CFR 51.308(e) with respect to NO_X and SO_2 emissions from Tilden Mining Company L.C. of Ishpeming, Michigan. The requirements for this facility are satisfied by complying with § 52.1183(k–n).

(k)(1) NO_X Emission Limits. An emission limit of 1.20 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the indurating furnace, Grate Kiln Line 1 (EUKILN1), beginning 1 year and 6 months from the effective date of this rule.

(2) SO_2 Emission Limits. A fuel sulfur content limit of no greater than 1.20 percent sulfur content by weight shall apply to fuel combusted in Process Boiler #1 (EUBOILER1) and Process Boiler #2 (EUBOILER2) beginning 3 months from the effective date of this rule. A fuel sulfur content limit of no greater than 1.50 percent sulfur content by weight shall apply to fuel combusted in the Line 1 Dryer (EUDRYER1) beginning 3 months from the effective date of this rule.

(3) The owner or operator of the facility must comply with either (3)(i) or (3)(ii) for the Grate Kiln Line 1 (EUKILN1) beginning 2 years from the effective date of this rule. The selection must be identified in the initial notification of compliance required by this rule.

(i) An emission limit of 5 ppmv SO_2 at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Grate Kiln Line 1 (EUKILN1).

(ii) A 95.0 percent or greater SO_2 removal efficiency by the wet/dry FGD, based on a 30-day rolling average, shall apply to the Grate Kiln Line 1 (EUKILN1).

(l) Testing and Monitoring.

(1) No later than the compliance date of this regulation, the owner or operator shall install, certify, calibrate, maintain and operate a Continuous Emissions Monitoring System (CEMS) for NO_X on Tilden Mining Company unit EUKILN1 in accordance with 40 CFR63.8, and Appendices B and F of Part 60. The owner or operator shall install, certify, calibrate, maintain and operate a continuous diluent monitor (O_2 or CO_2) and continuous flow rate monitor on Tilden Mining Company unit EUKILN1 to allow conversion of the NO_X concentration to units of the standard (lbs/MMBtu). Compliance with the emission limits for NO_X shall be determined using data from the CEMS corrected to 7 percent oxygen.

(2) No later than the compliance date of this regulation, the owner or operator shall install, certify, calibrate, maintain and operate one or more CEMS for SO_2 on Tilden Mining Company unit EUKILN1 in accordance with 40 CFR 63.8, and Appendices B and F of Part 60. The owner or operator shall install, certify, calibrate, maintain and operate one or more continuous diluent monitor(s) (O_2 or CO_2) and continuous flow rate monitor(s) on Tilden Mining Company unit EUKILN1 to allow conversion of the SO_2 concentration to units of the standard (ppmv). The number of monitors is dependent on the emission standard selected (5 ppmv or a minimum of 95 percent removal efficiency). Compliance with the emission standard selected for SO_2 shall be determined using data from the CEMS corrected to 7 percent oxygen.

(3) Except for CEMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero and high-level drift adjustments, all CEMS required by this rule shall be in continuous operation and meet minimum frequency of operation requirements at (l)(3)(i–viii) during all periods of process operation of the indurating furnaces, including periods of process unit startup, shutdown, and malfunction.

(i) Continuous monitoring systems for measuring the pollutant, NO_X or SO_2, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(ii) Hourly averages shall be computed using at least one data point in each fifteen-minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events.

(iii) When valid pollutant emission data in pounds per hour or pounds per million BTU are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA, and incorporated into the monitoring plan, to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive unit operating days.

(iv) Data substitution must not be used for purposes of determining compliance under this regulation.

(v) All CEMS (and emission testing) data shall be reduced and reported in units of the applicable standard.

(vi) A Quality Control Program Plan must be developed and implemented for all CEMS required by this rule. The plan will include, at a minimum, the information described at 40 CFR 63.8(d), including calibration checks, calibration drift adjustments, preventative maintenance, data collection, recording and reporting, accuracy audits/procedures, periodic performance evaluations, and a corrective action program for CEMS problems and excess emission events.

