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FEDERAL REGISTER

Vol. 77 Thursday,
No. 207 October 25, 2012

Pages 65097–65250

OFFICE OF THE FEDERAL REGISTER

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

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Contents

Federal Register

Vol. 77, No. 207

Thursday, October 25, 2012

Agriculture Department
See Forest Service

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65191–65194

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65194–65195
Award of Four Single-Source Program Expansion Supplement Grants:
Tribal Early Learning Initiative, 65195–65196
Awards of Single-Source Program Expansion Supplement Grants:
Regents of the Board of the University of Michigan in Ann Arbor, MI, 65196–65197
Research Foundation of CUNY on behalf of Hunter College School of Social Work, New York, NY, 65197–65198
Tribal Law and Policy Institute in West Hollywood, CA, 65196
University of Oklahoma, Tulsa, OK, 65197

Civil Rights Commission
NOTICES
Meetings:
Illinois Advisory Committee, 65170

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Adjustment of Civil Monetary Penalties for Inflation, 65100–65103
NOTICES
Swap Data Repositories:
Interpretative Statement Regarding the Confidentiality and Indemnification Provisions of Section 21(d) of the Commodity Exchange Act, 65177–65182

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 65182

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65182–65185

Defense Department
NOTICES
Arms Sales, 65185–65187

Economic Development Administration
NOTICES
Petitions for Determinations of Eligibility to Apply for Trade Adjustment Assistance, 65170–65171

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approval and Promulgation of Implementation Plans:
Texas; Revisions to the New Source Review State Implementation Plan, etc., 65119–65125
Approvals and Promulgations of Implementation Plans:
Georgia; Infrastructure Requirements for 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards, 65125–65132
Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5):
Amendment to the Definition of ''Regulated NSR Pollutant'' Concerning Condensable Particulate Matter, 65107–65119
National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources; Stay, 65135–65136
Revisions to State Implementation Plans:
California; Mojave Desert Air Quality Management District, 65133–65135
PROPOSED RULES
Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes:
New Hampshire; Redesignation of the Southern New Hampshire 1997 8-hour Ozone Nonattainment Area, 65151–65164
Findings of Substantial Inadequacy of Implementation Plans:
Call for California State Implementation Plan Revision; South Coast, 65151
NOTICES
Meetings:
National Environmental Justice Advisory Council, 65189

Export-Import Bank
NOTICES
Meetings; Sunshine Act, 65189–65190

Farm Credit Administration
RULES
Board Policy Statements, 65098–65099

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Airbus Airplanes, 65146–65148
Embraer S.A. Airplanes, 65144–65146
Intertechnique Aircraft Systems, 65148–65150
Pratt and Whitney Canada Corp. Turboshaft Engines, 65142–65144

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 65190

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 65187–65188

Filings:
Western Area Power Administration, 65188–65189

Federal Reserve System
RULES
Reimbursement to Financial Institutions for Providing Financial Records:
Recordkeeping Requirements for Certain Financial Records, 65097–65098
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 65190
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 65190

Federal Trade Commission
RULES
Rules of Practice:
Correction, 65099–65100

Fish and Wildlife Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alaska Migratory Bird Subsistence Harvest Household Survey, 65201–65203
Bald Eagle Post-Delisting Monitoring, 65200–65201
Wolf–Livestock Demonstration Project Grant Program, 65203–65204

Food and Drug Administration
PROPOSED RULES
Withdrawal of Color Additive Petition:
Cryovac North America, 65150–65151
NOTICES
Generic Drug User Fee:
Abbreviated New Drug Application, Prior Approval Supplement, and Drug Master File Fee Rates for Fiscal Year 2013, 65198–65199
Backlog Fee Rate for Fiscal Year 2013, 65199–65200

Forest Service
RULES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Community Forest and Open Space Conservation Program, 65103
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Visitor Permit and Visitor Registration Card, 65166–65167
Environmental Impact Statements; Availability, etc.:
Blacksmith Ecological Restoration Project, Eldorado National Forest, Placer and El Dorado Counties, CA, 65167–65169
Extension of Certain Timber Sale Contracts:
Finding of Substantial Overriding Public Interest, 65169–65170

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
NOTICES
Meetings:
HIT Policy Committee, 65191
National Committee on Vital and Health Statistics, 65190–65191

Interior Department
See Fish and Wildlife Service

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Fresh Garlic from the People's Republic of China, 65171–65172
Antidumping Duty Investigations; Results, Extensions, Amendments, etc.:
Hardwood and Decorative Plywood from the People's Republic of China, 65172–65176

International Trade Commission
NOTICES
Five-Year Reviews:
Honey from China, 65204

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Equal Employment Opportunity Plan Certification of Compliance and Short Form, 65204–65205
Lodging of Proposed Consent Decrees under CERCLA, 65205–65206

Merit Systems Protection Board
NOTICES
Privacy Act; Systems of Records, 65206–65208

National Aeronautics and Space Administration
RULES
Use of Centennial of Flight Commission Name:
Correction, 65099

National Credit Union Administration
PROPOSED RULES
Designation of Low-income Status:
Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions, 65139–65141
Prompt Corrective Action, Requirements for Insurance, and Promulgation of NCUA Rules and Regulations:
Extension of Public Comment Period, 65141–65142

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Black Sea Bass Fishery; Recreational Quota Harvested, 65136
NOTICES
Meetings:
Science Advisory Board, 65176–65177

Nuclear Regulatory Commission
PROPOSED RULES
Temporary Storage of Spent Fuel after Cessation of Reactor Operation:
Consideration of Environmental Impacts; Public Meetings, 65137–65139
NOTICES
Applications for Approval:
Proposed Indirect Transfer of Control of Construction Authorization for Mixed Oxide Fuel Fabrication Facility, Aiken, SC, 65208–65210

Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information, Effective Immediately:
Licensee Identified in Attachment 1 and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein, 65210–65215
Order Imposing Requirements for the Protection of Certain Safeguards Information, Effective Immediately:
Licensee Identified in Attachment 1 and All Other Persons Who Obtain Safeguards Information Described Herein, 65215–65220
Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material Effective Immediately, 65220–65231

Postal Regulatory Commission
NOTICES
New Postal Product and Related Negotiated Service Agreement, 65231–65233

Postal Service
RULES
Rules of Practice in Proceedings Relative to Administrative Offsets Initiated Against Former Employees of the Postal Service, 65103–65107

Public Debt Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65247–65248
Senior Executive Service Performance Review Board, 65248–65249

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65233–65234
Cancellations of Registrations of Certain Investment Advisers, 65234–65237
Meetings; Sunshine Act, 65237
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 65241–65244
NASDAQ Stock Market LLC, 65237–65241
Suspension of Trading Orders:
Fearless International, Inc.; Glassmaster Co.; Global Entertainment Holdings/Equities, Inc., et al., 65244

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Smart Traveler Enrollment Program, 65244–65245
Culturally Significant Objects Imported for Exhibitions:
Late Roman and Early Byzantine Treasures From The British Museum, 65245
Portrait of Spain; Masterpieces from the Prado, 65245
Privacy Act; Systems of Records, 65245–65247

Transportation Department
See Federal Aviation Administration
PROPOSED RULES
Disadvantaged Business Enterprise:
Program Implementation Modifications, 65164–65165

Treasury Department
See Public Debt Bureau

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR

Proposed Rules:

51 65137

12 CFR

219 65097

Ch. VI 65098

Proposed Rules:

701 65139

702 65141

741 (2 documents) 65139, 65141

791 65141

14 CFR

1204 65099

Proposed Rules:

39 (4 documents) 65142, 65144, 65146, 65148

16 CFR

2 65099

4 65099

17 CFR

143 65100

21 CFR

Proposed Rules:

73 65150

36 CFR

230 65103

39 CFR

966 65103

40 CFR

51 65107

52 (4 documents) 65107, 65119, 65125, 65133

63 65135

Proposed Rules:

52 (2 documents) 65151

81 65151

49 CFR

Proposed Rules:

26 65164

50 CFR

648 65136

Rules and Regulations

Federal Register

Vol. 77, No. 207

Thursday, October 25, 2012

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–1444]

RIN 7100 AD 91

Reimbursement to Financial Institutions for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors (Board) is amending its regulation which governs recordkeeping and reporting requirements for funds transfers and transmittals of funds, to conform the citations and references to organizational changes adopted by the Director of the Financial Crimes Enforcement Network (FinCEN) in 2010.

DATES: The final rule will become effective November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Dena L. Milligan, Attorney, (202) 452–3900, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION: The statutory framework generally referred to as the Bank Secrecy Act (BSA) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.[1] The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550) (Annunzio-Wylie) amended the BSA to authorize the Treasury and the Board jointly to prescribe regulations to require banks and nonbank financial institutions to maintain records regarding domestic and international funds transfers and transmittals of funds if the Secretary and the Board determine that the maintenance of records has a high degree of usefulness in the criminal, tax, or regulatory investigations or proceedings.[2]

On January 3, 1995, the Secretary and the Board jointly issued a rule that requires banks and nonbank financial institutions to collect and retain certain information on funds transfers and transmittals of funds (''recordkeeping rule'').[3] To minimize potential confusion by affected entities regarding the scope of the joint recordkeeping rule and the rule's interaction with other anti-money laundering regulations, the substantive requirements of the recordkeeping rule were codified in 31 CFR part 103 with other BSA regulations. At the same time, the Board separately adopted the recordkeeping rule's requirements by adding existing subpart B to Regulation S. Subpart B incorporates the recordkeeping rule's requirements by cross-referencing the jointly prescribed requirements then located in 31 CFR part 103, rather than restating the requirements in full.[4]

In October 2010, FinCEN moved the BSA regulations, including those implementing the recordkeeping rule, from 31 CFR part 103 to new Chapter X of Title 31 of the CFR.[5] Within the new Chapter X, FinCEN reorganized the BSA regulations by financial industry to make it easier to find regulatory requirements. With respect to the cross-references in Regulation S, 31 CFR 103.11 was redesignated as 31 CFR 1010.100, 31 CFR 103.33(e) was redesignated as 31 CFR 1020.410(a), and 31 CFR 103.33(f) was redesignated as 31 CFR 1010.410(e).[6]

The Board is amending the cross-references in subpart B of its Regulation S to conform the references to the reorganized BSA regulations. These amendments do not have any effect on the substantive requirements imposed by Regulation S.

Administrative Procedure Act

In accordance with section 553(b) the Administrative Procedures Act (APA) (5 U.S.C. 553(b)), the Board finds, for good cause, that providing an opportunity for public comment is unnecessary. The amendments are solely technical amendments that revise citations to conform to a previous reorganization of BSA regulations in the CFR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The technical amendments to Regulation S will revise the cross-references to conform to a previous reorganization of BSA regulations in the CFR. The amendments do not change any substantive requirements of the regulation or currently approved information collections. Therefore, no additional paperwork burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 219

Banks, Banking, Currency, Reporting and recordkeeping requirements, Foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 219 as follows:

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 12 U.S.C. 3415.

§ 219.21 [Amended]

■ 2. Section 219.21 is amended as follows:

■ a. Remove ''31 CFR 103.11 and 103.33(e) and (f)'' and add in its place ''31 CFR 1010.100, 1010.410(e), and 1020.410(a)''; and

■ b. Remove ''31 CFR 103.33(e) or (f)'' and add in its place ''31 CFR 1010.410(e) or 1020.410(a).''

[1] The BSA is codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5329.

[2] 12 U.S.C. 1829b(b).

[3] 60 FR 220 (Jan. 3, 1995).

[4] 60 FR 232 (Jan. 3, 1995).

[5] The Secretary delegated to the Director of the Financial Crimes Enforcement Network (FinCEN), the authority to implement, administer, and enforce compliance with the BSA and associated regulations. Treasury Order 180–01 (Sept. 26, 2002).

[6] 75 FR 65806 (Oct. 26, 2010).

§ 219.22 [Amended]

■ 3. Section 219.22 is amended by removing ''31 CFR 103.11'' and adding in its place ''31 CFR 1010.100.''

§ 219.23 [Amended]

■ 4. Section 219.23 is amended as follows:

■ a. In paragraph (a), remove ''31 CFR 103.33(e)'' and add in its place ''31 CFR 1020.410(a)'' wherever it appears;

■ b. In paragraph (b), remove ''31 CFR 103.33(f)'' and add in its place ''31 CFR 1010.410(e)'' wherever it appears.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, October 18, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26132 Filed 10–24–12; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

Board Policy Statements

AGENCY: Farm Credit Administration.

ACTION: Notice of policy statement and index.

SUMMARY: The Farm Credit Administration (FCA), as part of its annual public notification process, is publishing for notice an index of the 18 Board policy statements currently in existence. Most of the policy statements remain unchanged since our last **Federal Register** notice on September 1, 2011 (76 FR 54638), except for one with minor technical updates on September 17, 2012, and another on Ethics, Independence, Arm's-Length Role, Ex Parte Communications and Open Government.

DATES: October 25, 2012.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4009, TTY (703) 883–4056; or Wendy R. Laguarda, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: A list of the 18 FCA Board policy statements is set forth below. FCA Board policy statements may be viewed online at *www.fca.gov/handbook.nsf.*

On November 7, 2011, the FCA Board adopted Policy Statement FCA–PS–81 on, ''Ethics, Independence, Arm's-Length Role, Ex Parte Communications and Open Government.'' It was published in the **Federal Register** on November 17, 2011 (76 FR 71343).

On September 17, 2012, the FCA Board reaffirmed, and made technical updates only, to FCA–PS–62 on, ''Equal Employment Opportunity and Diversity.'' The text of the policy statement is set forth below in its entirety. The FCA will continue to publish new or revised policy statements in their full text.

FCA Board Policy Statements

FCA–PS–34 Disclosure of the Issuance and Termination of Enforcement Documents
FCA–PS–37 Communications During Rulemaking
FCA–PS–41 Alternative Means of Dispute Resolution
FCA–PS–44 Travel
FCA–PS–53 Examination Philosophy
FCA–PS–59 Regulatory Philosophy
FCA–PS–62 Equal Employment Opportunity and Diversity
FCA–PS–64 Rules for the Transaction of Business of the Farm Credit Administration Board
FCA–PS–65 Release of Consolidated Reporting System Information
FCA–PS–67 Nondiscrimination on the Basis of Disability in Agency Programs and Activities
FCA–PS–68 FCS Building Association Management Operations Policies and Practices
FCA–PS–71 Disaster Relief Efforts by Farm Credit Institutions
FCA–PS–72 Financial Institution Rating System (FIRS)
FCA–PS–77 Borrower Privacy
FCA–PS–78 Official Names of Farm Credit Institutions
FCA–PS–79 Consideration and Referral of Supervisory Strategies and Enforcement Actions
FCA–PS–80 Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions
FCA–PS–81 Ethics, Independence, Arm's-Length Role, Ex Parte Communications and Open Government

Equal Employment Opportunity and Diversity

FCA–PS–62

Effective Date: 17–SEPT–12

Effect on Previous Action: Updates FCA–PS–62 [BM–13–JUL–06–03] (71 FR 46481, 8/14/2006) 7–13–06; amended by NV–11–15 (08–JUL–11); amended by NV–12–16 (07–SEPT–12).

Source of Authority: Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*); Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.*); Rehabilitation Act of 1973, as amended (29 U.S.C. 721 *et seq.*); Equal Pay Act of 1974 (29 U.S.C. 206(d)); Civil Service Reform Act of 1978 (5 U.S.C. 3112); Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (NO FEAR Act) (5 U.S.C. 2301); Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff *et seq.*); section 5.9 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2243); Executive Order 11478 (Equal Employment Opportunity in the Federal Government), as amended by Executive Orders 13087 and 13152 to include prohibitions on discrimination based on sexual orientation and status as a parent; Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency); 29 CFR part 1614; Equal Employment Opportunity Commission Management Directives.

Purpose

The Farm Credit Administration (FCA or Agency) Board reaffirms its commitment to Equal Employment Opportunity (EEO) and Diversity (EEOD) and its belief that all FCA employees should be treated with dignity and respect. The Board also provides guidance to Agency management and staff for deciding and taking action in these critical areas.

Importance

Unquestionably, the employees who comprise the FCA are its most important resource. The Board fully recognizes that the Agency draws its strength from the dedication, experience, and diversity of its employees. The Board is firmly committed to taking whatever steps are needed to protect the rights of its staff and to carrying out programs that foster the development of each employee's potential. We believe an investment in efforts that strongly promote EEOD will prevent the conflict and the high costs of correction for taking no, or inadequate, action in these areas. The Farm Credit Administration (FCA) Board Adopts the Following Policy Statement:

It is the policy of the FCA to prohibit discrimination in Agency policies, program practices, and operations. Employees, applicants for employment, and members of the public who seek to take part in FCA programs, activities, and services will be treated fairly. The Chairman and Chief Executive Officer (CEO) is ultimately responsible for ensuring that FCA meets all EEOD requirements and initiatives in accordance with laws and regulations,

to maintain a workplace that is free from discrimination and that values all employees. FCA, under the appropriate laws and regulations, will:

- Ensure equal employment opportunity based on merit and qualification, without discrimination because of race, color, religion, sex, age, national origin, disability, sexual orientation, status as a parent, genetic information, or participation in discrimination or harassment complaint proceedings;
- Provide for the prompt and fair consideration of complaints of discrimination;
- Make reasonable accommodations for qualified applicants for employment and employees with physical or mental disabilities under law;
- Provide an environment free from harassment to all employees;
- Create and maintain an organizational culture that recognizes, values, and supports employee and public diversity and inclusion;
- Develop objectives within the Agency's operation and strategic planning process to meet the goals of EEOD and this policy;
- Implement affirmative programs to carry out this policy within the Agency; and
- To the extent practicable, seek to encourage the Farm Credit System to continue its efforts to promote and increase diversity.

Diversity and Inclusion

The FCA intends to be a model employer. That is, as far as possible, FCA will build and maintain a workforce that reflects the rich diversity of individual differences evident throughout this Nation. The Board views individual differences as complementary and believes these differences enrich our organization. When individual differences are respected, recognized, and valued, diversity becomes a powerful force that can contribute to achieving superior results. Therefore, we will create, maintain, and continuously improve on an organizational culture that fully recognizes, values, and supports employee diversity. The Board is committed to promoting and supporting an inclusive environment that provides to all employees, individually and collectively, the chance to work to their full potential in the pursuit of the Agency's mission. We will provide everyone the opportunity to develop to his or her fullest potential. When a barrier to someone achieving this goal exists, we will strive to remove this barrier.

Affirmative Employment

The Board reaffirms its commitment to ensuring FCA conducts all of its employment practices in a nondiscriminatory manner. The Board expects full cooperation and support from everyone associated with recruitment, selection, development, and promotion to ensure such actions are free of discrimination. All employees will be evaluated on their EEOD achievements as part of their overall job performance. Though staff commitment is important, the role of supervisors is paramount to success. Agency supervisors must be coaches and are responsible for helping all employees develop their talents and give their best efforts in contributing to the mission of the FCA.