(vii) The owner or operator must develop and implement a written startup, shutdown, and malfunction plan for NO_X and SO_2 according to the provisions in § 63.6(e)(3).

(viii) Performance evaluation of continuous monitoring systems. When required by a relevant standard the owner or operator of an affected source being monitored with continuous emission monitoring equipment shall conduct a performance evaluation of the CEMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in 40 CFR 63.8(e) and incorporated into the Quality Control Program Plan.

(4) No later than the compliance date of this regulation, the owner or operator of EUKILN1 shall conduct initial performance testing for NO_X and SO_2, in accordance with the requirements of 40 CFR 63.7 and Appendix A of Part 60 to determine compliance with applicable emission limits/standards. Specific testing shall be described in the intent to test form submitted in accordance with the rule. The general reference methods to be used for initial testing will include: Methods 1–4, 6–6C, and 7–7E. Performance testing for demonstrating compliance with NO_X and SO_2 emission limits (if the 5 ppmv emission standard is selected) shall include testing emissions after exiting the control device. Performance testing for demonstrating compliance with the SO_2 removal efficiency standard shall include measurement of SO_2 concentrations at the inlet to the control device and in the duct/stack after emissions exit the control device.

(m) Recordkeeping Requirements

(1)(i) Records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(ii) As specified in § 63.10(b)(1), records must be kept for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(iii) Records must be kept on site for at least 2 years after the date of each occurrence, measurement, maintenance, report, or record according to § 63.10(b)(1). Records may be kept offsite for the remaining 3 years.

(2) Records listed in paragraphs (2)(i) through (iv) of this section must be kept for a period of five years.

(i) A copy of each notification and report submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status submitted, according to the requirements in 40 CFR 63.10(b)(2)(xiv).

(ii) The records in 40 CFR 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(iii) Records of performance tests and performance evaluations as required in 40 CFR 63.10(b)(2)(viii).

(iv) Records of all major maintenance conducted on emission units, pollution control equipment, and CEMS.

(3) For each CEMS, the records specified in paragraphs (3)(i) through (vii) of this section must be kept.

(i) Records described in 40 CFR 63.10(b)(2)(vi) through (xi).

(ii) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(iii) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(iv) All CEMS data including the date, place, and time of sampling or measurement, parameters sampled or measured, and results.

(v) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix B, Performance Specification 2, Procedure 1 or 40 CFR part 75.

(vi) All records required by 40 CFR part 60, appendix F, Procedure 1 or 40 CFR part 75.

(vii) Records of the NO_X emissions in the units of the standard. The owner or operator shall convert the monitored data into the appropriate unit of the emission limitation using an appropriate conversion factors and F-factors. F-factors used for purposes of this rule shall be documented in the monitoring plan and developed in accordance with 40 CFR part 60, appendix A, Method 19. The owner or operator may use an alternate method to calculate the NO_X emissions upon written approval from EPA.

(n) Reporting Requirements

(1) Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Region 5 (E–19J), at 77 West Jackson Boulevard, Chicago, Illinois 60604.

(2)(i) If the owner or operator is required to conduct a performance test, a notification of intent to conduct a performance test must be submitted at least 60 calendar days before the performance test is scheduled to begin, as required in 40 CFR 63.7(b)(1).

(ii) If the owner or operator is required to conduct a performance test or other initial compliance demonstration, a notification of compliance status must be submitted according to 40 CFR 63.9(h)(2)(ii). The initial notification of compliance status must be submitted by the dates specified in paragraphs (2)(ii)(A) through (B) of this section.

(A) For each initial compliance demonstration that does not include a performance test, notification of compliance status must be submitted before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(B) For each initial compliance demonstration that does include a performance test, notification of compliance status, including the performance test results, must be submitted before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(3) The recordkeeping requirements for CEMS performance testing are found in 40 CFR 60.7(c) and (d). All emission data shall be reported in the units of the standard.

(4) The recordkeeping requirements for non-continuous performance testing are found in 40 CFR 60.7(b). The owner or operator shall submit a written report of the results from all required non-CEMS performance tests to EPA within

90 calendar days of the completion of the performance test.

(5) Compliance Reports. Unless the Administrator has approved a different schedule, a semiannual compliance report must be submitted, according to the paragraphs (5)(i) through (iv) of this section.

(i) The first compliance report must cover the beginning period on the compliance date that is specified for the affected source and ended on June 30 or December 31, whichever date comes first after the compliance date that is specified for the affected source.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever comes first after the first compliance report is due.

(iii) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(6) Compliance report contents. Each compliance report must include the information in paragraphs (6)(i) through (iii) of this section and, as applicable, in paragraphs (6)(iv) through (viii) of this section.

(i) Company name and address.

(ii) Statement by a responsible official, with the official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) If the source had a startup, shutdown, or malfunction during the reporting period and the owner or operator took actions consistent with the source's startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(v) If there were no deviations from the continuous NO_X and SO_2 compliance requirements that apply to the affected source, then a statement that there were no deviations from the emission limitations during the reporting period must be provided.

(vi) If there were no periods during which a continuous monitoring system was out-of-control as specified in § 63.8(c)(7), then a statement that there were no periods during which a continuous monitoring system was out-of-control during the reporting period must be provided.

(vii) For each deviation from a NO_X and SO_2 emission limitation occurring at an affected source where a continuous monitoring system is being used to comply with the emission limitation in this subpart, the information in paragraphs (6)(i) through (iv) of this section and the information in paragraphs (6)(vii)(A) through (K) of this section must be included. This includes periods of startup, shutdown, and malfunction.

(A) The date and time that each malfunction started and stopped.

(B) The date and time that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(C) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(E) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(H) A brief description of the process units.

(I) A brief description of the continuous monitoring system.

(J) The date of the latest continuous monitoring system certification or audit.

(K) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(7) Immediate startup, shutdown, and malfunction report. If the affected source had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with the startup, shutdown, and malfunction plan, an immediate startup, shutdown, and malfunction report must be submitted according to the requirements in § 63.10(d)(5)(ii).

(8) Notification of performance evaluation. (i) The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b) or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

(ii)(A) Submission of site-specific performance evaluation test plan. Before conducting a required CEMS performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(B) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CEMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(C) The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator (if requested) at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested).

(D) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(E) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(*1*) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(*2*) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in paragraph (5)(iv) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.

(F) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall—

(*1*) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(*2*) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(iii) Conduct of performance evaluation and performance evaluation dates. The owner or operator of an affected source shall conduct a performance evaluation of a required CEMS during any performance test required under § 63.7 in accordance with the applicable performance specification as specified in the relevant standard. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 180 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(iv) Reporting performance evaluation results. The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7 or within 60 days of completion of the performance evaluation if no test is required, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

3. Section 52.1235 is amended by adding paragraphs (a), (b), (c), (d) and (e) to read as follows:

§ 52.1235 Regional Haze.

(a) The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by the state on December 30, 2009, and on May 8, 2012, does not meet the requirements of 40 CFR 51.308(e) with respect to NO_X and SO_2 emissions from United States Steel Corporation, Keetac of Keewatin, Minnesota; Hibbing Taconite Company of Hibbing, Minnesota; United States Steel Corporation, Minntac of Mountain Iron, Minnesota; United Taconite, LLC of Forbes, Minnesota; ArcelorMittal Minorca Mine, Inc. near Virginia, Minnesota; and Northshore Mining Company—Silver Bay of Silver Bay, Minnesota. The requirements for these facilities are satisfied by complying with the requirements of § 52.1235.

(b)(1) NO_X Emission Limits.

(i) United States Steel Corporation, Keetac: An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Grate Kiln pelletizing furnace (EU030), beginning 1 year and 6 months from the effective date of this rule.

(ii) Hibbing Taconite Company: An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Line 1 pelletizing furnace (EU020) beginning 1 year and 6 months from the effective date of this rule. An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Line 2 pelletizing furnace (EU021) beginning 3 years and 6 months from the effective date of this rule. An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Line 3 pelletizing furnace (EU022) beginning 2 years and 6 months from the effective date of this rule.