Workplace Harassment

It is the policy of the FCA to provide a work environment free from unlawful discrimination in any form, and to protect all employees from any form of harassment, either physical or verbal. The FCA will not tolerate harassment in the workplace for any reason. The FCA also will not tolerate retaliation against any employee for reporting harassment or for aiding in any inquiry about reporting harassment.

Disabled Veterans Affirmative Action Program (DVAAP)

A disabled veteran is defined as someone who is entitled to compensation under the laws administered by the Veterans Administration or someone who was discharged or released from active duty because of a service-connected disability.

The FCA is committed to increasing the representation of disabled veterans within its organization. Our Nation owes a debt to those veterans who served their country, especially those who were disabled because of service. To honor these disabled veterans, the FCA shall place emphasis on making vacancies known to and providing opportunities for employing disabled veterans.

Dated This 17th Day of September, 2012.

By Order of the Board.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

Dated: October 19, 2012.

Mary Alice Donner,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 2012–26255 Filed 10–24–12; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

[Docket No. NASA–2012–0004]

RIN 2700–AD78

Use of the Centennial of Flight Commission Name; Correction

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule; correction.

SUMMARY: This document corrects a direct final rule that made nonsubstantive changes by removing a regulation that is obsolete and no longer used. The revisions to the direct final rule are part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011. NASA's full plan can be accessed on the Agency's open government Web site at *http://www.nasa.gov/open/*.

DATES: This correction is effective on December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Nanette Jennings, 202–358–0819.

SUPPLEMENTARY INFORMATION: NASA published FR Doc. 2012–23649 in the **Federal Register** of October 4, 2012 (77 FR 60619) removing regulations that are obsolete and no longer in use. In the rule under the heading ''Part 1204—Administrative Authority and Policy'' an incorrect amendatory instruction is being corrected.

Part 1204

Subpart 5—[Corrected]

■ On page 60620, in the first column, correct amendatory instruction 1 to read as follows:

''1. The authority citation for part 1204 subpart 5 is revised to read as follows:''

Cheryl E. Parker,

Federal Register Liaison.

[FR Doc. 2012–26273 Filed 10–24–12; 8:45 am]

BILLING CODE 7510–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Trade Commission published a document in the **Federal Register** of September 27, 2012, adopting revisions to the

Commission's Rules of Practice. A footnote in the document contained an incorrect citation to the Commodity Futures Trading Commission. This notice corrects this error.

DATES: Effective November 9, 2012.

FOR FURTHER INFORMATION CONTACT: Kenny A. Wright (202–326–2907), FTC, Office of the General Counsel, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 27, 2012, in FR Doc. 2012–23691, on page 59303, the second column, remove ''8 CFR 1003.104'' from the fourth line of footnote 74 (continued) and add ''17 CFR 14.8'' in its place.

Donald S. Clark,

Secretary.

[FR Doc. 2012–26170 Filed 10–24–12; 8:45 am]

BILLING CODE 6750–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038–AD76

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Commodity Futures Trading Commission

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rule that governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (CEA) and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* This final rule will become effective October 25, 2012.

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418–5327 or *ericcobene@cftc.gov,* Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),[1] requires the head of each Federal agency to adjust by regulation, at least once every four years, the maximum amount of CMPs provided by law within the jurisdiction of that agency by the cost of living adjustment defined in the FCPIAA, as amended.[2] Because one of the purposes of the inflation adjustments includes maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission monitors the impact of inflation on its CMP maximums and adjusts them as needed to implement the requirements and purposes of the FCPIAA.[3]

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) into law.[4] Section 753 of the Dodd-Frank Act set maximum CMPs for Sections 6(c) and 6(d) of the CEA, 7 U.S.C. 9, 13b. Section 753 of the Dodd-Frank Act is effective August 15, 2011, the effective date for the Commission's rules implementing this section.[5]

II. Commodity Exchange Act Civil Monetary Penalties

The inflation adjustment requirement applies to any penalty, fine or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. [28 U.S.C. 2461 note.] The CEA provides for CMPs that meet the above definition and are, therefore, subject to the inflation adjustment in the following instances: Sections 6(c), 6(d), 6b, and 6c of the CEA.[6]

Section 6(c) of the CEA, as amended by Section 753(a) of the Dodd-Frank Act, sets the maximum CMP that may be imposed by the Commission in an administrative proceeding on ''any person (other than a registered entity)'' for: (1) Each violation of Section 6(c) of the CEA ''or any other provisions of [the] Act or of the rules, regulations, or orders of the Commission thereunder'' to the greater of $140,000 or triple the monetary gain to the violator; and (2) any ''manipulation or attempted manipulation in violation of'' Section 6(c) or 9(a)(2) of the CEA to the greater of $1,000,000 or triple the monetary gain to the violator.[7]

Section 6(d) of the CEA, as amended by Section 753(b) of the Dodd-Frank Act, sets the maximum CMP that may be imposed by the Commission in an administrative proceeding on ''any person (other than a registered entity [8])'' for violations of the CEA ''or any other provisions of [the CEA] or of the rules, regulations, or orders of the Commission thereunder'' to ''the greater of $140,000 or triple the monetary gain'' to the violator.[9]

Section 6b of the CEA provides that the Commission in an administrative proceeding may impose a CMP on: (1) any registered entity for not enforcing or has not enforced its rules of government made a condition of its designation or registration'' as set forth in the CEA, or (2) ''any registered entity, or any director, officer, agent, or employee of any registered entity,'' for violations of the CEA ''or any rules, regulations, or orders of the Commission thereunder.'' [10] For each violation for which a CMP is assessed pursuant to

[1] The FCPIAA, Public Law 101–410 (1990), and the relevant amendments to the FCPIAA contained in the DCIA, Public Law 104–134 (1996), is codified at 28 U.S.C. 2461 note.

[2] The DCIA also requires that the range of minimum and maximum CMPs be adjusted, if applicable. For the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

[3] Specifically, the FCPIAA states that the purpose of the FCPIAA is to establish a mechanism that shall allow for regular adjustment for inflation of civil monetary penalties; maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and improve the collection by the Federal Government of civil monetary penalties.

[4] See Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[5] Prohibition of Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 FR 41398 (July 14, 2011) (implementing Section 753 of the CEA; effective August 15, 2011).

[6] 7 U.S.C. 9, 13a, 13a–1, 13b.

[7] 7 U.S.C. 9.

[8] The term ''registered entity'' is a defined term under the CEA. Section 1a(40) provides that the term ''registered entity'' means a board of trade designated as a contract market under section 7 of the CEA; a derivatives clearing organization registered under section 7a–1 of the CEA; a board of trade designated as a contract market under section 7b–1 of the CEA; a swap execution facility registered under section 7b–3 of the CEA; a swap data repository registered under section 24a of the CEA; and with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded. 7 U.S.C. 1a(40).

[9] 7 U.S.C. 13b.

[10] 7 U.S.C. 13a.

Section 6b, Rule 143.8(a)(3) sets the current maximum penalty at: the greater of $1,000,000 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the CEA; and the greater of $675,000 or triple the monetary gain to such person for all other violations.[11]

Section 6c of the CEA provides that Commission may bring an action in the ''proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States'' and the court may impose on a CMP on ''any registered entity or other person'' found by the court to have committed any violation of any provision of the CEA ''or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap.'' [12] For each violation for which a CMP is assessed pursuant to Section 6c(d), Rule 143.8(a)(2) sets the current maximum penalty at: the greater of $1,000,000 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the CEA; and the greater of $140,000 or triple the monetary gain to such person for all other violations.[13]

III. Cost-of-Living Adjustment for Commodity Exchange Act Civil Monetary Penalties

A. Methodology

The formula for determining the cost-of-living adjustment, first defined by the FCPIAA, and amended by the DCIA, consists of a four-step process.

The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the Consumer Price Index for all-urban consumers published by the Department of Labor (CPI) [14] for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. The CMPs for Sections 6(c) and 6(d) of the CEA were last set by the Dodd-Frank Act, effective in the calendar year 2011. The CMPs for Sections 6b and 6c of the CEA were last set by Commission Rule, effective in the calendar year 2008.[15] Accordingly, the inflation adjustment factor for Sections 6(c) and 6(d) of the CEA equals the CPI for June 2011 (*i.e.,* June of the year preceding this year) divided by that index for June 2011, and the inflation adjustment factor for Sections 6b and 6c of the CEA equals the CPI for June 2011 divided by that index for June 2008.[16]

Second, the inflation adjustment factors are then multiplied by the current maximum CMPs to calculate the raw inflation increase. Third, this raw inflation increase is then rounded according to the guidelines set forth by the FCPIAA to calculate the final inflation increase.[17] Fourth, the final inflation increase is added to the current CMP maximum to obtain the new CMP maximum penalty.

B. Civil Monetary Penalty Adjustments

In Commission actions pursuant to Sections 6(c) or (d) of the CEA, the amount set for the maximum CMP for manipulation or attempted manipulation violations is $1,000,000, and the amount set for the maximum CMP for all other violations is $140,000. Applying the CPI adjustment methodology, no adjustment to these CMP amounts is required.[18]

In Commission actions pursuant to Section 6b of the CEA, the amount set for the CMP for manipulation and attempted manipulation violations is $1,000,000 (or triple the monetary gain) and the amount set for the CMP for all other violations is $675,000 (or triple the monetary gain). Applying the CPI adjustment methodology, these CMP amounts must be increased by $25,000 each, and the new CMP maximums are $1,025,000 (or triple the monetary gain) for manipulation and attempted manipulation violations, and $700,000 (or triple the monetary gain) for all other violations.[19]

In Commission actions pursuant to Section 6c of the CEA, the amount set for the CMP for manipulation and attempted manipulation violations is $1,000,000 (or triple the monetary gain) and the amount set for the CMP for all other violations is $140,000 (or triple the monetary gain). Applying the CPI adjustment methodology, the CMP amount for manipulation and attempted manipulation violations must be increased by $25,000 to $1,025,000 (or triple the monetary gain), while the CMP amount for all other violations remains unchanged at $140,000 (or triple the monetary gain).[20]

The FCPIAA provides that ''any increase under [FCPIAA] in a CMP shall apply only to violations which occur after the date the increase takes effect.'' [21] Thus, the new CMP amounts may be applied only to violations of the CEA that occur after the effective date of this amendment, October 23, 2012.

IV. Administrative Compliance

A. Notice Requirement

The notice and comment procedures of 5 U.S.C. 553 do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language which mandates that the Commission act in a nondiscretionary matter. *Lake Carriers' Ass'n* v. *E.P.A.,* 652 F.3d 1, 10 (DC Cir. 2011).[22]

[11] 17 CFR 143.8(a)(3).

[12] 7 U.S.C. 13a–1.

[13] 17 CFR 143.8(a)(2).

[14] The Consumer Price Index means the Consumer Price Index for all urban consumers published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the Internet. To access this information, go to the Consumer Price Index Home Page at: *http://www.bls.gov/cpi/*. Under the ''CPI Databases'' heading, select ''CPI—All Urban Consumers (Current Series)'', ''Top Picks.'' Then check the box for ''U.S. All Items, 1967 = 100–CUUR0000AA0'', and click the ''Retrieve data'' button.

[15] See Adjustment of Civil Monetary Penalties for Inflation, 73 FR 57512 (Oct. 3, 2008) (effective Oct. 23, 2008).

[16] The CPI for June 2011 was 676.162, and the CPI for June 2008 was 655.474. Therefore, the relevant inflation adjustment factor for Sections 6(c) and 6(d) of the Act equals 676.162 divided by 676.162, which is 0.0 for computational purposes, and for Sections 6b and 6c equals 676.162 divided by 655.474, which is 0.0316 for computational purposes.

[17] The FCPIAA, as amended by the DCIA, provides in relevant part that any increase shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and multiple of $25,000 in the case of penalties greater than $200,000.

[18] Because the inflation adjustment factor for these CMPs is 0.0, the CMP amounts are not required to be revised pursuant to FCPIAA.

[19] Multiplying the CMP amounts by the inflation adjustment factor results in a raw adjustment amount of $31,562 for manipulation and attempted manipulation violations (0.03156 × $1,000,000), and a raw adjustment amount of $21,304 for all other violations (0.03156 × $675,000). Because the CMP amounts are greater than $200,000, the raw adjustment amounts must be rounded to the nearest $25,000, which results in a final adjustment amount of $25,000 for all violations, including manipulation and attempted manipulation violations.

[20] Multiplying the CMP amounts by the inflation adjustment factor results in a raw adjustment amount of $31,562 for manipulation and attempted manipulation violations (0.03156 × $1,000,000), and a raw adjustment amount of $3,156 for all other violations (0.03156 × $140,000). Because the CMP amount for manipulation and attempted manipulation violations is greater than $200,000, the raw adjustment amount must be rounded to the nearest $25,000, which results in a final adjustment amount of $25,000 for these violations. Because the CMP amount for all other violations is less than $200,000, the raw adjustment amount must be rounded to the nearest $10,000, which results in a final adjustment amount of $0 for these violations.

[21] See also *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994) (holding that there is a presumption against retroactivity in changes to damage remedies or civil penalties in the absence of clear statutory language to the contrary).

[22] The Commission has determined that the amendment to Rule 143.8 is exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of

Continued

B. Regulatory Flexibility Act

The Regulatory Flexibility Act [23] requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for ''rule[s] for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) * * * or any other law.'' As the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to regulation 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507(d), which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

D. Consideration of Costs and Benefits

Section 15(a) of the CEA, 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the civil money penalties in regulation 143.8 were enacted to ensure that civil money penalties do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in section 15(a), or any other factors.

List of Subjects in 17 CFR Part 143

Civil monetary penalties, Claims.

In consideration of the foregoing and pursuant to authority contained in Sections 6(c), 6(d), 6b and 6c of the CEA, 7 U.S.C. 9, 13a, 13a–1(d), 13b, and 28 U.S.C. 2461 note, the Commission hereby amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

■ 1. The authority citation for part 143 continues to read as follows:

Authority: 7 U.S.C. 9, 15, 9a, 12a(5), 13a, 13a–1(d), 13(a), 13b; 31 U.S.C. 3701–3719; 28 U.S.C. 2461 note.

■ 2. Section 143.8 is amended by revising paragraph (a) to read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules, regulations or orders promulgated thereunder that may be assessed or enforced under the Commodity Exchange Act in an administrative proceeding before the Commission or a civil action in Federal court will be:

(1) For a civil penalty assessed pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9, against any person (other than a registered entity):

(i) For manipulation or attempted manipulation violations:

(A) Committed on or after May 22, 2008, not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation; and

(ii) For all other violations:

(A) Committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation;

(B) Committed between October 23, 2000 and October 22, 2004, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation;

(C) Committed between October 23, 2004 and October 22, 2008, not more than the greater of $130,000 or triple the monetary gain to such person for each such violation; and

(D) Committed on or after October 23, 2008, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation; and

(2) For a civil monetary penalty assessed pursuant to Section 6(d) of the Commodity Exchange Act, 7 U.S.C. 13b, against any person (other than a registered entity):

(i) For violations committed on or after August 15, 2011, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation; and

(ii) [Reserved]

(3) For a civil monetary penalty assessed pursuant to Section 6b of the Commodity Exchange Act, 7 U.S.C. 13a, against any registered entity or any director, officer, agent, or employee of any registered entity:

(i) For manipulation or attempted manipulation violations:

(A) Committed between May 22, 2008 and August 14, 2011, not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation;

(B) committed on or after August 15, 2011, not more than the greater of $1,025,000 or triple the monetary gain to such person for each such violation; and

(ii) For all other violations:

(A) Committed between November 27, 1996 and October 22, 2000, not more than $550,000 for each such violation;

(B) Committed between October 23, 2000 and October 22, 2004, not more than $575,000 for each such violation;

(C) Committed between October 23, 2004 and October 22, 2008, not more than $625,000 for each such violation;

(D) Committed between October 23, 2008 and October 22, 2012, not more than the greater of $675,000 or triple the monetary gain to such person for each such violation; and

(E) Committed on or after October 23, 2012, not more than the greater of $700,000 or triple the monetary gain to such person for each such violation; and

(4) For a civil monetary penalty assessed pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. 13a–1, against any registered entity or other person:

(i) For manipulation or attempted manipulation violations:

(A) Committed between May 22, 2008 and August 14, 2011, not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation; and

proposed rulemaking and provide other opportunities for public participation, but excludes rules of agency practice, such as those found in part 143 of the Commission's regulations, and in particular rule 143.8 being revised herein.

[23] 5 U.S.C. 601–612.

(B) Committed on or after August 15, 2011, not more than the greater of $1,025,000 or triple the monetary gain to such person for each such violation; and

(ii) For all other violations:

(A) Committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation;

(B) Committed between October 23, 2000 and October 22, 2004, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation;

(C) Committed between October 23, 2004 and October 22, 2008, not more than the greater of $130,000 or triple the monetary gain to such person for each such violation; and

(D) Committed on or after October 23, 2008, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation.

* * * * *

Issued in Washington, DC, on October 18, 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Adjustment of Civil Monetary Penalties for Inflation—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

[FR Doc. 2012–26090 Filed 10–24–12; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 230

RIN 0596–AC84

Community Forest and Open Space Conservation Program; Approval of Information Collection Request

AGENCY: Forest Service, USDA.

ACTION: Final rule; notice of approval of Information Collection Request (ICR).

SUMMARY: The final rule entitled Community Forest and Open Space Conservation Program was published on October 20, 2011. The Office of Management and Budget approved and cleared the associated information collection requirements (ICR) on August 22, 2012. This document announces approval of the ICR.

DATES: The ICR associated with the final rule published in the **Federal Register** on October 20, 2011, at 76 FR 65121. The Office of Management and Budget (OMB) approved and cleared the associated Information Collection Requirements on August 22, 2012, under OMB Control Number 0596–0227.

FOR FURTHER INFORMATION CONTACT: Scott Stewart, U.S. Department of Agriculture, Forest Service, State and Private Forestry, Cooperative Forestry, 202–205–1618. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Dated: October 16, 2012.

Harris D. Sherman,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2012–26247 Filed 10–24–12; 8:45 am]

BILLING CODE 3410–11–P

POSTAL SERVICE

39 CFR Part 966

Rules of Practice in Proceedings Relative to Administrative Offsets Initiated Against Former Employees of the Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document revises the rules of practice of the Judicial Officer in proceedings relative to administrative offsets initiated against former employees of the Postal Service. These revisions update the rules to reflect changes in the Postal Service's debt collection regulations and procedures, eliminate outdated provisions, and conform the rules to the Judicial Officer's existing practice.

DATES: *Effective date:* November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Gary E. Shapiro, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078; *Telephone:* (703) 812–1900.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

The rules of practice in proceedings relative to administrative offsets initiated against former employees of the Postal Service are set forth in 39 CFR part 966. The Postal Service is concurrently revising its regulations pertaining to collecting debts from former employees contained in the Postal Service Employment and Labor Relations Manual (ELM). These ELM revisions conform existing Postal Service regulations to the requirements of the Debt Collection Act. The revisions in this document will bring 39 CFR part 966 into accord with the Postal Service's revised regulations for collecting debts from former employees by administrative offset. In addition, minor changes will be made to eliminate outdated provisions and conform these rules to the existing practice of the Judicial Officer.

The Postal Service published these proposed changes to 39 CFR part 966 on September 4, 2012 (77 FR 53830–34). No comments were received. The final version of the rule is, accordingly unmodified, with the exception of minor changes to § 966.9, intended to be clarifying only.

B. Summary of Changes

Changes to § 966.2(a) cross reference the Postal Service's new ELM provisions pertaining to administrative offsets and also clarify that such offsets are taken pursuant to the statutory authority of 31 U.S.C. 3716. Changes to § 966.2(b) clarify that the regulations contained in 39 CFR part 966 are intended to be consistent with the Federal Claims Collection Standards promulgated jointly by the Department of Justice and the Treasury, found at 31 CFR parts 900–904.

Changes to § 966.3 update the definitions of part 966 to refer to the Postal Service Accounting Service Center (ASC) or successor installation instead of the area Postmaster/Installation head. The definition of ''reconsideration'' in paragraph (i) is thus revised to refer to action taken by the ASC. These changes accurately reflect the Postal Service's current practices for collecting debts from former employees, as collections from former employees are normally handled through the ASC. Definitions are also updated to include the Federal Claims Collection Standards, referenced elsewhere in the revised regulations. Changes to paragraph (j) are non-substantive and provide the parties with useful contact information.

Changes to § 966.4 revise the procedures for filing a petition for a hearing under part 966. These revisions align these regulations with the Postal Service's revised ELM regulations pertaining to collecting debts from former employees by administrative offset, the Postal Service's current debt collection procedures, and current practice before the Judicial Officer.

Paragraphs (a)(2) and (3) are revised to cross reference and incorporate the Postal Service's ELM provisions, as well as the relevant section of the Debt Collection Act, that detail the notice and due process rights former Postal Service employees are afforded prior to the collection of a debt by administrative offset. Changes to these paragraphs clarify that a former employee may petition for review under part 966 either after receiving the required notice and requesting and receiving a reconsideration determination from the ASC, or after requesting reconsideration but not receiving a determination within 60 days from the request. Changes to paragraph (b) detail those situations whereby the Postal Service may take an administrative offset without affording an opportunity for pre-deprivation review to the former employee. In accordance with the Judicial Officer's current practice and applicable law, these changes further clarify that where prior notice and an opportunity for review are omitted and the circumstances outlined in revised paragraphs (b)(2), (3) and/or (4) do not apply, the former employee may submit a petition for review under part 966 following the offset. Changes to paragraph (c) clarify the procedural time limits for filing a petition for review under revised part 966. In conformance with revisions made elsewhere to part 966, ''Accounting Service Center'' is substituted for ''Postmaster/Installation Head'' in paragraph (d)(4). The remaining revisions to paragraph (d) are intended to modernize requirements for the content of hearing petitions.

In § 966.6, paragraph (a) is revised to reflect the Recorder's correct hours, delete the requirement that parties submit documents in triplicate, and clarify that parties should serve papers directly with each other unless otherwise directed by the Hearing Official. Paragraph (c) explicitly requires that parties discuss extensions of time with the opposing party, as is the current practice. Paragraph (d) clarifies that the General Counsel may delegate cases to a designee and establishes a notice of appearance requirement in order to reduce the possibility of misdirected orders. In addition, paragraph (d) is revised to allow for non-attorney representatives. In current practice, former employees are often represented by non-attorneys.

Section 966.7 is revised to simplify the answer's content, eliminate the need for the Postal Service's representative to provide certain information prematurely, and require that the answer clearly explain the basis and calculation of the debt at issue.

Changes to § 966.8(a)(3), (6), and (7) conform the regulations to the existing practice of the Judicial Officer. Changes to § 966.8(a)(9) similarly reflect the Judicial Officer's existing practice and provide notice to parties that time extensions will not be automatically granted.

Changes to § 966.9 update the regulation to reflect the existing practice of the Judicial Officer pertaining to hearing transcripts, as well as the Hearing Official's ability, in case of a party's unexcused absence, to continue with a hearing at the Hearing Official's discretion. This section is also revised to clarify current practice pertaining to when a Hearing Official may conduct a hearing, as opposed to a decision on the record.

Section 966.11 is revised to provide that the Initial Decision of the presiding Administrative Judge may become the final determination of the Postal Service without any further order by the Judicial Officer, so long as no appeal has been filed and the Judicial Officer has not decided to review the decision on his or her own motion.

Formerly, § 966.12 detailed only circumstances under which the Petitioner could be found in default and administrative offset could thus be initiated. As revised, § 966.12 provides for circumstances under which either party may be found in default. This change is in accordance with existing practice and decisions of the Judicial Officer.

Section 966.13 is revised to reflect more accurately the definition of ''ex parte'' discussions in the context of proceedings brought under part 966.

Sections 966.5 and 966.10, dealing respectively with the effect of filing a petition, and the initial decision of the Hearing Official, are retained without change.

C. Effective Dates and Applicability

These revised rules will begin to govern proceedings under part 966 docketed on or after November 26, 2012.

List of Subjects in 39 CFR Part 966

Administrative practice and procedure, claims, Government employees, wages.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 966 as set forth below:

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 966 is revised to read as follows:

Authority: 31 U.S.C. 3716; 39 U.S.C. 204, 401, 2601.

■ 2. Section 966.2 is revised to read as follows:

§ 966.2 Scope of rules.

(a) The rules in this part apply to any petition filed by a former postal employee:

(1) To challenge the Postal Service's determination that he or she is liable to the Postal Service for a debt incurred in connection with his or her Postal Service employment, that the Postal Service intends to collect by administrative offset pursuant to the authority of 31 U.S.C. 3716 and in accordance with the regulations contained in the Employee and Labor Relations Manual, sections 470 and 480; and/or

(2) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

(b) The regulations in this part are consistent with the provisions of the Federal Claims Collection Standards pertaining to administrative offset.

■ 3. Section 966.3 is revised to read as follows:

§ 966.3 Definitions.

(a) *Accounting Service Center* refers to the United States Postal Service Eagan Accounting Service Center or its successor installation.

(b) *Administrative offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(c) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(d) *Federal Claims Collection Standards or FCCS* refers to regulations promulgated by the Department of Justice and the Department of the Treasury and codified at 31 CFR parts 900 through 904.

(e) *Former employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of

business on the effective date of his or her separation.

(f) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(g) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to this part.

(h) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(i) *Reconsideration* refers to the review of an alleged debt and/or the proposed offset schedule conducted by the Accounting Service Center at the request of a former employee alleged to be indebted to the Postal Service.

(j) *Recorder* refers to the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The recorder's telephone number is (703) 812–1900, and the Judicial Officer's Web site is *http://about.usps.com/who-we-are/judicial/welcome.htm*. The fax number is (703) 812–1901.

■ 4. Section 966.4 is revised to read as follows:

§ 966.4 Petition for a hearing and supplement to petition.

(a) A former employee who is alleged to be responsible for a debt to the Postal Service may petition for a hearing under this part, provided:

(1) Liability for the debt and/or the proposed offset schedule has not been established under part 452.3 or part 462.3 of the Employee & Labor Relations Manual (ELM);

(2) The former employee has received a Notice from the Accounting Service Center in compliance with section 472.1 of the ELM and the administrative offset provisions of the FCCS, informing the former employee of the debt and an offset schedule to satisfy the debt, the former employee's rights under 31 U.S.C. 3716(a), the right to request reconsideration of the debt and/or offset schedule from the Accounting Service Center, and the right to request review under this part; and

(3) The former employee has requested reconsideration of the Postal Service's determination of the existence or amount of the alleged debt and/or the offset schedule proposed by the Postal Service within thirty (30) calendar days of receiving the notice referenced in paragraph (a)(2), and either has received a reconsideration determination, or within sixty (60) calendar days from the reconsideration request has not received a reconsideration determination.

(b) Notwithstanding the provisions of this part, the Postal Service may omit the procedures for notice and reconsideration in this part under certain circumstances as set forth below:

(1) If the Postal Service first learns of the existence of the amount owed by the former employee when there is insufficient time before payment would be made to the former employee to allow for prior notice and an opportunity for review under this part. When prior notice and an opportunity for review are omitted, the Postal Service will give the former employee notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed. In such circumstances whereby prior notice and an opportunity for pre-deprivation review are omitted, the former employee may submit a petition for review under this part.

(2) If an agency (including the Postal Service) has already given the former employee any of the required notice and review opportunities set forth in the FCCS with respect to a particular debt. In such a situation, the Postal Service need not duplicate such notice and review opportunities before taking an administrative offset.

(3) If a former bargaining unit employee of the Postal Service pursues, in accordance with the applicable provisions of his or her CBA, a grievance concerning the Postal Service's claim, including, but not limited to, the existence of a debt owed to the Postal Service, the amount of such debt, and/or the proposed repayment schedule, and none of the circumstances set forth in ELM section 483.1 apply;

(4) If otherwise allowed by law, including, but not limited to, the administrative offset provisions of the FCCS.

(c) Within thirty (30) calendar days after the date of receipt of the Accounting Service Center's decision upon reconsideration, after the expiration of sixty (60) calendar days after a request for reconsideration where a reconsideration determination is not made, or following an administrative offset taken without prior notice and opportunity for reconsideration pursuant to paragraph (b)(1) of this section, the former employee must file a written, signed petition, requesting a written or oral hearing, with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(d) The petition must include the following:

(1) The words, ''Petition for Review Under 39 CFR Part 966'';

(2) The former employee's name;

(3) The former employee's home address, email address (if available), and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Accounting Service Center's decision upon reconsideration of the alleged debt and a copy of the decision;

(5) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which support the former employee's position; and

(6) Copies of all records in the former employee's possession which relate to the debt and which the former employee may enter into the record of the hearing.

(e) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

■ 5. Section 966.6 is revised to read as follows:

§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents required under this part must be filed by the former employee or the General Counsel with the Recorder. (The Recorder's normal business hours are between 8:45 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) Unless otherwise directed by the Hearing Official, the party filing any document shall send a copy thereof to the opposing party.

(b) *Docketing.* The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and General Counsel should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day. Requests for extensions of time shall be made in writing stating good cause therefor, shall represent that the moving party has contacted the opposing party about the request, or made reasonable efforts to do so, and shall indicate whether the opposing party consents to the extension.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the General Counsel, or designee. The representative of the Postal Service, as designated by the General Counsel, shall file a notice of appearance as soon as practicable, and no later than the date for filing the answer. If a former employee has a representative, further transmissions of documents and other communications by and with the former employee shall be made through his or her representative rather than directly with the former employee.

■ 6. Section 966.7 is revised to read as follows:

§ 966.7 Answer to petition.

Within thirty (30) days after the date of receipt of the petition, the General Counsel shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's claim, or the administrative offset schedule proposed by the Postal Service for collecting any such claim. The answer shall provide a clear and detailed description of the basis for the Postal Service's determination of the alleged debt and its calculation of the amount of the alleged debt and/or its proposed offset schedule, as appropriate.

■ 7. Section 966.8 is revised to read as follows:

§ 966.8 Authority and responsibilities of Hearing Official or Judicial Officer.

(a) In processing a case under this part, the Hearing Official's authority includes, but is not limited to, the following:

(1) Ruling on all offers, motions, or requests by the parties;

(2) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;

(3) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties). The Hearing Official's Memorandum of Telephone Conference serves as the official record of that conference;

(4) Determining if an oral hearing is necessary, the type of oral hearing that would be appropriate, and setting the place, date, and time for such hearing;

(5) Administering oaths or affirmations to witnesses;

(6) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable, and probative evidence is elicited on the disputed issues, and that irrelevant, immaterial, or repetitious evidence is excluded. The Hearing Official in his or her discretion may examine witnesses to ensure that a satisfactory record is developed;

(7) Establishing the record in the case. Except as the Hearing Official may otherwise order in his or her discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the written record, after notification by the Hearing Official that the case is ready for decision. The weight to be attached to any evidence of record will rest within the sound discretion of the Hearing Official. The Hearing Official may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter;

(8) Issuing an initial decision or one on remand; and

(9) Granting reasonable time extensions or other relief for good cause shown.

(b) The Judicial Officer, in addition to possessing such authority as is described elsewhere in this part, shall possess all of the authority and responsibilities of a Hearing Official.

■ 8. Section 966.9 is revised to read as follows:

§ 966.9 Opportunity for oral hearing.

An oral hearing shall be held in the sole discretion of the Hearing Official. An oral hearing includes an in-person hearing, a telephonic hearing, or a hearing by video conference. When the Hearing Official determines that an oral hearing shall not be conducted, the decision shall be based solely on written submissions. The Hearing Official shall arrange for the recording and transcription of an oral hearing, which shall serve as the official record of the hearing. The unexcused absence of a party at the time and place set for hearing may not be occasion for delay at the discretion of the Hearing Official. In the event of such absence, the hearing may proceed without the participation of the absent party.

■ 9. Section 966.11 is revised to read as follows:

§ 966.11 Appeal.

The initial or tentative decision will become the final agency decision thirty (30) days after its issuance unless, before the expiration of that time, a party files an appeal with the Judicial Officer, or the Judicial Officer, in his or her sole discretion, elects to conduct a review of the decision on his or her own initiative. During such review or appeal consideration, the Judicial Officer will accept all findings of fact in the original decision unless clearly erroneous. If following appeal or review, the Judicial Officer affirms the original decision, that decision becomes the final agency decision with no further right of appeal within the agency.

■ 10. Section 966.12 is revised to read as follows:

§ 966.12 Waiver of rights.

(a) The Hearing Official may determine that the former employee has waived the right to a hearing, and that administrative offset may be initiated if the former employee files a petition for hearing after the period prescribed in these Rules and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay; or has filed a withdrawal of the former employee's previous petition for a hearing.

(b) The Hearing Official may determine that the Postal Service has waived the alleged debt at issue, and that the administrative offset may not be initiated if the Postal Service fails to file the answer within the period prescribed by the Rules and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay; or has filed a withdrawal of the debt determination at issue.

(c) In addition, whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Hearing Official, comply with orders of the Hearing Official, participate in conferences, fail to treat the proceedings with the proper decorum, or otherwise indicate an intention not to continue the prosecution or defense of a petition, the Hearing Official may issue an order requiring the offending party to show cause why the petition should not be dismissed or granted, as appropriate. If the offending party shall fail to show cause, the Hearing Official may take such action as he or she deems reasonable and proper under the circumstances, including dismissal or granting of the petition as appropriate.

■ 11. Section 966.13 is revised to read as follows:

§ 966.13 Ex parte communications.

Ex parte communications are not allowed between a party and the Hearing Official or the Official's staff. For these purposes, ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–26248 Filed 10–24–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0062; FRL–9742–8]

RIN 2060–AR30

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): Amendment to the Definition of ''Regulated NSR Pollutant'' Concerning Condensable Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing a final rule that revises the definition of ''regulated NSR pollutant'' contained in two sets of Prevention of Significant Deterioration (PSD) regulations and in the EPA's Emission Offset Interpretative Ruling. The revision corrects an inadvertent error made in 2008 when the EPA issued its rule to implement the New Source Review (NSR) program for fine particles with an aerodynamic diameter of less than or equal to 2.5 micrometers ($PM_{2.5}$). This revision removes a general requirement in the definition of ''regulated NSR pollutant'' to include condensable PM when measuring one of the emissions-related indicators for particulate matter (PM) known as ''particulate matter emissions'' in the context of the PSD and NSR regulations. However, the rule preserves the requirement in some particular cases to include condensable PM in measurements of ''particulate matter emissions'' as required by other regulations. In addition, measurement of condensable PM continues to be required in all cases for two other emissions-related indicators for emissions of PM—emissions of particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM_{10} emissions) and $PM_{2.5}$ emissions.

DATES: The amendments to 40 CFR parts 51 and 52 are effective December 24, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0062. 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.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Air Quality Policy Division (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541–5593; fax number (919) 541–5509; or email address: *deroeck.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this Supplementary Information section of this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Purpose
III. Background
A. National Ambient Air Quality Standards (NAAQS) for PM
B. Measuring and Reporting Emissions of PM
C. NSR Program for PM
IV. What is the final action that the EPA is taking on the definition of ''regulated NSR pollutant'' and how does it affect the way ''particulate matter emissions'' are measured?
V. What comments did we receive on the proposed amendments to the definition of ''regulated NSR pollutant''?
A. Regulated Indicators of PM
B. Defining PM Consistent With an Applicable New Source Performance Standard (NSPS)
C. Defining PM To Include Condensable PM in the State Implementation Plan (SIP)
D. Comments Related to Special EPA Policies for Implementing PM Requirements Under the NSR Program
E. Other Comments Unrelated to the Final Rule
VI. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review
VII. Statutory Authority

I. General Information

A. Does this action apply to me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups that emit PM:

Industry group	NAICS [a]
Electric services	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum refining	32411.
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.

Industry group	NAICS [a]
Natural gas liquids	211112.
Natural gas transport	48621, 22121.
Pulp and paper mills	32211, 322121, 322122, 32213.
Paper mills	322121, 322122.
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Pharmaceuticals	325411, 325412, 325413, 325414.

[a] North American Industry Classification System.

Entities affected by this rule also include state, local and tribal reviewing authorities responsible for implementing Clean Air Act (CAA or Act) stationary source permitting programs.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

II. Purpose

The purpose of this rulemaking is to revise the definition of ''regulated NSR pollutant'' to correct an inadvertent error contained in the regulations for PSD at 40 CFR 51.166 and 52.21, and in the EPA's Emission Offset Interpretative Ruling at 40 CFR part 51 Appendix S. This error was introduced in the revised definition of ''regulated NSR pollutant'' in the 2008 rule titled, ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$).'' *See* 73 FR 28321 (May 16, 2008). The revised definition required that particulate matter emissions, PM_{10} emissions and $PM_{2.5}$ emissions—representing three separate size ranges or indicators of particles—must include ''gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures,'' *i.e.,* condensable particulate matter (condensable PM). *See* existing 40 CFR 51.166(b)(49)(vi), part 51 Appendix S, and 52.21(b)(50)(vi). This final action removes an unintended new requirement on state and local agencies and the regulated community that ''particulate matter emissions'' must include the condensable PM fraction in all cases. As described in more detail in section IV of this preamble, in the 2008 rule we did not intend that the term ''particulate matter emissions'' be listed with ''$PM_{2.5}$ emissions'' and ''PM_{10} emissions'' to include the condensable PM fraction of primary PM. Historically, for ''particulate matter emissions'' often only the filterable fraction had been considered for NSR purposes, consistent with the applicable New Source Performance Standards (NSPS) for PM and the corresponding compliance test method.