(iii) United States Steel Corporation, Minntac: An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to each of the five indurating furnaces (EU225, EU261, EU282, EU315, and EU334). The owner or operator shall comply with this NO_X emission limits beginning 4 years and 11 months from the effective date of this rule for the Line 3 indurating furnace (EU225), beginning 3 years from the effective date of this rule for the Line 4 indurating furnace (EU261), beginning 4 years from the effective date of this rule for the Line 5 indurating furnace (EU282), beginning 1 year from the effective date of this rule for the Line 6 indurating furnace (EU315), and beginning 2 years from the effective date of this rule for the Line 7 indurating furnace (EU334).

(iv) United Taconite: An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Line 1 pellet furnace (EU040) beginning 2 years and 6 months from the effective date of this rule. An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Line 2 pellet furnace (EU046) beginning 1 year and 6 months from the effective date of this rule.

(v) ArcelorMittal Minorca Mine: An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to the indurating furnace (EU026) beginning 1 year and 6 months from the effective date of this rule.

(vi) Northshore Mining Company—Silver Bay: An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to Furnace 11 (EU100/EU104) beginning 1 year and 6 months from the effective date of this rule. An emission limit of 1.2 lb NO_X/MMBtu at 7 percent oxygen, based on a 30-day rolling average, shall apply to Furnace 12 (EU110/114) beginning 2 years and 6 months from the effective date of this rule. An emission limit of 0.085 lb/hr at 7 percent oxygen, based on a 30-day rolling average, shall apply to Process Boiler #1 (EU003) and Process Boiler #2 (EU004) beginning 5 years from the effective date of this rule. The 0.085 lb/hr emission limit for each process boiler applies at all times a unit is operating, including periods of start-up, shut-down and malfunction.

(2) SO_2 Emission Limits.

(i) United States Steel Corporation, Keetac: An emission limit of 225 lb SO_2/hr at 7 percent oxygen, based on a 30-day rolling average, shall apply to the Grate Kiln pelletizing furnace (EU030). The owner or operator shall also operate its wet scrubber for EU030 to achieve a minimum SO_2 control efficiency of 57.0 percent and to achieve a hydrogen ion concentration (pH) in the scrubber liquid at or above 7.5. Compliance with all SO_2 emission limits, control efficiency and pH standards for EU030 is required beginning 90 days from the effective date of this rule.

(ii) Hibbing Taconite Company: Emission limits of 56.0 lb SO_2/hr at 7 percent oxygen shall apply to Line 1 (EU020), 63.0 lb SO_2/hr at 7 percent oxygen shall apply to Line 2 (EU021), and 64.0 lb SO_2/hr at 7 percent oxygen shall apply to Line 3 (EU022). The SO_2 emission limits for these three pelletizing furnaces are based on a 30-day rolling average and do not apply when a unit is combusting fuel oil. Compliance with the emission limits is required beginning 3 months from the effective date of this rule.

(iii) United States Steel Corporation, Minntac: The emission limits for the five indurating furnaces are 71.3 lb SO_2/hr at 7 percent oxygen for Line 3 (EU225), 56.1 lb SO_2/hr at 7 percent oxygen for Line 4 (EU261), 67.9 lb SO_2/hr at 7 percent oxygen for Line 5 (EU282), 64.5 lb SO_2/hr at 7 percent oxygen for Line 6 (EU315), and 67.1 lb SO_2/hr at 7 percent oxygen for Line 7 (EU334). The SO_2 emission limits are based on a 30-day rolling average and apply to each of the five indurating furnaces, beginning 3 months from the effective date of this rule.

(iv) United Taconite: An emission limit of 5 ppmv SO_2 at 7 percent oxygen shall apply to the Line 1 pellet furnace (EU040) beginning 4 years from the effective date of this rule. As an alternate, the owner or operator may select to comply with a 95.0 percent or greater SO_2 removal efficiency, based on a 30-day rolling average, on the control device for the Line 1 pellet furnace (EU040) beginning 4 years from the effective date of this rule. An emission limit of 5 ppmv SO_2 at 7 percent oxygen shall apply to the Line 2 pellet furnace (EU042) beginning 2 years from the effective date of this rule. As an alternate, the owner or operator may select to comply with a 95.0 percent or greater SO_2 removal efficiency, based on a 30-day rolling average, on the control device for the Line 2 pellet furnace (EU042) beginning 2 years from the effective date of this rule.