This final action ensures that our originally-intended approach for regulating the three indicators for emissions of particulate matter under the PSD program is codified. Thus, ''PM_{10} emissions'' and ''$PM_{2.5}$ emissions'' are regulated as criteria pollutants (that is, under the portion of the definition of ''regulated NSR pollutant'' that refers to ''[a]ny pollutant for which a national ambient air quality standard has been promulgated * * *''), and are required to include the condensable PM fraction emitted by a source. *See* 40 CFR 51.166(b)(49)(i) and 52.21(b)(50)(i). By contrast, ''particulate matter emissions'' is regulated as a non-criteria pollutant under the portion of the definition that refers to ''[a]ny pollutant that is subject to any standard promulgated under section 111 of the Act,'' where the condensable PM fraction generally is not required to be included in measurements to determine compliance with standards of performance for PM. *See* 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii).

III. Background

A. National Ambient Air Quality Standards (NAAQS) for PM

Sections 108 and 109 of the CAA govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list each air pollutant that ''in his judgment, cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare'' and ''the presence of which in the ambient air results from numerous or diverse mobile or stationary sources'' and to issue air quality criteria for those pollutants that are listed. CAA section 108(a)(1)(A), (B). Section 109 directs the Administrator to propose and promulgate primary and secondary NAAQS for pollutants listed under section 108 to protect public health and welfare, respectively. Section 109 also requires review of the NAAQS at 5-year intervals.

''Particulate matter'' is a term used to define an air pollutant that consists of a mixture of solid particles and liquid droplets found in the ambient air. Particulate matter occurs in many sizes and shapes and can be made up of hundreds of different chemicals. As explained further in the discussion that follows, the EPA has regulated several size ranges of particles under the CAA, referred to as indicators of particles, which has required that test methods be developed to measure the appropriate size particles that occur in the ambient air or that are being emitted directly from a source. In some cases, the EPA regulates certain species of particles as separate ''air pollutants.'' For example, lead, beryllium, fluorides and sulfuric acid mist are constituents of particulate matter that are also regulated separately under New Source Performance Standards (40 CFR part 60) and/or National Emissions Standards for Hazardous Air Pollutants (40 CFR parts 61, 63 or 65).

Particles as measured in the ambient air consist of both primary and secondary particles. Primary particles are emitted directly from sources, and may include gaseous emissions, which, when emitted from the stack of a source, condense under ambient conditions to form particles. Primary particles directly emitted by a source as a solid or liquid at the stack and captured on the filter of a test train are referred to as the ''filterable'' PM fraction. The gaseous emissions that form particles upon condensing under ambient conditions soon after release from the stack are referred to as ''condensable PM.'' Other types of particles, known as secondary particles, are formed from precursors, such as SO_2 and NO_X, at a distance from their point of release as a result of complex reactions in the atmosphere.

Initially, the EPA established NAAQS for PM on April 30, 1971, under sections 108 and 109 of the Act. *See* 36 FR 8186. Compliance with the original PM NAAQS was based on the measurement of particles in the ambient

air using an indicator of particles measuring up to a nominal size of 25 to 45 micrometers (μm). The EPA used the indicator name ''total suspended particulate'' or ''TSP'' to define the particle size range that was being measured. Total suspended particulate remained the indicator for the PM NAAQS until 1987 when the EPA revised the NAAQS in part by replacing the TSP indicator for both the primary and secondary standards with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 μm (PM_{10}).

On July 18, 1997, the EPA made significant revisions to the PM NAAQS in several respects. While the EPA determined that the PM NAAQS should continue to focus on particles less than or equal to 10 μm in diameter, the EPA also determined that the fine and coarse fractions of PM_{10} should be considered separately. Accordingly, on July 18, 1997, the EPA added a new indicator for fine particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm ($PM_{2.5}$), and continued to use PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10}. *See* 62 FR 38652.

In the next periodic review, the EPA concluded, on October 17, 2006, that it was necessary to revise the primary and secondary NAAQS for PM to provide increased protection of public health and welfare. *See* 71 FR 61144. The EPA retained the two separate indicators—PM_{10} and $PM_{2.5}$—for determining compliance with the revised NAAQS for PM, so both continue to be regarded as pollutants for which a NAAQS has been promulgated.

B. Measuring and Reporting Emissions of PM

Section 110 of the Act requires that state and local air pollution control agencies develop and submit plans, known as state implementation plans or SIPs (that provide for the attainment, maintenance and enforcement of the NAAQS), for approval by the EPA. An essential component of each SIP is the emissions reduction strategy, including emissions limitations and other control measures (as set forth in SIPs and in individual source permits) designed to control the emissions of pollutants that contribute to the air quality against which the NAAQS are measured. For many years, most control measures for PM were generally focused on primary PM—specifically, the filterable PM fraction. Accordingly, the early EPA test methods for quantifying amounts of PM emitted by sources generally were based on the collection of the filterable PM fraction.

In support of state obligations to develop emissions reduction strategies, section 111 of the Act requires the EPA to adopt standards of performance that focus on sources that cause or contribute significantly to ''air pollution which may reasonably be anticipated to endanger public health and welfare.'' Such standards, referred to as NSPS, are emissions standards that are intended to reflect the degree of air pollution emission limitation attainable through the application of the best system of emission reduction (taking into account the cost of achieving such reduction and any non-air quality health and energy requirements) that the Administrator determines has been adequately demonstrated. Accordingly, the EPA historically has developed NSPS (and corresponding compliance test methods) under 40 CFR part 60 to provide standards of performance that address, among other pollutants, the control of PM.

When the EPA promulgated the first set of NSPS for PM in 1971, only the filterable PM fraction was regulated. The EPA simultaneously promulgated a test method, known as Method 5, as the NSPS compliance test method to measure the filterable fraction of PM. Once available, Method 5 was often also used for permitting purposes to quantify the in-stack emissions of PM that represented the particles in the atmosphere expressed in terms of the ambient indicator, TSP—the original indicator for the PM NAAQS. Thus, the filterable PM collected by Method 5 or other similar source test methods was sometimes referred to as ''TSP emissions,'' even though it was recognized that Method 5 actually collected particles that exceeded the TSP size range (25–45 μm), and did not include the condensable PM fraction. Today, Method 5 continues to serve as the performance testing procedure for most NSPS for PM.

As a result of the promulgation of the PM_{10} NAAQS in 1987, the annual source emissions reporting of ''particulate matter emissions'' (required under 40 CFR 51.322 and 51.323) ended with the state reporting of calendar year 1987 emissions, and the required reporting of PM_{10} emissions began with state reporting of calendar year 1988 emissions. In the absence of a standard reference test method for measuring PM_{10} emissions, states were instructed to choose an appropriate method of determining PM_{10} emissions for each source. On April 17, 1990, the EPA promulgated Method 201A to provide the states with a standard means of measuring filterable PM_{10} emissions contained in the stack. In the preamble of the promulgated Method 201A, the EPA noted that condensable PM forms very fine particles in the PM_{10} size range and is considered a portion of total PM_{10} emissions. The EPA announced its intent to propose Method 202 as a test method to measure the condensable portion. On October 12, 1990, the EPA proposed Method 202 to provide states with a means of measuring condensable PM from stationary sources. *See* 55 FR 41546. The test method for condensable PM, known as Method 202, was promulgated on December 17, 1991, in Appendix M of 40 CFR part 51. With the new focus on the PM_{10} indicator the EPA also began to emphasize the relevance of condensable PM,[1] and encouraged states to consider the condensable PM fraction as part of PM_{10} emissions where it was considered to be a significant contributor to an area's PM_{10} nonattainment status. However, there were only a few nonattainment areas where control of the condensable PM portion was actually required in order to achieve attainment of the NAAQS.

Even before the EPA introduced the $PM_{2.5}$ indicator for the PM NAAQS in 1997, the agency published information on $PM_{2.5}$ emissions in its National Emission Inventory Database (NEI).[2] With the assistance of information gained through speciation analyses of $PM_{2.5}$, the EPA recognized that condensable PM could be a substantial portion of the total $PM_{2.5}$ emitted by certain source categories. Beginning with the 1999 NEI, the EPA began including the condensable PM fraction of the total $PM_{2.5}$ emitted by certain source categories, and encouraged states to consider the condensable PM fraction for the development of emissions inventories for $PM_{2.5}$ SIPs.[3] The EPA also provided condensable PM emission factors for various source categories in AP–42 so that those state and local air control agencies having the responsibility to report emission inventories would have the tools needed

[1] ''Condensable PM is of potential importance because it usually is quite fine and thus falls primarily within the PM_{10} fraction.'' *See* ''PM–10 SIP Development Guideline,'' EPA–450/2–86–001 (June 1987) at p. 5–32.

[2] The EPA's NEI contains information about sources that emit criteria pollutants and their precursors, and hazardous pollutants. The database includes estimates of annual air pollutant emissions from point, nonpoint and mobile sources. The NEI currently contains information on PM with regard to the criteria indicators PM_{10} and $PM_{2.5}$.

[3] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze,'' EPA–454/R–99–006 (April 1999).

to estimate and report those emissions to the EPA.

In 2002, the EPA issued a rule known as the Consolidated Emissions Reporting Rule (CERR), which, among other things, established requirements for the reporting to the EPA of $PM_{2.5}$ emissions. In conjunction with the new reporting requirements, the EPA added definitions of ''primary PM,'' ''primary PM_{10},'' and ''primary $PM_{2.5}$,'' all of which included both the filterable and condensable PM fraction. *See* 67 FR 39602 (June 10, 2002). The CERR required states to report emissions of primary PM_{10} and primary $PM_{2.5}$, and listed as optional the reporting of emissions of primary PM. However, when the EPA amended those rules in 2008, it dropped the definition of ''primary PM'' and the listing of ''primary PM'' as an optional pollutant, eliminating the requirement for reporting ''PM'' (as opposed to PM_{10} and $PM_{2.5}$). *See* 73 FR 76539 (December 17, 2008).

In November 2005, the EPA proposed requirements that states must fulfill in developing their implementation plans for the attainment of $PM_{2.5}$ NAAQS. *See* 70 FR 65984 (November 1, 2005). With the historical emphasis on controlling the filterable PM fraction, it became apparent that in many cases it would be necessary to take a closer look at the control of the condensable PM fraction in order to attain the $PM_{2.5}$ NAAQS in some areas.[4] The preamble to the 2005 proposed rule highlighted the importance in certain cases of controlling the condensable PM fraction to help ensure the attainment of the new NAAQS. It was acknowledged at that time that most stationary source test methods specified in state rules did not provide for the measurement of condensable PM. As such, it was found that most source test methods referenced in SIPs provided a measurement of only the filterable fraction of PM. The EPA further noted that ''these filterable particulate matter test methods are either identical or very similar to one of the ten federal test methods published in Appendix A of 40 CFR Part 60 and used to determine compliance with New Source Performance Standards (NSPS).'' *Id.* at 66049. The EPA indicated that states needing to adopt local control measures for primary $PM_{2.5}$ in nonattainment areas would need to revise their stationary source test methods to focus on the $PM_{2.5}$ indicator, including the condensable PM fraction.[5]

On March 25, 2009, the EPA proposed to modify existing Method 201A to allow for measurement of filterable $PM_{2.5}$. In fact, the proposed modification offered the ability to measure filterable PM_{10}, filterable $PM_{2.5}$, or both filterable PM_{10} and filterable $PM_{2.5}$ from stationary sources. At the same time, the EPA proposed amendments to Method 202 to improve the precision of the method for measuring condensable PM and to provide for more accurate overall quantification of primary emissions of PM_{10} and $PM_{2.5}$ to the ambient air. Method 202 contained several optional procedures that were intended to accommodate the various test methods used by state and local regulatory entities at the time Method 202 was being developed. The inclusion of the optional procedures ultimately proved problematic in that each of them resulted in a different emissions value. To address this issue, the EPA explored the influence of the optional procedures to identify the ones that would result in biased or imprecise measurements. In December 2010, the EPA promulgated an improved Method 202 with limited options that would produce more consistent measures of emissions.

C. NSR Program for PM

The NSR program is a statutorily-based preconstruction permitting program that applies when a stationary source of air pollution proposes to construct or undergo modification. The NSR program consists of three different preconstruction permit programs: PSD, nonattainment NSR and minor NSR. We often refer to the PSD and nonattainment NSR programs together as the major NSR program because those permit programs regulate the construction of new major stationary sources and major modifications to existing major stationary sources.

The nonattainment NSR program applies in advance of construction to new major stationary sources and major modifications of sources of a pollutant that locate in an area that is designated ''nonattainment'' for that pollutant. As such, the nonattainment NSR program applies only with respect to pollutants for which the EPA has promulgated NAAQS (commonly described as ''criteria pollutants''). On the other hand, the PSD program is a statutorily-based preconstruction review and permitting program that applies to new or modified major stationary sources proposing to locate in an area meeting any NAAQS (''attainment'' areas) and areas for which there is insufficient information to classify them as either attainment or nonattainment (''unclassifiable'' areas) for at least one pollutant. Like the nonattainment NSR program, the applicability of the PSD program to a major stationary source or major modification must be determined in advance of construction and is on a pollutant-specific basis. However, unlike the nonattainment NSR program, the PSD requirements may apply to any ''air pollutant'' that is ''subject to regulation'' under the Act.[6] Thus, the PSD program is not restricted to criteria pollutants.[7] Once a major source is determined to be subject to the PSD program (PSD source) for a particular air pollutant, among other requirements, it must undertake a series of analyses to demonstrate that it will use the best available control technology (BACT) to minimize the emissions of each regulated pollutant and that the emissions of the source will not cause or contribute to a violation of any applicable NAAQS or any applicable maximum allowable increase in a pollutant concentration (PSD increment).

Consistent with the original NAAQS and PSD increments for PM, the PSD program established pollutant applicability requirements for PM on the basis of the TSP indicator. Accordingly, the PSD regulations defined a ''significant'' increase in emissions of PM as 25 tons per year (tpy). When the EPA revised the PM NAAQS in 1987, establishing a new PM_{10} indicator, two indicators for particles were recognized as being regulated under the Act because the statutory PSD increments for PM were still expressed in terms of TSP. The addition of the new PM_{10} indicator also necessitated a distinction between those emissions of PM that should be used to determine a source's compliance with

[4] ''The inclusion of condensable emissions in a source's $PM_{2.5}$ emissions is of increasing importance with the change in the indicator for particulate matter to $PM_{2.5}$. Condensible emissions are essentially fine particles, and thus are a larger fraction of $PM_{2.5}$ than of TSP or PM_{10}.'' 70 FR 65984 (November 1, 2005) at p. 66039.

[5] The EPA did indicate that ''test methodologies that measure only filterable particulate matter would be acceptable in areas where no additional reductions of primary $PM_{2.5}$ and particulate precursor emissions are required to project attainment of the $PM_{2.5}$ NAAQS.'' *Id.* at 66049.

[6] Although the language in the PSD requirements in the CAA states that those requirements apply to any pollutant subject to regulation under the Act, section 112(b)(6) of the CAA specifically excludes hazardous pollutants regulated under that section of the CAA from the PSD provisions. Accordingly, hazardous pollutants listed in section 112 of the CAA are not regulated under the EPA's PSD regulations. *See, e.g.,* 40 CFR 52.21(b)(50)(v).

[7] The EPA uses the term ''particulate matter emissions'' to define a pollutant regulated under the PSD program, but not under the nonattainment NSR program because nonattainment designations apply only with regard to criteria pollutants (pollutants for which NAAQS exist, *e.g.,* PM_{10} and $PM_{2.5}$). ''Particulate matter emissions'' are not considered a criteria pollutant.

the new PM_{10} NAAQS and those emissions of PM that should be used to determine a source's compliance with the existing TSP-based increments. Hence, in 1987, the EPA adopted the term ''particulate matter emissions'' to represent the indicator of emissions of PM that roughly corresponds to the ambient indicator, TSP, and adopted the term ''PM_{10} emissions'' to represent the indicator of emissions of PM that corresponds to the ambient indicator, PM_{10}. *See* 52 FR 24672 (July 1, 1987). Accordingly, the original significant emissions rate of 25 tpy was retained and applied to the newly-defined term ''particulate matter emissions'' (associated with the ambient TSP indicator), and simultaneously a significant emissions rate of 15 tpy was defined with regard to ''PM_{10} emissions.'' *See* 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i).

In 1993, as authorized by the CAA Amendments of 1990, the EPA adopted increments for PM that were expressed in terms of ambient concentrations of PM_{10}, and substituted those increments for the original statutory increments for PM based on the TSP indicator. *See* 58 FR 31622 (June 3, 1993). As a result, both the NAAQS for PM and the PSD increments for PM were henceforth measured by the PM_{10} indicator and, once states revised their SIPs to incorporate the new PM_{10} NAAQS and PM_{10} increments, the TSP (ambient) indicator was no longer considered a regulated indicator of particles. However, because the NSPS for PM commonly measured performance standard compliance based on emissions of PM in a manner that was roughly associated with the original ambient TSP indicator, the EPA stated in the preamble to the 1993 final rule promulgating new PSD increments based on PM_{10} that the agency would continue to regulate ''particulate matter emissions'' (25 tpy significant emissions rate) separately from ''PM_{10} emissions'' (15 tpy significant emissions rate) for purposes of PSD applicability determinations. *Id.* at 31629.

In October 1997, following the promulgation of revised NAAQS for PM, which included the addition of NAAQS defined by the $PM_{2.5}$ indicator, the EPA issued a guidance memorandum titled ''Interim Implementation for the New Source Review Requirements for $PM_{2.5}$'' (John Seitz, EPA, October 27, 1997).[8] In this guidance, the EPA set forth what is referred to as the 1997 PM_{10} Surrogate Policy, in which it was explained that sources could continue to use implementation of a PM_{10} program as a surrogate for meeting the $PM_{2.5}$ NSR requirements until certain technical difficulties were resolved. Those technical difficulties included the lack of necessary tools to calculate $PM_{2.5}$ emissions and related precursors from individual stationary sources, the lack of adequate modeling techniques to project ambient $PM_{2.5}$ impacts, and the lack of $PM_{2.5}$ ambient monitoring sites. Accordingly, sources applying for PSD permits could rely on a demonstration of compliance with regard to the PM_{10} requirements as an interim measure to satisfy the CAA requirements for meeting BACT and ambient air quality standards for the new $PM_{2.5}$ indicator. In 2005, following the promulgation of nonattainment area designations for $PM_{2.5}$, the EPA issued guidance extending the 1997 PM_{10} Surrogate Policy to the issuance of major source permits in $PM_{2.5}$ nonattainment areas. (''Implementation of New Source Review Requirements in $PM_{2.5}$ Nonattainment Areas,'' April 5, 2005.)

In 2008, the EPA issued a final rule setting forth certain new requirements for $PM_{2.5}$ in its NSR and PSD regulations. *See* ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' 73 FR 28321 (May 16, 2008). Specifically, the EPA identified the major source threshold and significant emissions rate for $PM_{2.5}$ to reflect the indicator for the PM NAAQS promulgated in 1997. *See* 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i). The 2008 rule also announced the end of the use of the EPA's 1997 PM_{10} Surrogate Policy under the federal PSD program at 40 CFR 52.21 and the nonattainment NSR program (including the Emission Offset Rule at 40 CFR part 51 Appendix S) upon the effective date of the final rule (July 15, 2008). *See* 73 FR at 28340–28343. However, the rule provided a grandfathering provision, under the federal PSD program, for PSD permit applications that were determined to be complete before July 15, 2008, but had not yet received a PSD permit by that date, enabling those applications to continue to be reviewed under the 1997 PM_{10} Surrogate Policy in lieu of the new $PM_{2.5}$ requirements. Later, in a final rule issued on May 18, 2011, which became effective on July 18, 2011, the EPA announced the repeal of that PSD grandfather provision. *See* 76 FR 28646. The EPA continued to allow the use of the surrogate policy[9] for PSD permits issued under SIP-approved PSD programs until May 16, 2011—the due date for revising SIPs to incorporate the new $PM_{2.5}$ PSD requirements promulgated in the 2008 rule. *See* 76 FR at 28659 (declining to adopt a proposal to end the policy earlier).

Hence, PM is currently being regulated under the PSD program as three separate regulated pollutants. Those include PM_{10} and $PM_{2.5}$—both of which are indicators reflecting the way the NAAQS for PM are currently measured—and ''particulate matter emissions,'' which is a term used in the PSD regulations to signify the indicator of PM that is measured and regulated under various NSPS for PM (40 CFR part 60).[10] All three of the indicators for PM are considered separately as regulated NSR pollutants subject to review under the PSD program, which means that proposed new and modified sources must treat each indicator of PM as a separate regulated pollutant for applicability determinations, and must then apply the PSD requirements, as appropriate, independently for each indicator of PM.

The 2008 rule also added a provision to the definition of ''regulated NSR pollutant'' in the PSD regulations and the Emission Offset Interpretative Ruling that required the inclusion of the condensable PM fraction for all three emissions-based indicators of PM. Accordingly, the determination of the potential emissions (for permit applicability determinations), and the setting of emissions limitations and in-stack pollutant measurements (for source compliance purposes) would involve the inclusion of the condensable fraction of PM for each of the three PM indicators. However, the EPA also announced in the 2008 rule that it would not require states to implement the requirement to account for condensable PM in establishing enforceable emissions limits for either PM_{10} or $PM_{2.5}$ in permits until the completion of a transition period that would end on January 1, 2011. *See* 73 FR at 28335. The EPA explained that the transition period would allow the agency time to assess concerns raised about uncertainties associated with the measurement of direct $PM_{2.5}$, including condensable PM, and to conduct a notice and comment rulemaking to codify new or revised test methods.

[8] Available in the docket, ID. No. EPA–HQ–OAR–2003–0063, and at *http://www.epa.gov.nsr/documents/nsrmemo.pdf.*

[9] During this period, EPA communicated that the policy should be applied consistent with applicable case law on use of surrogates. *See* 75 FR at 6831.

[10] In addition to the NSPS for PM, it is noted that states regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

Thus, while the definition of ''regulated NSR pollutant'' required the inclusion of condensable PM in all three indicators for emissions of PM, the transition policy effectively delayed its implementation until January 1, 2011, unless an existing permit condition or SIP expressly required that the condensable PM fraction be included in the measurement of PM_{10} emissions or $PM_{2.5}$ emissions. Also, states were required to submit to the EPA by May 16, 2011, SIP revisions addressing the new, revised definition of ''regulated NSR pollutant'' and other new $PM_{2.5}$ NSR requirements promulgated in the 2008 rule.

IV. What is the final action that the EPA is taking on the definition of ''regulated NSR pollutant'' and how does it affect the way ''particulate matter emissions'' are measured?

This final rule corrects an inadvertent error that established a general requirement under the definition of ''regulated NSR pollutant'' to account for the condensable PM fraction in applicability determinations and in establishing emissions limitations with regard to ''particulate matter emissions.'' The change that has been made affects three sets of NSR regulations, including the PSD regulations at 40 CFR 51.166 and 52.21, and the Emission Offset Interpretative Ruling at 40 CFR part 51 Appendix S.

It is important to note that the change being finalized under this action does not mean that we are totally exempting the inclusion of the condensable PM fraction as part of ''particulate matter emissions.'' As we described in the proposal, it may be necessary for PSD sources to count the condensable PM fraction with regard to ''particulate matter emissions'' in certain cases. The first case is for a source that is subject to an NSPS for which the condensable PM fraction must be included in the determination of compliance with the standard of performance for PM.[11] The second case is where the applicable SIP already requires that the condensable PM fraction be included in the measurement of ''particulate matter emissions.'' Finally, the third case is where a source that emits ''particulate matter emissions'' is not subject to an NSPS, but is required by the reviewing authority to include the condensable PM fraction. *See* 77 FR 15661. Accordingly, the EPA proposed to add new regulatory language at 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii) to address these particular situations. (However, as pointed out by a commenter, we omitted language referencing an approved SIP (case 2) in the proposed regulatory language.)

In this final rule, based on public comments and additional considerations we have since identified, we are not adopting the proposed clarifying text in 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii). In the proposal, the EPA explained that the revisions to these subsections were intended to assure that the condensable PM fraction of ''particulate matter emissions'' was counted in those cases where either the applicable NSPS requires that the condensable PM fraction be included in the determination of compliance with the standard of performance for PM or the applicable SIP already requires the inclusion of the condensable PM fraction. The EPA does not believe that the proposed revisions to subparagraph (ii) are necessary to include the condensable fraction of ''particulate matter emissions'' where it would be consistent with the applicable NSPS. Federal regulations at 40 CFR 51.100(pp) already define ''particulate matter emissions'' to be measured according to ''the applicable reference methods, or an equivalent or alternative method, specified in this chapter, or by a test method specified in an approved State implementation plan.'' We believe that definition is appropriately applied under both part 51 and part 52 of our regulations, even though part 52 does not presently contain such any definition of the term ''particulate matter emissions,'' and thus is not directly applicable. Thus, the condensable fraction of particulate matter emissions should be counted where appropriate, consistent with the part 51 definition.

In addition, public comments discussed later in this preamble raised questions about the proposed regulatory language that provided the option, when an NSPS was not applicable to a source, for a reviewing authority to determine on a case-by-case basis whether to include condensables in ''particular matter emissions.'' Comments have persuaded the EPA that this case-by-case approach is not needed and that if a source is not covered by an NSPS, the condensable PM fraction need not be included in ''particulate matter emission'' unless the state elects to implement such a requirement through its SIP.

Furthermore, we have recognized that the regulatory text that we proposed (which is not specific to ''particulate matter emissions'') may have a broader effect on the definition and measurement of other regulated NSR pollutants that extends beyond the intentions outlined in the proposal. Accordingly, in order to allow for further evaluation of the possible implications of the proposed regulatory text, the EPA is not finalizing the proposed revisions to subparagraph (ii) at this point.

For these reasons, we are retaining the existing regulatory language in these subparts of the PSD regulations without change. However, we will continue to evaluate the need for the proposed changes to 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii).

The proposed revisions to these paragraphs of the regulations were a secondary component of the proposed rule. The primary objective of our decision to revise the definition of ''regulated NSR pollutant'' is to correct an inadvertent error, and thus ensuring that we do not impose a new requirement on state/local agencies and the regulated community that has little if any effect on preventing significant air quality deterioration or on efforts to attain the primary and secondary PM NAAQS. That is, the PSD regulations will not require the inclusion of condensable PM in measurements of ''particulate matter emissions,'' except where either the applicable NSPS compliance test includes the condensable PM fraction or the applicable implementation plan requires the condensable PM fraction to be counted. Proposed new or modified stationary sources of PM typically will be subjected to the PSD requirements on the basis of their potential to emit significant amounts of PM_{10} or $PM_{2.5}$ and will be required to install controls for their emissions of PM_{10} and/or $PM_{2.5}$, both of which must consider the condensable PM fraction.

V. What comments did we receive on the proposed amendments to the definition of ''regulated NSR pollutant''?

The EPA provided a 60-day review and comment period on this rulemaking, which closed on May 15, 2012. A total of seven comment letters (six industry comment letters and one state agency comment letter) were received on the proposed amendment to correct the definition of ''regulated NSR pollutant'' by removing the unilateral requirement that condensable PM be

[11] In developing the NSPS for Wool Fiberglass Insulation Manufacturing facilities (Subpart PPP), the EPA determined that the control device could effectively reduce both the solid particles and the condensable PM, and promulgated the PM standard based on the measurement of both filterable solid particles and condensable PM. In addition, the agency established a variant of Method 5, referred to as Method 5e, to measure the filterable PM and the total organic carbon portion of the impinger catch. *See* 50 FR 7694 (February 25, 1985).

included in measurements of ''particulate matter emissions.'' All of the commenters supported the EPA's proposed correction. Although the commenters supported the EPA's proposal with regard to the way that ''particulate matter emissions'' should be measured, some commenters also requested that the EPA make additional revisions or clarify certain aspects of the proposal in the final rule preamble and regulation language. The following subsections provide a summary of those requests.

A. Regulated Indicators of PM

Comment: A state agency commenter claims that the EPA's discussion of PM and the various indicators of PM is confusing in several ways. First, the state agency commenter notes that the EPA uses the general term ''particulate matter'' in the Integrated Science Assessment or ISA (previously called the Air Quality Criteria Document) to describe the criteria pollutant, while also using various indicators—TSP, PM_{10} and $PM_{2.5}$—based on particle size to establish NAAQS. The state then explained that ''[w]e have always understood that each of the indicators used for PM included all applicable size distributions. Therefore, PM_{TSP} includes PM_{10} and $PM_{2.5}$ and PM_{10} includes $PM_{2.5}$. Therefore, we found the preamble justification confusing when EPA refers to PM without reference to particle size.''

Response: Any reference to ''PM'' alone was intended to generally describe the generic pollutant without regard to the specific indicator being regulated by either the NAAQS or an emissions test method. The term ''particulate matter'' or ''PM'' is used generically to describe a broad range of particles. PM is a pollutant that is defined more specifically for regulatory purposes by the method in which it is collected, either under in-stack or ambient conditions. As explained earlier in this preamble, for NSR purposes, the EPA regulates three indicators of emissions of PM—''particulate matter emissions,'' ''PM_{10} emissions'' and ''$PM_{2.5}$ emissions,'' and two indicators of ambient PM—PM_{10} and $PM_{2.5}$. The term ''total suspended particulate'' or ''TSP'' was originally used by the EPA as an indicator of ambient concentrations of PM by which compliance with the original NAAQS for PM was measured. The term ''particulate matter emissions'' represents the indicator of emissions of PM that roughly corresponds with the ambient indicator ''TSP.'' Since the EPA revoked the TSP-based NAAQS, but continues to regulate ''particulate matter emissions'' as an emissions indicator associated with various NSPS for PM, ''particulate matter emissions'' is referred to as a non-criteria emissions indicator of PM. Accordingly, when we intend to refer to a specific regulated form of PM, the preamble uses the appropriate term—''particulate matter emissions,'' ''PM_{10} emissions,'' or ''$PM_{2.5}$ emissions''—to establish the form of PM to be regulated for NSR applicability determinations and emissions setting purposes.

Comment: The same state agency commenter claims that ''EPA proposes to regulate only the filterable portion of PM under Method 5 and retain PM_{10} and $PM_{2.5}$ as indicators for the PM criteria pollutant.'' The state then indicated that ''[t]he definition of direct emissions for PM_{10} and $PM_{2.5}$ includes both filterable and condensable PM emissions.'' Thus, the state agency commenter claims that it was unclear how the EPA's final rule would affect permit applicability determinations, ''since the state implementation plan (SIP) includes condensable emissions for total PM.'' In conjunction with this uncertainty, the state commenter asks whether it is the EPA's intent ''to limit the emissions for PM to only the fraction larger than PM_{10} or $PM_{2.5}$? Or, is EPA's intent to limit the emissions for PM to only the filterable fraction larger than PM_{10} or $PM_{2.5}$, but include the filterable and condensable emissions for PM_{10} and $PM_{2.5}$?'' The state agency commenter requests that the EPA confirm its understanding that ''no source impact analysis under PSD is required for PM because EPA considers PM—as PM_{TSP}—to be a non-criteria pollutant indicator similar to sulfuric acid mist.'' Thus, the state agency commenter understood that it would evaluate impacts under the state's minor NSR program, and only require a control technology review under PSD for the filterable fraction of particulate matter emissions.

Response: The final rule sets forth minimum PSD program requirements at 40 CFR 51.166 for an approvable SIP. Under those requirements, the measurement of ''particulate matter emissions'' generally includes only the filterable portion, unless the applicable NSPS or SIP requires that the condensable PM fraction be counted as well. Hence, as in the case of the state commenter, where a SIP requires the inclusion of condensable PM emissions in the measurement of ''total PM'' (the term that the state commenter appears to use in lieu of the EPA's term ''particulate matter emissions''), the final rule does not preclude the state from requiring a source to determine its applicability, and enforceable emissions limits, for ''particulate matter emissions'' based on both the filterable and the condensable PM fractions. In any case, it was not the EPA's intent to limit the measurement of ''particulate matter emissions'' to the fraction (or filterable fraction) larger than PM_{10} and $PM_{2.5}$. Clearly, Method 5 measures particles that include the filterable PM_{10} and $PM_{2.5}$, but includes larger particles as well.

To address ''particulate matter emissions,'' we generally agree with the commenter's understanding that one of the primary concerns under the PSD program is to ensure that a new major stationary source that emits significant amounts of ''particulate matter emissions'' or a major modification that results in a significant net emissions increase of ''particulate matter emissions'' must undergo a control technology review for that emissions indicator of PM. However, there is a source impact assessment component in the PSD requirements that cannot simply be relegated to a minor NSR review requirement with regard to ''particulate matter emissions.'' While there are no air quality standards (NAAQS or increments) associated with ''particulate matter emissions,'' section 165(e)(3)(B) of the CAA requires an analysis of the ambient air quality, climate, meteorology, terrain, soils and vegetation, and visibility ''for each pollutant regulated under this Act'' that will be emitted by the proposed PSD project. This requirement, referred to as the ''Additional Impact Analysis'' at 40 CFR 51.166(o) and 40 CFR 52.21(o), could potentially require certain analyses with regard to ''particulate matter emissions'' as part of the PSD preconstruction review process.

Comment: The state agency commenter and an industry commenter both had recommendations for excluding ''particulate matter emissions'' from the major source applicability requirements. The state agency commenter's recommendation addresses major modifications, while the industry commenter recommends an exclusion from major source applicability altogether. The state agency commenter recommends that, because the concern with ''particulate matter emissions'' rests with NSPS applicability and control technology review, the EPA should ''remove the major modification significant emission rate (25 tpy) for PM from the PSD major modification portion of the PSD rules, and rely on the state's minor NSR program to conduct the technology review under the NSPS program. * * *'' The industry commenter

believes that there is no reason to include ''particulate matter emissions'' in any major NSR applicability determinations, regardless of whether the term includes condensable PM or not, because (1) particles larger than 10 μm are not a significant driver of health effects; and (2) applicability thresholds for PM_{10} and $PM_{2.5}$ are already in place and are generally more protective standards than the ''particulate matter emissions'' standards. Thus, the industry commenter recommends that the definition of ''regulated NSR pollutant'' be further modified to eliminate ''particulate matter emissions'' as a third indicator of PM for NSR purposes.

Response: With regard to the comments that ''particulate matter emissions'' should be excluded from major source applicability determinations, we note that the statutory PSD requirements mandate preconstruction review for each pollutant regulated under the CAA. For example, section 165(a)(4) requires best available control technology for ''each pollutant subject to regulation under this Act. * * * '' Thus, the EPA's PSD regulations require that both criteria and non-criteria pollutants undergo PSD review under the applicable provisions. The term ''particulate matter emissions'' represents an indicator of emissions of PM, different from the current indicators of PM that define the PM NAAQS, that is regulated under various NSPS to determine compliance with regard to PM based on Test Method 5. For this reason, the EPA believes that it is necessary to consider ''particulate matter emissions'' to be a separate pollutant subject to regulation under the CAA and, thus, subject to PSD. *See, e.g.,* 58 FR 31622 at 31629 (June 3, 1993).

Comment: Two industry commenters request that the EPA clarify that, consistent with prior rulemaking, it intends to limit the interpretation of existing limits—and associated compliance demonstration requirements—to filterable PM. The commenters point to several instances when the EPA stated the importance of implementing any new or revised emissions limits and test methods that account for condensable emissions in a prospective manner and clearly differentiated from existing NSR permit requirements in order to avoid confusion over a source's compliance status relative to existing PM emissions limits that did not include the condensable portion. (Commenters cited similar EPA statements made in two separate **Federal Register** notices, *i.e.,* 72 FR 20586 (April 25, 2007) at 20654 and 73 FR 28321 (May 16, 2008) at 28335.)

Response: The EPA's position with regard to the enforcement of permits, as explained in the preamble to the 2008 rule, was and continues to be that the provisions requiring the inclusion of the condensable PM fraction should be implemented prospectively and not retroactively after the January 1, 2011, default end date for the condensable PM transition period. In the preamble to the 2008 rule, we indicated with regard to the potential for retroactive enforcement that the EPA ''will not revisit applicability determinations made in good faith prior to the end of the transition period, insofar as the quantity of condensable PM emissions are concerned, unless the applicable implementation plan clearly required consideration of condensable PM.'' *See* 73 FR at 28335. We also stated that ''EPA will interpret PM emissions limitations in existing permits or permits issued during the transition period as not requiring quantification of condensable $PM_{2.5}$ for compliance purposes unless such a requirement was clearly specified in the permit conditions or the applicable implementation plan.'' Id. 28335. Thus, we believe our position is clear that it is not our intention to apply the requirement to include the condensable PM fraction to applicability determinations and emissions limitations in permits that occurred prior to the January 1, 2011, end of the condensable PM transition period, unless such determinations and emissions limitations already address the condensable PM fraction. We do, however, intend to apply the requirement prospectively, such that when existing sources undergo modifications involving increases in PM_{10} emissions and $PM_{2.5}$ emissions, the source will be required to consider the condensable fraction of PM_{10} and $PM_{2.5}$ emissions in determining the applicability of PSD to the proposed project, and establishing enforceable emissions limits and compliance tests.