(v) ArcelorMittal Minorca Mine: An emission limit of 23.0 lb SO_2/hr at 7 percent oxygen, based on a 30-day rolling average, shall apply to the indurating furnace (EU026) beginning 3 months from the effective date of this rule. This limit shall not apply when the unit is combusting fuel oil.

(vi) Northshore Mining Company—Silver Bay: An emission limit of 16.3 lb SO_2/hr at 7 percent oxygen, based on a 30-day rolling average, shall apply to Furnace 11 (EU100/EU104). An emission limit of 17.1 lb SO_2/hr at 7 percent oxygen, based on a 30-day rolling average, shall apply to Furnace 12 (EU110/EU114). The owner or operator shall also operate its control device for EU100/EU104 and EU110/EU114 to achieve a minimum SO_2 control efficiency of 80.0 percent. The owner or operator shall comply with the SO_2 emission limits/standards beginning 6 months from the effective date of this rule. These limits shall not apply when the subject unit is combusting fuel oil.

(c) Testing and Monitoring.

(1) No later than the compliance date of this regulation, the owner or operator of the respective facility shall install, certify, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for NO_X on United States Steel Corporation, Keetac unit EU030; Hibbing Taconite Company units EU020, EU021, and EU022; United States Steel Corporation, Minntac units EU225, EU261, EU282, EU315, and EU334; United Taconite units EU040 and EU042; ArcelorMittal Minorca Mine unit EU026; and Northshore Mining Company—Silver Bay units Furnace 11 (EU100/EU104) and Furnace 12 (EU110/EU114). All NO_X CEMS must be installed, certified, calibrated, maintained and operated in accordance with 40 CFR 63.8, and Appendices B and F of Part 60. The owner or operator shall install, certify, calibrate, maintain and operate a continuous diluent monitor (O_2 or CO_2) and continuous flow rate monitor on each unit identified by this rule to allow conversion of the NO_X concentration to units of the standard (lbs/MMBtu). Compliance with the emission limits for NO_X shall be determined using data from the CEMS corrected to 7 percent oxygen.

(2) No later than the compliance date of this regulation, the owner or operator shall install, certify, calibrate, maintain and operate one or more CEMS for SO_2 on United States Steel Corporation, Keetac unit EU030; Hibbing Taconite Company units EU020, EU021, and EU022; United States Steel Corporation, Minntac units EU225, EU261, EU282, EU315, and EU334; United Taconite units EU040 and EU042; ArcelorMittal Minorca Mine unit EU026; and Northshore Mining Company—Silver Bay units Furnace 11 (EU100/EU104) and Furnace 12 (EU110/EU114). All SO_2 CEMS must be installed, certified, calibrated, maintained and operated in accordance with 40 CFR 63.8, and Appendices B and F of Part 60. The owner or operator shall install, certify, calibrate, maintain and operate a continuous diluent monitor (O_2 or CO_2) and continuous flow rate monitor on each unit identified by this rule to allow conversion of the SO_2 concentration to units of the standard (lb/hr, ppmv or a minimum of 95 percent removal efficiency). The number of monitors is dependent on the emission standard selected for purposes of demonstrating compliance. Compliance with the emission standard selected for SO_2 shall be determined using data from the CEMS corrected to 7 percent oxygen.

(3) Except for CEMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero and high-level drift adjustments, all CEMS required by this rule shall be in continuous operation and meet minimum frequency of operation requirements at (c)(3)(i–viii) during all periods of process unit operation, including periods of process unit startup, shutdown, and malfunction.

(i) Continuous monitoring systems for measuring the pollutant, NO_X or SO_2, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(ii) Hourly averages shall be computed using at least one data point in each fifteen-minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events.