B. Defining PM Consistent With an Applicable New Source Performance Standard (NSPS)

Comment: Several industry commenters support the EPA's proposal to define PM consistent with an applicable NSPS. One of the commenters recommends that the final regulation be amended to clarify that the definition and measurement of PM_{10} and $PM_{2.5}$, when used in the context of NSR and PSD reviews and analyses, also be tied to the underlying and governing NSPS requirements of the source being considered. Specifically, the commenter states that the final regulation should be amended to state that $PM_{2.5}$ and PM_{10} should not include the condensable fraction of PM for any source where the applicable NSPS does not include the condensable fraction of PM in the definition or measurement of the PM standard.

Response: The main purpose of this rule is to remove the general requirement that ''particulate matter emissions'' include the condensable PM fraction and to make the measurement of ''particulate matter emissions'' generally consistent with the method prescribed by the applicable NSPS (except where a SIP would be more stringent). We do not agree with the recommendation by the commenters that the final PSD regulations should not require ''$PM_{2.5}$ emissions'' and ''PM_{10} emissions'' to include the condensable PM fraction when the applicable NSPS does not include the condensable fraction. There may be more than one basis upon which a pollutant is regulated under the Clean Air Act, and hence defined as a regulated NSR pollutant. Both $PM_{2.5}$ and PM_{10} are indicators of PM for which the EPA has promulgated health- and welfare-based NAAQS and thus each is a regulated NSR pollutant independent of the scope of any applicable NSPS for a source. Furthermore, it is important that a source seeking a PSD permit demonstrate that its proposed emissions increases will not cause or contribute to a violation of any NAAQS or increment, as is clearly required by the CAA and PSD regulations. As such, it is important to consider the condensable PM fraction in each case when setting enforceable emissions limits and compliance tests for PSD sources. The fact that a particular NSPS may not include the condensable fraction to determine compliance with a particular performance-based standard does not alter that fact. The standards of performance for new sources established under section 111 of the CAA reflect emission limits achievable at the time of promulgation with the best adequately demonstrated technological system of continuous emission reduction considering the cost of achieving such emission reductions and any non-air quality health, environmental and energy impacts. Thus, if the consideration of the condensable fraction of PM_{10} and $PM_{2.5}$ emissions would not be indicative of the efficiency of a control device used by the industry at the time of promulgation, then it would not be necessary or appropriate to include

measurement of the condensable PM fraction as part of the NSPS.[12]

On the other hand, SIPs, including the NSR permitting requirements, approved under section 110 of the Act, must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. If the enforceable limits in a PSD permit for PM_{10} and $PM_{2.5}$ do not include the condensable PM fraction, simply because the applicable NSPS does not include it, the source's demonstration of compliance with the NAAQS and increments for PM_{10} and $PM_{2.5}$ would be incomplete and subject to challenge. Similarly, for nonattainment NSR, it is important to consider the condensable PM fraction so that all PM_{10} and $PM_{2.5}$ emissions increases can be considered for applicability determinations and for determining required offsets.

Thus, the final rule retains the general requirement to include the condensable fraction of PM_{10} and $PM_{2.5}$ emissions in each case for purposes of NSR permitting under the EPA's regulations at 40 CFR 51.166(b)(49)(i), 40 CFR 52.21(b)(50)(i), 40 CFR 51.165(a)(1)(xxxvii), and 40 CFR part 51 Appendix S. Because of these provisions, the definition of ''PM_{10} emissions'' in section 51.100(rr) of the EPA's regulations should not be construed to limit PM_{10} emissions to only the fraction covered by an applicable test method in an NSPS or SIP. Section 51.100(rr) defines ''PM_{10} emissions'' as measured under the chapter of the Code of Federal Regulations where this provision is located or an approved SIP. The more specific definitions of the term ''regulated NSR pollutant'' referenced above are part of the same chapter and thus applicable under the general definition of ''PM_{10} emissions'' in section 51.100(rr). Therefore, the specific definitions in the NSR regulations control in this instance to require inclusion of the condensable fraction of PM_{10} emissions in all cases under the NSR program.

C. Defining PM To Include Condensable PM in the State Implementation Plan (SIP)

In the preamble to the notice of proposed rulemaking (NPRM), we indicated that when a proposed source or modification emits a pollutant that is regulated under section 111 of the CAA, but the source itself is not subject to an NSPS for that pollutant, the reviewing authority will determine the applicable test method to be used to determine the source's compliance, *e.g.,* with regard to the possible inclusion of condensable PM in the measurement of ''particulate matter emissions.'' *See* 77 FR at 15661 and 15663 (proposed regulatory text at 40 CFR 51.166(b)(49)(ii) providing that ''[f]or sources not currently regulated by an applicable NSPS, measurement of such pollutant shall be determined by the reviewing authority'').

Comment: Two industry commenters opine that reviewing authorities should not be allowed to define PM as requiring consideration of condensable PM where the SIP does not already require it of a particular source category. One of the industry commenters suggest that the EPA replace the reference to the ''reviewing authority'' in proposed 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii) with a reference to the ''applicable state implementation plan.'' The commenter states that the proposed language suggests that, for a non-NSPS source, a permitting authority could specify a measurement method that is inconsistent with the SIP.

Response: The EPA believes that states should follow the requirements set forth in their EPA-approved SIP and that it would be inappropriate to make decisions on individual permits that are inconsistent with the applicable SIP provisions. Thus, where a SIP provides that only the filterable fraction of ''particulate matter emissions'' be counted, individual sources should not be selectively required to count the condensable PM fraction as well. We do not believe, however, that explicit language needs to be included in the regulatory text as recommended by the commenters. As explained earlier in this preamble, we have decided to take no final action at this time with regard to revising subparagraph (ii) of the definition ''regulated NSR pollutant.'' Accordingly, this final action does not revise the PSD regulations to include the proposed language or any clarification of it. As explained earlier, the definition of ''particulate matter emissions'' at 40 CFR 51.100(pp) provides that states can rely on a test method contained in ''an approved State implementation plan'' to determine the measurement of that pollutant. In the absence of specific language in the definition of ''regulated NSR pollutant,'' this definition provides sufficient criteria for the reviewing authority to determine the applicable method under federal law for measuring ''particulate matter emissions,'' and should address the commenters' concerns about the reviewing authority using a method inconsistent with the SIP in circumstances where the reviewing authority is implementing the approved SIP.

Comment: One state agency commenter provides that the actual proposed rule language (40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii)) only accounts for two of three stated cases cited by the EPA where condensable PM could be included in the measurement of ''particulate matter emissions,'' and omits the EPA-cited case where the applicable SIP already requires that the condensable PM fraction be included in the measurement of ''particulate matter emissions.'' The commenter suggests that the EPA reconsider and specifically list the SIP requirement case (where condensable PM should still be counted) in the final rule language to avoid confusion in regulatory intent.

Response: The commenter is correct in identifying the omission of the cited regulatory language in the proposal. For reasons discussed above, we are not adopting the proposed revisions to sections 51.166(b)(49)(ii) and 52.21(b)(50)(ii) at this time. In light of the definition of ''particulate matter emission'' in section 51.100(pp), we do not believe that a direct reference to the SIP needs to be included in sections 51.166(b)(49)(ii) and 52.21(b)(50)(ii). Accordingly, it should be clear that a state may choose to adopt a requirement for a test method that includes the condensable PM fraction as part of ''particulate matter emissions,'' for PSD applicability and permit enforcement purposes. It should also be noted that such requirement in a state's SIP will not similarly affect PSD sources in other states or SIP jurisdictions.[13]

D. Comments Related to Special EPA Policies for Implementing PM Requirements Under the NSR Program

Comment: Two industry commenters express concerns that the discussion in the March 16, 2012, proposal preamble regarding the history of the EPA's regulation of PM under the NSR program, failed to include a description of several key policy decisions, including the 1997 PM_{10} Surrogate

[12] Several preambles for NSPS have recognized that the measurement methods for the standards highlight the basis for the test methods selected and that the selected test methods will not necessarily measure emissions as they would exist upon release to the atmosphere. *See, e.g.,* 40 FR 46250 (Oct. 6, 1975); 43 FR 7568 (Feb. 23, 1978); 44 FR 34840 (June 15, 1979); 45 FR 66742 (Oct. 7, 1980).

[13] *See* Memo from Stephen L. Johnson, Administrator, to Regional Administrators re: EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program, at 15 (Dec. 18, 2008) (outlining interpretation of CAA section 116); 74 FR 51535, 51542–43 (Oct. 7, 2009) (proposing to retain Johnson Memo interpretation on reconsideration); 75 FR 17004, 17011–12 (April 2, 2010) (final action on reconsideration of interpretation).

Policy, the Grandfather Policy for $PM_{2.5}$ (for pending permits under the federal PSD program) and the condensable PM Transition Policy. These commenters indicate that there are continued concerns regarding the EPA's PM regulations that have created uncertainty and hardship for the regulated community, and specifically requests that the EPA include a discussion of these policies in the final rule preamble for accuracy purposes.

Response: This preamble includes a limited discussion about each of these special policies for implementing the PM program in section III.C of this preamble (*New Source Review Program for PM*). In addition, we have included references to earlier actions that provide greater details of the respective policies. Thus, we do not believe that it is necessary to provide more lengthy descriptions of the individual policies herein.

E. Other Comments Unrelated to the Final Rule

Several commenters raise concerns of either a policy or technical nature unrelated to the actions associated with this final rule. For example, two industry commenters state that EPA Method 201A cannot be used to accurately measure filterable PM_{10} and $PM_{2.5}$ from emissions units that use wet controls. Another commenter recommends that the EPA continue work toward development of a methodology known as the air dilution test methodology. A commenter recommends that the EPA accelerate its progress toward promulgating complete and appropriate modeling and monitoring methods necessary to provide the required technical support for effective and equitable implementation of $PM_{2.5}$ major NSR permitting. Finally, one commenter requests that the EPA review guidance documents to the states to assure that the EPA is giving them correct and clear direction regarding the need to test certified stationary engines. The details of these comments can be reviewed in the docket where all of the individual sets of comments received for this rulemaking have been posted. The EPA believes that these comments generally pertain to broader $PM_{2.5}$ issues but are not relevant to this limited action to revise the definition of ''regulated NSR pollutant'' as it applies to condensable PM emissions. As such, the issues described above are more appropriately addressed in forums other than this final rule.

VI. Statutory and Executive Order Reviews

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). This final action removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications subject to the PSD program. The change will eliminate an unintended burden.

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 this rule on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (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 final rule on small entities, which removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities because small entities are not subject to the requirements of this rule.

D. Unfunded Mandates Reform Act

This final action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action does not impose any enforceable duty on any state, local or tribal governments or the private sector. This action removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications. Thus, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This final action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted above, this final action removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications.

E. Executive Order 13132: Federalism

This final action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action removes the unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications. The requirement being removed was inadvertently included in the 2008 rule for implementation of the $PM_{2.5}$ NSR program. Thus, Executive Order 13132 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed action from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final action removes the

unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modification. The removed requirement was inadvertently included in the 2008 rule for implementation of the $PM_{2.5}$ NSR program.

The Act provides for states to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Air Rule (TAR) under the Act gives tribes the opportunity to develop and implement Act programs to attain and maintain the $PM_{2.5}$ NAAQS, but leaves to the discretion of the tribes the decision of whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. Thus, Executive Order 13175 does not apply to this action.

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

This final action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the agency does not believe the environmental health or safety risks addressed by this action to eliminate an unintended requirement present a disproportionate risk to children. The removal of this requirement will not affect one of the basic requirements of the PSD program; that new and modified major sources must demonstrate that any new emissions do not cause or contribute to air quality in violation of the NAAQS.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action 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 the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider 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, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule action to remove an inadvertent error that was introduced in a 2008 rulemaking will not have adverse human health or environmental effects on minority or low-income populations because it does not appreciably affect the level of protection provided to human health or the environment.

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 24, 2012.

L. Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 24, 2012. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment (including any public hearing) can be raised during judicial review. This section also provides a mechanism for the EPA to convene a proceeding for reconsideration ''[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule[.]'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

VII. Statutory Authority

The statutory authority for this final action is provided by sections 101, 160, 163, 165, 166, 301 and 307(d) of the Act as amended (42 U.S.C. 7401, 7470, 7473, 7475, 7476, 7601 and 7607(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: October 12, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

■ 2. Section 51.166 is amended by revising paragraph (b)(49)(i) and by removing paragraph (b)(49)(vi). The revised text reads as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(49) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included;

(*b*) Any pollutant identified under this paragraph (b)(49)(i)(*b*) as a constituent or precursor to a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

* * * * *

■ 3. Appendix S to Part 51 is amended by revising paragraph II.A.31(ii) and by removing paragraphs II.A.31(iii) and (iv). The revised text reads as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

31. * * *

(ii) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in permits issued under this ruling. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(*b*) Any pollutant that is identified under this paragraph II.A.31(ii)(*2*) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

* * * * *

PART 52—[Amended]

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

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

Subpart A—[Amended]

■ 5. Section 52.21 is amended by revising paragraph (b)(50)(i) and by removing paragraph (b)(50)(vi). The revised text reads as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(50) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(*b*) Any pollutant identified under this paragraph (b)(50)(i)(*b*) as a constituent or precursor for a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA

demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

* * * * *

[FR Doc. 2012–25978 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0332; FRL—9743–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Antibacksliding of Major NSR SIP Requirements for the One-Hour Ozone National Ambient Air Quality Standards (NAAQS); Major Nonattainment NSR (NNSR) SIP Requirements for the 1997 Eight-Hour Ozone NAAQS; and Major NSR Reform Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the SIP for the State of Texas that relate to antibacksliding of Major NSR SIP Requirements for the one-hour ozone NAAQS; Major NNSR SIP requirements for the 1997 eight-hour ozone NAAQS; Major NSR Reform Program with Plantwide Applicable Limit (PAL) provisions; and non-PAL aspects of the Major NSR SIP requirements, because these changes comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. Texas submitted revisions to these programs in two separate SIP submittals on March 11, 2011. On August 29, 2012, Texas submitted SIP revisions (adopted July 25, 2012) that it had previously proposed February 22, 2012, for parallel processing. On May 3, 2012, Texas provided a letter to EPA which included a demonstration showing how its submitted rules are at least as stringent as the Federal NSR Reform Program. EPA proposed approval of these revisions on June 20, 2012. Today, EPA is approving the two SIP revisions submitted March 11, 2011; the revisions submitted August 29, 2012; and the May 3, 2012, letter as part of the Texas NSR SIP. EPA is approving these provisions under section 110 and parts C and D of the Act.

DATES: This rule is effective on November 26, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0332. All documents in this docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publically available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publically available only in hard copy form. Publically available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–7212; fax number (214) 665–6762; email address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever any reference to ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background
A. What is the background of the Texas programs for major NSR for the eight-hour NAAQS for ozone and for NSR reform?
B. What changes did Texas submit?
C. Proposal and Public Comments
D. Overview of Today's Final Rule
II. What comments did we receive and what is our response to the comments?
III. Final Action
V. Statutory and Executive Order Reviews

I. Background

A. What is the background of the Texas programs for major NSR for the eight-hour NAAQS for ozone and for NSR reform?

1. Major NSR for the Eight-Hour NAAQS for Ozone

On April 30, 2004, EPA promulgated regulations (69 FR 23858) that included requirements for implementing Major NSR for the 1997 eight-hour ozone NAAQS. On May 25, 2005, the TCEQ adopted SIP revisions to implement these requirements and submitted them to EPA on June 10, 2005. The EPA disapproved these regulations on September 15, 2010 (75 FR 56424) because the State's regulations did not meet the requirements of the Act, Federal regulations, and were not consistent with EPA policy. On March 11, 2011, TCEQ resubmitted the revisions adopted May 25, 2005, and submitted further revisions, adopted February 9, 2011, to address EPA's September 15, 2010, disapproval. Sections I.B and I.D of this preamble include further details on TCEQ's submission.

2. NSR Reform

On December 31, 2002 (67 FR 80186), EPA promulgated its NSR Reform Program. On November 7, 2003 (68 FR 63021), EPA promulgated a final action on its reconsideration of the December 31, 2002, NSR Reform Program's rules. On January 11, 2006, TCEQ adopted its regulations for NSR Reform and on February 1, 2006, submitted these regulations to EPA for SIP approval. EPA disapproved these regulations on September 15, 2010 (75 FR 56424) because the State's regulations did not meet the requirements of the Act, Federal regulations, and were not consistent with EPA policy. On March 11, 2011, TCEQ resubmitted the revisions adopted January 11, 2006, and submitted further revisions, adopted February 9, 2011, to address the grounds for EPA's September 15, 2010, disapproval. On February 22, 2012, TCEQ proposed additional revisions to these regulations and requested that EPA parallel process these revisions with the revisions submitted March 11, 2011, based upon the revisions that TCEQ proposed February 22, 2012. The TCEQ adopted these proposed revisions on July 25, 2012, and submitted them to EPA on August, 29, 2012. Finally, TCEQ submitted a letter dated May 3, 2012, to

EPA to meet its Federal NSR Reform Program demonstration requirements that provides its interpretation of certain NSR Reform rules to further clarify and ensure implementation consistent with the Federal NSR Reform Program. Sections I.B and I.D of this preamble include further details of what TCEQ submitted.

B. What changes did Texas submit?

On March 11, 2011, the TCEQ submitted the following revisions to the Texas SIP:

- New Source Review for Eight-Hour Ozone Standard; Rule Project Number 2005–009–116–AI, adopted May 25, 2005. These revisions were originally submitted on June 10, 2005. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions submitted March 11, 2011, included the resubmittal of the 2005 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.
- Federal New Source Review Permit Rules Reform; Rule Project Number 2006–010–116–PR, adopted January 11, 2006. These revisions were originally submitted on February 1, 2006. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions submitted March 11, 2011, included the resubmittal of the 2006 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.
- New Source One-Hour Ozone Major Source Thresholds and Emission Offsets; Rule Project Number 2008–030–116–PR, were adopted February 9, 2011, and submitted March 11, 2011.
- New Source Review (NSR) Reform; Rule Project Number 2010–008–116–PR, were adopted February 9, 2011, and submitted March 11, 2011.
- NSR Reform Revisions; Rule Project Number 2012–015–116–AI, were adopted July 25, 2012, and submitted August 29, 2012; which include revisions proposed February 22, 2012, for parallel processing.
- A letter dated May 3, 2012, which requested that EPA parallel process the revisions proposed February 22, 2012, and further included a demonstration showing that certain of its submitted rules are at least as stringent as the Federal NSR Reform Program.

Additional information on the submitted SIP revisions is included in the proposed rulemaking for this final rule and in the Technical Support Document (TSD) which is located in the docket.[1]

C. Proposal and Public Comments

On June 20, 2012, EPA proposed to approve these revisions (77 FR 36964). We established a public comment period and requested that interested parties submit comments on the proposal for a period of 30 days (until July 20, 2012). We received comments from one industry group and three citizens. We address these comments in section II of this preamble.