(iii) When valid pollutant emission data in pounds per hour or pounds per million BTU are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA, and incorporated into the monitoring plan, to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive unit operating days.

(iv) Data substitution must not be used for purposes of determining compliance under this regulation.

(v) All CEMS (and emission testing) data shall be reduced and reported in units of the applicable standard.

(vi) A Quality Control Program Plan must be developed and implemented for all CEMS required by this rule. The plan will include, at a minimum, the information described at 40 CFR 63.8(d), including calibration checks, calibration drift adjustments, preventative maintenance, data collection, recording and reporting, accuracy audits/

procedures, periodic performance evaluations, and a corrective action program for CEMS problems and excess emission events.

(vii) The owner or operator must develop and implement a written startup, shutdown, and malfunction plan for NO_X and SO_2 according to the provisions in § 63.6(e)(3).

(viii) Performance evaluation of continuous monitoring systems. When required by a relevant standard the owner or operator of an affected source being monitored with continuous emission monitoring equipment shall conduct a performance evaluation of the CEMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in 40 CFR 63.8(e) and incorporated into Quality Control Program Plan.

(4) No later than the compliance date of this regulation, the owner or operator of each unit identified in this rule shall conduct initial performance testing for NO_X and SO_2, in accordance with the requirements of 40 CFR 63.7 and Appendix A of Part 60 to determine compliance with applicable emission limits/standards. Specific testing shall be described in the intent to test form submitted in accordance with the rule. The general reference methods to be used for initial testing will include: Methods 1–4, 6–6C, and 7–7E. Performance testing for demonstrating compliance with NO_X and SO_2 emission limits (lb/MMBtu, lb/hr, or ppmv) shall include testing emissions after exiting the control device. Performance testing for demonstrating compliance with the SO_2 removal efficiency standard shall include measuring SO_2 concentrations at the inlet to the control device and in the duct/stack after emissions exit the control device.

(5) No later than the compliance date of this regulation, owners or operators utilizing a wet scrubber to control SO_2 shall include in the performance testing an evaluation of compliance with the pH limits established by this rule. The pH evaluation shall be performed in accordance with the requirements of 40 CFR 163.3 using EPA Method 150.2.

(d) Recordkeeping Requirements.

(1)(i) Records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(ii) As specified in § 63.10(b)(1), records must be kept for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(iii) Records must be kept on site for at least 2 years after the date of each occurrence, measurement, maintenance, report, or record according to § 63.10(b)(1). Records may be kept offsite for the remaining 3 years.

(2) Records listed in paragraphs (2)(i) through (iv) of this section must be kept for a period of five years.

(i) A copy of each notification and report submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status submitted, according to the requirements in 40 CFR 63.10(b)(2)(xiv).

(ii) The records in 40 CFR 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(iii) Records of performance tests and performance evaluations as required in 40 CFR 63.10(b)(2)(viii).

(iv) Records of all major maintenance conducted on emission units, pollution control equipment, and CEMS.

(3) For each CEMS, the records specified in paragraphs (3)(i) through (vii) of this section must be kept.

(i) Records described in 40 CFR 63.10(b)(2)(vi) through (xi).

(ii) Previous (that is, superceded) versions of the performance evaluation plan as required in 63.8(d)(3).

(iii) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(iv) All CEMS data including the date, place, and time of sampling or measurement, parameters sampled or measured, and results.

(v) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix B, Performance Specification 2, Procedure 1 or 40 CFR part 75.

(vi) All records required by 40 CFR part 60, appendix F, Procedure 1 or 40 CFR part 75.

(vii) Records of the NO_X emissions in the units of the standard. The owner or operator shall convert the monitored data into the appropriate unit of the emission limitation using an appropriate conversion factor and F-factors. F-factors used for purposes of this rule shall be documented in the monitoring plan and developed in accordance with 40 CFR part 60, appendix A, Method 19. The owner or operator may use an alternate method to calculate the NO_X emissions upon written approval from EPA.

(e) Reporting Requirements.