D. Overview of Today's Final Rule

As discussed above, we reviewed the rules that TCEQ submitted in two submittals dated March 11, 2011, and August 29, 2012. We proposed to approve the latter submittal, as proposed by TCEQ on February 22, 2012, using our parallel processing authority. TCEQ adopted the latter submittal on July 25, 2012, without change from its proposal.

In summary, we are approving the following revisions that TCEQ submitted to ensure that the rules are consistent with Federal requirements and approvable by EPA:

- Anti-backsliding of major NSR SIP requirements for the one-hour ozone NAAQS, in areas that are also nonattainment for the eight-hour ozone NAAQS.
- The Federal requirements for applicability of the 8-hour ozone requirements in non-attainment areas being the date of issuance of the permit.
- The Plantwide Applicability Limit (PAL) provisions as follows:
  - Limited PALs to existing major stationary sources.
  - Created provisions for PAL re-openings to make corrections that relating to PAL increases; PAL decreases; new applicable requirements (for example, NSPS); reductions to PALs to avoid causing or contributing to a violation to a NAAQS or PSD increment or an quality related value identified for a Federal Class I area.
  - Created revisions for PAL invalidation for failure to use a monitoring system prescribed by the PAL.
  - Adopted provisions to clarify that PALs are applicable to major stationary sources only and the TCEQ added language to require that all emission units at the major stationary source that emit the PAL pollutant be included in the PAL permit application.
  - Adopted necessary definition changes for ''baseline actual emissions'' that specify that the calculations of baseline actual emissions for a PAL is an average rate.
  - Adopted new definitions for the PAL program specific monitoring definitions in its rules such as Continuous Emissions Monitoring System (CEMS), Continuous Emissions Rate Monitoring System (CERMS), Continuous Parameter Monitoring System (CPMS), and Predictive Emissions Monitoring System (PEMS).
  - Modified the definition of ''plant-wide applicability limit effective date'' by removing references to the date a Flexible Permit was issued.

TCEQ also provided a clarification letter to EPA on May 3, 2012, which includes:

- A written demonstration for how the definition of ''plantwide applicability limit'' provides that emission limits in its PAL Permits meets the Federal requirements for being enforceable as a practical matter.
- A written demonstration that monitoring data must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL.
- A written clarification that the Texas rules provides for the PAL limit to be enforced on a 12-month rolling average, and that *for compliance purposes,* the emission calculations must include emissions from startups, shutdowns, and malfunctions, including outlining that their rules require regulated entities, regardless of whether they have a PAL permit, to record (and in some cases report) emissions events, which include unscheduled maintenance, startup, and shutdown (MSS) activity emissions, with additional clarification that emissions from malfunctions are unauthorized emissions as defined in 30 TAC 101.1(107); therefore, they are unauthorized (non-compliant) emissions.

TCEQ also addressed EPA's concerns about several non-PAL aspects of the major NSR SIP requirements including:

- Explicitly limiting the definition of ''Facility'' to an emissions unit by adding the clarification language that the use of ''facility'' by adding ''or emissions unit'' to the terms ''facility'' or ''facilities.''
- Revising the definitions of ''baseline emissions'' and ''projected actual emissions'' to require the inclusion of emissions resulting from startups and shutdowns.

[1] The Technical Support Document is in the docket for this action as document number EPA–R06–OAR–2011–0332–0008. You can access this document at *http://www.regulations.gov/#!documentDetail;D=EPA–R06–OAR–2011–0332–0008.* After you open this address, click on the ''PDF'' icon to open the document.

• Revisions to clarify that startup and shutdown emissions reported under Chapter 101 be included in the calculation of baseline actual emissions but only to the extent that they have been authorized or are being authorized to ensure that *non-compliant emissions are excluded* from baseline actual emissions.

• Amending the definition of ''projected actual emissions'' by replacing the phrase ''unauthorized emissions from startup and shutdown activities'' with ''emissions from planned maintenance, startup, or shutdown activities,'' which were historically unauthorized and subject to reporting under Chapter 101 to ensure that this definition is compatible with the definition of ''baseline actual emissions.''

We are taking final action to approve these revisions for the reasons discussed in the EPA's June 20, 2012, proposal, and in our response to comments discussed in section II. Please refer to the proposal and the TSD for the additional information on the basis for this final action.

II. What comments did we receive and what is our response to the comments?

We received comments from the Texas Industry Project (TIP) and from three citizens. These comments and our responses are summarized below.

A. Comment Relating To Invalidation of PAL Permits Because of Monitoring Malfunctions or Downtime

Comment. We received a comment from TIP requesting that EPA confirm that its interpretation of proposed revisions to 30 TAC 116.186(b)(9) and associated Federal PAL provisions that PAL permits will not be invalidated because of monitoring malfunctions and other downtime. The commenter stated that each of these provisions states that ''[f]ailure to use a monitoring system that meets the requirements of this section renders the PAL permit invalid'' as stated at 37 *Tex. Reg.* 1661, 1674 (March 9, 2012); and in the Federal rules at 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). This would be consistent with TCEQ's interpretation, which is: ''[T]he phrase 'failure to use' in EPA's rule means failure to install or operate the prescribed monitoring device or system to operate under a PAL permit, rather than an inadvertent malfunction or maintenance downtime of the monitoring device or system.'' See 37 *Tex. Reg.* at 1663. This also appears to be consistent with EPA's interpretation. See 75 FR 56424, at 56438 (September 15, 2010) (indicating EPA's intent to require State PAL programs to provide for ''invalidating the PAL if there is no compliance with the required monitoring''). This interpretation is also consistent with other PAL provisions that acknowledge the possibility of monitoring malfunctions or other downtime. For example, the ''monitoring system'' can rely on emissions factors. See 40 CFR 51.165(f)(12)(ii)(D) and 51.166(w)(12)(ii)(d); and 30 TAC 116.186(c)(3)(D). The rules also require recording and reporting maximum emissions ''during any period of time that there is no monitoring data,'' unless another method is specified in the permit. See 40 CFR 51.165(f)(12)(vii) and 51.166(w)(12)(vii); and 30 TAC 116.186(b)(8). As another example, the rules call for periodic reporting of ''deviations or monitoring malfunctions.'' See 40 CFR 51.165(f)(14)(i)(E) and 51.166(w)(14)(i)(e); and 30 TAC 116.186(b)(4)(C)(v).

Response. EPA confirms that the requirements in 30 TAC 116.116(b)(9) do not require PAL permits to be invalidated because of monitoring malfunctions or maintenance performed in accordance with applicable Federal regulations and with appropriate backup and provision for substitute data. EPA's December 31, 2002, NSR Reform rulemaking provides:

> You will also need to provide calculations for the maximum potential emissions without considering enforceable emission limitations or operational restrictions for each unit in order to determine emissions during periods when the monitoring system is not in operation or fails to provide data. In lieu of the permit requiring maximum potential emissions during periods when there is no monitoring data, you may propose another alternate monitoring approach as a backup. This backup monitoring, however must still meet the minimum requirements for the monitoring approaches prescribed in the regulation.

See 67 FR 80186, at 80213. The requirement is also provided in the Federal PAL rule at 40 CFR 51.165(f)(12)(vii) and 51.166(w)(12)(vii). The Federal PAL rule contemplates circumstances when the monitoring system is not in operation or fails to provide data (such as during periods of malfunction or maintenance) during which the PAL permit need not be invalidated when the applicant either provides calculations for the maximum potential emissions without considering enforceable emission limitations or operational restrictions for each unit in order to determine emissions or uses another alternate monitoring approach that meet the minimum requirements for the monitoring approaches prescribed in the regulation.

TCEQ outlined in its July 25, 2012, adoption, the following:

> Any invalidation of a PAL permit will be subject to necessary and appropriate procedures in the Texas statutes and TCEQ rules. Texas Water Code (TWC), § 7.302, regarding Grounds for Revocation or Suspension of Permit, provides the commission the authority to suspend or reissue a permit on prescribed grounds after notice and hearing. Prior to any invalidation of a PAL permit, the commission anticipates enforcement action that could include a request for revocation.

See the August 29, 2012, submittal of revisions to 30 TAC 116.186(b)(9), final rule, Section by Section Discussion, on pages 9–10. Furthermore, the requirements relating to periods when monitoring data are not available because of monitoring malfunctions or maintenance are included in 30 TAC 116.186(b)(8) which provides that during the absence of monitoring data, ''[a] source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for a facility during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit special conditions.'' The requirements of 30 TAC 116.186(b)(8) are approvable because they meet the requirements of 40 CFR 51.165(f)(12)(vii) and 51.166(w)(12)(vii) as discussed above.

B. Comment Relating to Interference With Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act

Comment. TIP commented that it supports EPA's proposed approval of each applicable Texas regulation because these regulations comply with the Federal Clean Air Act and are important components of Texas's stationary source permitting program. TIP further agrees with EPA's analysis that the Texas PAL rules are environmentally protective because they ''will generally be established at a level that is lower than the allowable emissions established in the pre-existing permit'' and ''create[] [an] incentive for an owner or operator to create room for growth.'' See 77 FR 36964, at 36979.

Response. EPA acknowledges the above comment.

C. General Comments

EPA received three comments from citizens on this proposed rule. Each of these comments relates to the proposed

New Source Performance Standard (NSPS) for Greenhouse Gases which is outside the scope of this action.

III. Final Action

Under section 110(k)(3) and parts C and D of the Act and for the reasons stated above, EPA approves the following revisions to the Texas SIP:

- Revisions to 30 TAC 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions—adopted May 25, 2005, submitted June 10, 2005, and resubmitted March 11, 2011; revisions adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; two revisions adopted February 9, 2011, submitted March 11, 2011; revisions adopted July 25, 2012, and submitted August 29, 2012; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ's interpretation of 30 TAC 116.12(22).
- Revisions to 30 TAC 116.115—General and Special Conditions—adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.127—Actual to Projected Actual and Emission Exclusion Test for Emissions—adopted January 11, 2006, submitted February 1, 2006 (as 30 TAC 116.121) and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011, which redesignated this section to 30 TAC 116.127.
- Revisions to 30 TAC 116.150—New Major Source or Major Modification in Ozone Nonattainment Area—adopted May 25, 2005, submitted June 10, 2005, and resubmitted March 11, 2011; revisions adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted July 25, 2012, and submitted August 29, 2012.
- Revisions to 30 TAC 116.151—New Major Source or Major Modification in Nonattainment Areas Other Than Ozone—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011 (without further revision); and revisions adopted July 25, 2012, and submitted August 29, 2012.
- New 30 TAC 116.180—Applicability—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; revisions adopted February 9, 2011, and submitted March 11, 2011; and revisions adopted July 25, 2012, and submitted August 29, 2012.
- New 30 TAC 116.182—Plant-Wide Applicability Permit—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.184—Application Review Schedule—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011 (without further revision).
- New 30 TAC 116.186—General and Specific Conditions—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; revisions adopted February 9, 2011, and submitted March 11, 2011; revisions adopted July 25, 2012, and submitted August 29, 2012; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ's interpretation of 30 TAC 116.186.
- New 30 TAC 116.188—Plant-Wide Applicability Limit—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.190—Federal Nonattainment and Prevention of Significant Deterioration Review—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.192—Amendments and Alterations—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.196—Renewal of a Plant-Wide Applicability Limit Permit—adopted January 11, 2006, submitted February 1, 2006; and resubmitted March 11, 2011 (without further revision).
- New 30 TAC 116.198—Expiration or Voidance—adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011 (without further revision).

EPA is also amending the second table under 40 CFR 52.2270(e) entitled ''EPA Approved Nonregulatory and Quasi-Regulatory Measures in the SIP'' to include TCEQ's May 3, 2012, ''Letter of explanation and interpretation of the Texas SIP for NSR Reform.''

Finally, EPA is amending 40 CFR 52.2273(d) to remove the references to rules that were disapproved September 15, 2010, and which are now approved in this action.

IV. Statutory and Executive Order Reviews

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

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

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

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

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined in 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2012.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 11, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. Section 52.2270 is amended as follows:

■ a. The table in paragraph (c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended as follows:

■ i. By revising the entries under ''Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification'' for Sections 116.12, 116.115, 116.150, and 116.151.

■ ii. By adding a new entry for Section 116.127 in numerical order under Chapter 116 (Reg 6), Subchapter B—New Source Review Permits, and Division 1—Permit Application.

■ iii. By adding a new heading immediately following the entry for Section 116.176 entitled ''Subchapter C—Plant-Wide Applicability Limits'', followed by a new heading entitled ''Division 1—Plant-Wide Applicability Limits'', followed by new entries for Sections 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.196, and 116.198.

■ b. Paragraph (e) is amended by adding a new entry for ''Letter of explanation and interpretation of the Texas SIP for NSR Reform'' at the end of the second table in paragraph (e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP.''

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification			
Subchapter A—Definitions				
*	*	*	*	*
Section 116.12	Nonattainment and Prevention of Significant Deterioration Review Definitions.	7/25/2012	10/25/2012, [Insert FR page number where document begins].	The SIP includes TCEQ's letter dated 5/3/2012, which explains and clarifies TCEQ's interpretation of the definition of ''plant-wide applicability limit'' in paragraph (22).
*	*	*	*	*
Subchapter B—New Source Review Permits				
Division 1—Permit Application				
*	*	*	*	*
Section 116.115	General and Special Conditions.	2/9/2011	10/25/2012, [Insert FR page number where document begins].	
*	*	*	*	*
Section 116.127	Actual to Projected Actual and Emission Exclusion Test for Emissions.	2/9/2011	10/25/2012, [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Division 5—Nonattainment Review				
Section 116.150	New Major Source or Major Modification in Ozone Nonattainment Area.	7/25/2012	10/25/2012, [Insert FR page number where document begins].	
Section 116.151	New Major Source or Major Modification in Nonattainment Area Other than Ozone.	7/25/2012	10/25/2012, [Insert FR page number where document begins].	
*	*	*	*	*
Subchapter C—Plant-wide Applicability Limits				
Division 1—Plant-wide Applicability Limits				
Section 116.180	Applicability	7/25/2012	10/25/2012, [Insert FR page number where document begins].	
Section 116.182	Plant-Wide Applicability Limit Permit Application.	2/9/2011	10/25/2012, [Insert FR page number where document begins].	
Section 116.184	Application Review Schedule ..	1/11/2006	10/25/2012, [Insert FR page number where document begins].	
Section 116.186	General and Specific Conditions.	7/25/2012	10/25/2012, [Insert FR page number where document begins].	The SIP includes TCEQ's ''Letter of explanation and interpretation of the Texas SIP for NSR Reform'' dated 5/3/2012, which explains and clarifies TCEQ's interpretation of paragraphs (a), (b)(9) and (c)(2).
Section 116.188	Plant-Wide Applicability Limit ..	2/9/2011	10/25/2012, [Insert FR page number where document begins].	
Section 116.190	Federal Nonattainment and Prevention of Significant Deterioration Review.	2/9/2011	10/25/2012, [Insert FR page number where document begins].	
Section 116.192	Amendments and Alterations ..	2/9/2011	10/25/2012, [Insert FR page number where document begins].	
Section 116.196	Renewal of Plant-Wide Applicability Limit Permit.	1/11/2006	10/25/12, [Insert FR page number where document begins].	
Section 116.198	Expiration and Voidance	1/11/2006	10/25/2012, [Insert FR page number where document begins].	
*	*	*	*	*

* * * * *

(e) * * *

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EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Comments
*	*	*	*	*
Letter of explanation and interpretation of the Texas SIP for NSR Reform.	Statewide	5/3/2012	10/25/2012, [Insert FR page number where document begins].	Letter dated 5/3/2012 from TCEQ to EPA explains and clarifies TCEQ's interpretation of section 116.12(22); and section 116.186(a), (b)(9), and (c)(2).

* * * * *

■ 3. Section 52.2273(d) is amended as follows:

■ a. By removing paragraphs (d)(1)(ii) through (iii).

■ b. By removing and reserving paragraphs (d)(2) through (3).

■ c. By removing and reserving paragraphs (d)(4)(i) through (vii).

■ d. By removing paragraphs (d)(4)(ix) through (x).

§ 52.2273 Approval status.

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(d) * * *

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(2)–(3) [Reserved]

(4) * * *

(i)–(vii) [Reserved]

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[FR Doc. 2012–26094 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1012; FRL–9739–1]

Approval and Promulgation of Implementation Plans; Georgia 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State Implementation Plan (SIP) submissions, submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), as demonstrating that the State meets the SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS), with noted exceptions. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Georgia certified that the Georgia SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_2 NAAQS are implemented, enforced, and maintained in Georgia (hereafter referred to as ''infrastructure submission''). Georgia's infrastructure submissions, provided to EPA on July 23, 2008, and supplemented on September 9, 2008 and October 21, 2009, address all the required infrastructure elements for the 1997 annual and 2006 24-hour PM_2 NAAQS. In addition, EPA is clarifying an inadvertent error included in the proposed approval for this rule.

DATES: This rule will be effective November 26, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–1012. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. This Action
III. EPA's Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 36852), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On June 15, 2012, EPA proposed to approve Georgia's July 23, 2008, and October 21, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. *See* 77 FR 35909. A summary of the background for today's final action is provided below. See EPA's June 15, 2012, proposed rulemaking at 77 FR 35909 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP

submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

EPA is taking final action to approve Georgia's infrastructure submissions as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, except for the elements noted above on which EPA is not taking action. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. EPD certified that the Georgia SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Georgia. Additionally, EPA is now clarifying an inadvertent error made in the proposed rule.

In the proposal, EPA inadvertently stated that Georgia had met each of its 105 grant commitments for fiscal year 2011. Georgia did not complete one of its 63 grant commitments from fiscal year 2011—its commitment to develop and submit a National Emissions Inventory Quality Assurance Project Plan (QAPP). Nonetheless, as was explained in the proposed rule, EPA has determined that Georgia has provided necessary assurances that its SIP contains the adequate infrastructure requirements to address these types of issues as they arise, consistent with the obligation in CAA Section 110(a)(2)(E)(i). Further, EPA has a process to ensure such issues are addressed and EPA is currently working with Georgia to ensure that the State meets all of its commitments, including the outstanding 2011 grant commitment.

EPA received adverse comments on its June 15, 2012, proposed approval of portions of Georgia's July 23, 2008, and on October 21, 2009, infrastructure submissions (hereafter ''Georgia's infrastructure submissions''). Today's final action includes a response to adverse comments.

III. EPA's Response to Comments

EPA received one set of comments on the June 15, 2012, proposed rulemaking to approve Georgia's infrastructure submissions as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. A summary of the comments and EPA's response are provided below.