(1) Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Region 5 (E–19J), at 77 West Jackson Boulevard, Chicago, Illinois 60604.

(2)(i) If the owner or operator is required to conduct a performance test, a notification of intent to conduct a performance test must be submitted at least 60 calendar days before the performance test is scheduled to begin, as required in 40 CFR 63.7(b)(1).

(ii) If the owner or operator is required to conduct a performance test or other initial compliance demonstration, a notification of compliance status must be submitted according to 40 CFR 63.9(h)(2)(ii). The initial notification of compliance status must be submitted by the dates specified in paragraphs (2)(ii)(A) through (B) of this section.

(A) For each initial compliance demonstration that does not include a performance test, notification of compliance status must be submitted before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(B) For each initial compliance demonstration that does include a performance test, notification of compliance status, including the performance test results, must be submitted before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(3) The recordkeeping requirements for CEMS performance testing are found in 40 CFR 60.7(c) and (d). All emission data shall be reported in the units of the standard.

(4) The recordkeeping requirements for non-continuous performance testing are found in 40 CFR 60.7(b). The owner or operator shall submit a written report of the results from all required non-CEMS performance tests to EPA within 90 calendar days of the completion of the performance test.

(5) Compliance Reports. Unless the Administrator has approved a different schedule, a semiannual compliance report must be submitted, according to the paragraphs (5)(i) through (iv) of this section.

(i) The first compliance report must cover the beginning period on the compliance date that is specified for the affected source and ended on June 30 or December 31, whichever date comes first after the compliance date that is specified for the affected source.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever comes

first after the first compliance report is due.

(iii) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(6) Compliance report contents. Each compliance report must include the information in paragraphs (6)(i) through (iii) of this section and, as applicable, in paragraphs (6)(iv) through (viii) of this section.

(i) Company name and address.

(ii) Statement by a responsible official, with the official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) If the source had a startup, shutdown, or malfunction during the reporting period and the owner or operator took actions consistent with the source's startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(v) If there were no deviations from the continuous NO_X and SO_2 compliance requirements that apply to the affected source, then a statement that there were no deviations from the emission limitations during the reporting period must be provided.

(vi) If there were no periods during which a continuous monitoring system was out-of-control as specified in § 63.8(c)(7), then a statement that there were no periods during which a continuous monitoring system was out-of-control during the reporting period must be provided.

(vii) For each deviation from a NO_X and SO_2 emission limitation occurring at an affected source where a continuous monitoring system is being used to comply with the emission limitation in this subpart, the information in paragraphs (6)(i) through (iv) of this section and the information in paragraphs (6)(vii)(A) through (K) of this section must be included. This includes periods of startup, shutdown, and malfunction.

(A) The date and time that each malfunction started and stopped.

(B) The date and time that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(C) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(E) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(H) A brief description of the process units.

(I) A brief description of the continuous monitoring system.

(J) The date of the latest continuous monitoring system certification or audit.

(K) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(7) Immediate startup, shutdown, and malfunction report. If the affected source had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with the startup, shutdown, and malfunction plan, an immediate startup, shutdown, and malfunction report must be submitted according to the requirements in § 63.10(d)(5)(ii).

(8) Notification of performance evaluation. (i) The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b) or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

(ii)(A) Submission of site-specific performance evaluation test plan. Before conducting a required CEMS performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(B) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CEMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(C) The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator (if requested) at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested).

(D) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(E) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(*1*) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(*2*) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in paragraph (5)(iv) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Administrator approves the use of the alternative method. Notwithstanding

the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.

(F) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall—

(*1*) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(*2*) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(iii) Conduct of performance evaluation and performance evaluation dates. The owner or operator of an affected source shall conduct a performance evaluation of a required CEMS during any performance test required under § 63.7 in accordance with the applicable performance specification as specified in the relevant standard. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 180 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(iv) Reporting performance evaluation results. The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7 or within 60 days of completion of the performance evaluation if no test is required, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

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H.R. 5872/P.L. 112–155

Sequestration Transparency Act of 2012 (Aug. 7, 2012; 126 Stat. 1210)

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