Comment 1: The Commenter contends that Georgia's SIP does not contain the requisite enforceable limits for $PM_{2.5}$, and therefore, EPA cannot approve the State's infrastructure SIP submission with respect to section 110(a)(2)(A). The Commenter cites two primary reasons supporting this contention.

First, the Commenter contends that Georgia's SIP does not currently provide adequate enforceable limitations for $PM_{2.5}$ emissions from existing stationary sources. In support of this proposition, the Commenter notes a number of existing Georgia SIP provisions that address emissions of particulate matter generally or $PM_{10,}$ but not $PM_{2.5.}$ The Commenter further asserts that in the title V context, the State has concluded that at the time of the evaluation of the permit application, the source did not need to address $PM_{2.5}$ emissions. Similarly, the Commenter states that existing stationary sources permitted prior to January 1, 2011, do not adequately control condensable $PM_{2.5,}$ and implies that this should be addressed in the context of acting on the State's infrastructure submittal. Finally, the Commenter contends that even in the case of a source permitted after January 1, 2011, the State has not required specific limitations on condensable PM and thus fails to control direct $PM_{2.5}$ emissions at that source in a way that is relevant to action on the State's infrastructure SIP. The Commenter appears to be suggesting that this example evinces a SIP deficiency germane to EPA's determination respecting the sufficiency of the State's infrastructure SIP for purposes of section 110(a)(2)(A).

Second, the Commenter argues that EPA should not approve the State's infrastructure submittal because it contained references to several regional cap and trade rules as measures that would impose emissions limitations on $PM_{2.5}$ precursors within the State. The Commenter raised three objections: (1) The Commenter argued that the Nitrogen Oxide (NO_X) SIP Call, Clean

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Georgia's SIP addresses 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's final rulemaking.

Air Interstate Rule (CAIR), and Cross State Air Pollution Rule (CSAPR) cannot be considered enforceable emissions limitations because of their status; (2) the Commenter argued that cap and trade programs cannot be considered permanent and enforceable because they allow sources to purchase allowances or used banked credits rather than reducing emissions; and (3) the Commenter argued that the D.C. Circuit has held that regional cap and trade programs cannot ''satisfy an area-specific statutory mandate.'' [5]

Response 1: EPA disagrees with the Commenter's contention that the State's infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because it does not contain adequate enforceable emissions limitations on $PM_{2.5}$ and $PM_{2.5}$ precursors.

With respect to the Commenter's specific concerns about the adequacy of emissions limitations at stationary sources, the Commenter is incorrect with respect both to the scope of what is germane to an action on an infrastructure SIP and with respect to when certain regulatory requirements for stationary sources became operative. This comment pertains to EPA's action on an infrastructure SIP, which must meet the general structural requirements described in section 110(a)(2)(A). Section 110(a)(2)(A) of the CAA states that each implementation plan submitted by a State under the Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act.

The Commenter seems to believe that in the context of an infrastructure SIP submission, section 110(a)(2)(A) explicitly requires that a State adopt all possible new enforceable emission limits, control measures and other means developed specifically for attaining and maintaining the new NAAQS within the State. EPA does not believe that this is a reasonable interpretation of the provision with respect to infrastructure SIP submissions. Rather, EPA believes that different requirements for SIPs become due at different times depending on the precise applicable requirements in the CAA. For example, some State regulations are required pursuant to CAA section 172(b), as part of an attainment demonstration for areas designated as nonattainment for the standard. The timing of such an attainment demonstration would be after promulgation of a NAAQS, after completion of designations, and after the development of the applicable nonattainment plans. The Commenter seems to believe that EPA should disapprove a State's infrastructure SIP if the State has not already developed all the substantive emissions limitations that may ultimately be required for all purposes, such as attainment and maintenance of the NAAQS as part of an attainment plan for a designated nonattainment area.

In particular, the Commenter focuses upon the adequacy of emissions limitations for specific stationary sources in Georgia that arose in permit actions—Plant Bowen's title V Permit and Plant Washington's PSD permit—to support its argument that Georgia's SIP does not require adequate enforceable emissions limitations for $PM_{2.5}$ for existing sources. As described above, for purposes of approving Georgia's infrastructure submittal as it relates to section 110(a)(2)(A), EPA's evaluation is limited to whether the State has adopted, as necessary and appropriate, enforceable emission limitations and other control measures to meet applicable structural requirements of the CAA. Today's action does not involve case specific evaluations of specific permits. In this action, EPA is not evaluating whether or not the State has correctly imposed emissions limitations on each stationary source for purposes of meeting requirements for PSD permits or embodied in title V permits. Moreover, EPA notes that the Commenter is also incorrect with respect to its allegations concerning the appropriate treatment of condensables in emissions limits for stationary sources. In the implementation regulations for the $PM_{2.5}$ NAAQS, EPA separately authorized States to elect not to address condensable emissions in their air pollution programs until January 1, 2011.[6] Thus, the State was not required to address condensables in stationary source permits identified in the comment. For example, the Commenter is incorrect with respect to the PSD permit for Plant Washington because the permit for this source was issued on April 8, 2010, prior to January 1, 2011, and thus the permit was not required to address condensables.[7] The State's compliance with what EPA authorized with respect to condensables is not grounds for disapproval of the State's infrastructure SIP submission.

For purposes of section 110(a)(2)(A), and for purposes of an infrastructure SIP submission, EPA believes that the proper inquiry is whether the State has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon it. As stated in EPA's proposed approval for this rule, to meet section 110(a)(2)(A), Georgia submitted a list of existing emission reduction measures in the SIP that control $PM_{2.5}$ emissions. These include all the required measures previously adopted for the control of $PM_{2.5}$ and $PM_{2.5}$ precursor pollutants. The Commenter identifies a number of ways in which it believes that Georgia's SIP fails to meet such current requirements, but EPA concludes that the Commenter has not identified any deficiency that justifies disapproval of the infrastructure SIP submission in this action.

With respect to the Commenter's concern about the identification of cap and trade programs within the State's infrastructure SIP submission, the Commenter is also incorrect with respect to the scope of what is germane to section 110(a)(2)(A), and with respect to its assertions about such cap and trade programs in general.

The Commenter asserts that emissions limitations of sulfur dioxide and NO_X from the NO_X SIP Call, CAIR, and CSAPR are not ''enforceable emissions limitations'' because of the legal status of each of those rules. The Commenter asserts that the NO_X SIP call ''effectively no longer exists,'' that CAIR ''has been remanded and effectively no longer exists,'' and that at the time of the comment, CSAPR had been stayed and was subject to litigation. The Commenter also asserts that reductions from such cap and trade rules cannot be

[5] The Commenter cites *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009).

[6] *See* Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$), 73 FR 28321 (May 16, 2008); 40 CFR 51.166(b)(49)(vi); 40 CFR 52.21(b)(50)(vi).

[7] Although an amendment to the permit was issued on November 18, 2011, the purpose of the amendment was to add case-by-case maximum achievable control technology (MACT) requirements for organic and non-mercury metal hazardous air pollutants (HAP) under section 112(g) of the Act. Pursuant to 40 CFR Part 63, States may use a preconstruction review process to make a section 112(g) case-by-case MACT determination. However, pursuant to section 112(b)(6), the Act specifically excludes HAP from the PSD permitting requirements. *See also* 40 CFR § 52.21(b)(50)(v). While the State may have subsequently added the section 112(g) determination to a permit that included PSD requirements, the revision of the construction permit to address the case-by-case MACT requirements was not a revision or reopening of the PSD requirements. The portions of the permit satisfying PSD requirements were final on April 8, 2010, before the requirement to account for condensables became effective.

considered permanent and enforceable merely because they allow for the purchase and transfer of allowances or the use of banked credits. Finally the Commenter claims that the D.C. Circuit Court of Appeals recently held that EPA cannot allow use of cap and trade programs to satisfy an area-specific statutory mandate.

EPA disagrees with the Commenter's position that emissions reductions associated with the NO_X SIP Call cannot be considered to be permanent and enforceable. The Commenter's first argument—that the reductions are not permanent and enforceable because the NO_X SIP Call has been replaced—is based on a misunderstanding of the relationship between CAIR and the NO_X SIP Call. While the CAIR ozone-season NO_X trading program replaced the ozone-season NO_X trading program developed in the NO_X SIP Call (70 FR 25290), nothing in CAIR relieved states of their NO_X SIP Call obligations. In fact, in the preamble to CAIR, EPA emphasized that the states and certain units covered by the NO_X SIP Call but not CAIR must still satisfy the requirements of the NO_X SIP Call. EPA provided guidance regarding how such states could meet these obligations.[8] In no way did EPA suggest that states could disregard their NO_X SIP Call obligations. *See* 70 FR 25290. For NO_X SIP Call states, the CAIR NO_X ozone program provides a way to continue to meet the NO_X SIP Call obligations for electric generating units (EGUs) and large non-electric generating units (non-EGUs). In addition, the antibacksliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including statewide NO_X emission budgets, continue to apply. In sum, the requirements of the NO_X SIP Call remain in force. They are permanent and enforceable as are state regulations developed to implement the requirements of the NO_X SIP Call. Similarly, EPA disagrees with the Commenter's characterization of the status of CAIR and CSAPR. When the court stayed CSAPR as noted by the Commenter, it ordered EPA to continue to administer CAIR. When the court issued its opinion to vacate and remand CSAPR, it also ordered EPA to continue to administer CAIR pending development of a valid replacement. Thus, at this juncture, CAIR remains in place and EPA is continuing to implement and enforce it. Consequently, all SIP provisions implementing CAIR also remain enforceable at this time under the court opinion.

EPA also disagrees with the Commenter's second argument—that the reductions associated with the NO_X SIP Call, CAIR, or CSAPR could not be considered permanent and enforceable merely because they are trading programs. There is no support for the Commenter's argument that states cannot rely on such programs as a valid component of their SIPs to achieve necessary reductions of emissions simply because the mechanism used to achieve the reductions is an emissions trading program. As a general matter, trading programs establish mandatory caps on emissions and permanently reduce the total emissions allowed by sources subject to the programs. The emission caps and associated controls are enforced through the associated SIP rules or Federal Implementation Plans (FIPs). Any purchase of allowances and increase in emissions by a utility necessitates a corresponding sale of allowances and reductions in emissions by another utility. Given the regional nature of $PM_{2.5}$, the emission reductions will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase.

In addition, the case cited by the Commenter, *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009), does not support the Commenter's position. That case addressed EPA's determination that the ''reasonably available control technology'' (RACT) requirement for nonattainment areas was satisfied by the NO_X SIP Call trading program. The court held that because EPA had not demonstrated that the trading program would result in sufficient reductions within nonattainment areas to meet the RACT requirement, its determination that the program satisfied the RACT requirement (a specific nonattainment area requirement) was not supported. *Id,* 1256–58. The court explicitly noted that EPA might be able to reinstate the provision providing that compliance with the NO_X SIP Call satisfies NO_X RACT for EGUs for particular nonattainment areas if, upon conducting a technical analysis, it could demonstrate that the NO_X SIP Call results in greater emission reductions in a nonattainment area than would be achieved if RACT level controls were installed on the affected sources within the nonattainment area. *Id* at 1258. Thus, EPA disagrees with the Commenter's assertion that the case stands for the proposition that cap and trade programs can never satisfy a statutory mandate for area-specific emissions controls. Moreover, EPA's action on a state's infrastructure SIP does not entail an evaluation of whether that state has met the more specific nonattainment area requirements for RACT that may become relevant in later actions on a SIP submission designed by the state to meet nonattainment area requirements. For purposes of evaluating a state's infrastructure SIP submission, EPA is limiting its review to ensuring that the State meets basic structural SIP requirements. In the event that a state has to develop a SIP submission to meet nonattainment area requirements, the state and EPA will at that time evaluate whether the submission meets the separate statutory requirements for nonattainment areas.

Comment 2: The Commenter contends that Georgia's Ambient Air Quality Monitoring Program is incomplete because it does not meet the federal reporting requirements and utilizes spatial scales which could lead to misrepresentations of $PM_{2.5}$ concentrations. The Commenter explains that Georgia fails to incorporate any micro and middle spatial scales for $PM_{2.5}$, leading to potentially inaccurate reporting of $PM_{2.5}$ concentrations. For this reason, the Commenter states that EPA cannot make the determination that Georgia's air quality monitoring and data systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are adequate. The Commenter explains that Georgia only utilizes the neighborhood spatial scale for monitoring $PM_{2.5}$, with the exception of a $PM_{2.5}$ background site. The Commenter cites to 40 CFR Part 58, Appendix D (4.7.1(c)) for the proposition that there are circumstances where a more specific spatial scale is necessary to accurately represent the $PM_{2.5}$ concentrations. Specifically, the Commenter explains that microscale is appropriate for ''areas such as downtown street canyons and traffic corridors where the general public would be exposed to maximum concentrations from mobile sources.'' The Commenter makes certain statements about Atlanta, including traffic and asthma issues, and concludes that microscale would be appropriate for Atlanta. The Commenter concludes by stating that Georgia should explore whether such downtown, high maximum concentration areas occur and accordingly utilize the appropriate spatial scales.

Response 2: EPA disagrees with the Commenter's assessment that Georgia's Ambient Air Quality Monitoring Program is incomplete. Pursuant to CAA section 110(a)(2)(B), each SIP shall ''provide for establishment and operation of appropriate devices,

[8] EPA guidance regarding the NO_X SIP Call transition to CAIR can be found at *http://www.epa.gov/airmarkets/progsregs/cair/faq10.html.* EPA guidance regarding the NO_X SIP Call transition for CSAPR can be found at *http://www.epa.gov/crossstaterule/faqs.html.*

methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.'' Among other requirements that EPA evaluates to determine if the infrastructure SIP submission meets the applicable section 110(a)(2)(B) requirements, the Agency considers whether the state has submitted the most recent annual monitoring plan, and whether EPA has approved that monitoring plan as meeting the applicable regulatory requirements and consistent with applicable guidance. The latter approval addressed whether the state monitors air quality for the relevant pollutant at appropriate locations throughout the state using EPA approved federal reference method or equivalent monitors, and whether it submits data to EPA's Air Quality System (AQS) in a timely manner.

As noted in EPA's proposed rule for this action, Georgia's Rules 391–3–1–.02(3), ''Sampling,'' and 391–3–1–.02(6), ''Source Monitoring,'' along with the Georgia Network Description and Ambient Air Monitoring Network Plan provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies including EPD. Prior to submission to EPA for approval, the State makes the annual monitoring plan available for public inspection and comment in its own administrative process. In August 2011, Georgia submitted its monitoring network plan to EPA, and on October 21, 2011, EPA approved Georgia's monitoring network plan.

With regard to the Commenter's statements pertaining to the adequacy of monitoring in the Atlanta area, today's action does not involve specific evaluation for the Atlanta Area; but rather, Georgia's compliance with section 110(a)(2)(B) of the CAA for monitoring requirements statewide. As explained above, Georgia's infrastructure SIP submission complies with section 110(a)(2)(B) because it demonstrates that the State has met current monitoring requirements for this NAAQS and is thus approvable. The Commenter's concerns about the adequacy of monitoring in the Atlanta area in the future should be raised in the appropriate context, such as during the State's development of monitoring systems. For purposes of today's final action on Georgia's infrastructure submission, EPA has concluded that Georgia's monitoring program is adequate and thus consistent with the requirements of section 110(a)(2)(B) for this type of submission.

Comment 3: The Commenter claims that Georgia's SIP does not contain required provisions for $PM_{2.5}$ PSD increments promulgated in an October 20, 2010, EPA rule. The Commenter asserts that states are required to include these increments in their SIPs prior to EPA approval of their infrastructure SIP and cites 40 CFR 51.166(c) and EPA's September 25, 2009, ''Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' for support. Further, the Commenter states that this ''lack of inclusion renders Georgia's SIP inadequate to address PSD permitting, and, thus, the EPA cannot determine that 'Georgia's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 and 2006 24-hour $PM_{2.5}$ NAAQS.'''

Response 3: EPA does not agree with the Commenter's assertion that the lack of inclusion of the updated $PM_{2.5}$ increments renders Georgia's SIP inadequate to address PSD permitting. Pursuant to the 2010 $PM_{2.5}$ New Source Review (NSR) Rule and CAA section 166(b), states were not required to submit a revised SIP addressing the $PM_{2.5}$ increments until July 20, 2012. The Agency proposed action on the Georgia infrastructure SIP in a notice signed on June 1, 2012.[9] Therefore, on the date that the proposed rule was signed by the Agency, the $PM_{2.5}$ increments were not required to be included in the Georgia SIP in order for the State to meet the PSD requirements of sections 110(a)(2)(C) and (J) of the Act.

The Commenter's concerns here relate to the timing of Agency action on collateral, yet related, SIP submissions. These concerns highlight an important overarching question that the EPA has to confront when assessing the various infrastructure SIP submittals addressed in the proposed rule: how to proceed when the timing and sequencing of multiple related SIP submissions impact the ability of the State and the Agency to address certain substantive issues in the infrastructure SIP submission in a reasonable fashion.

It is appropriate for EPA to take into consideration the timing and sequence of related SIP submissions as part of determining what it is reasonable to expect a state to have addressed in an infrastructure SIP submission for a NAAQS at the time when the EPA acts on such submission. EPA has historically interpreted section 110(a)(2)(C) and section 110(a)(2)(J) as requiring EPA to assess a state's infrastructure SIP submission with respect to the then-applicable and federally enforceable PSD regulations required to be included in a state's implementation plan at the time EPA takes action on the SIP. However, EPA does not consider it reasonable to interpret section 110(a)(2)(C) and section 110(a)(2)(J) as requiring EPA to propose to disapprove a state's infrastructure SIP submissions because the state had not yet, at the time of proposal, made a submission that was not yet due for the 2010 $PM_{2.5}$ NSR Rule. To adopt a different approach by which EPA could not act on an infrastructure SIP, or at least could not approve an infrastructure SIP, whenever there was any impending revision to the SIP required by another collateral rulemaking action would result in regulatory gridlock and make it impracticable or impossible for EPA to act on infrastructure SIPs if EPA is in the process of revising collateral PSD regulations. EPA believes that such an outcome would be an unreasonable reading of the statutory process for the infrastructure SIPs contemplated in section 110(a)(1) and (2).

EPA acknowledges that it is important that these additional PSD program revisions be evaluated and approved into a state's implementation plan in accordance with the CAA, and the EPA intends to address the $PM_{2.5}$ increments in a subsequent rulemaking.

EPA also notes that major sources in Georgia are subject to the $PM_{2.5}$ increments pursuant to the version of the regulation, GA Rule 391–3–1–.02(7)—Prevention of Significant Deterioration of Air Quality, currently in effect in Georgia. Because the regulations relating to $PM_{2.5}$ increments are currently effective and enforceable as a matter of State law, as of August 9, 2012, EPA in the interim believes that proposed major sources in Georgia are being required as a matter of State law to comply with the PSD requirements like $PM_{2.5}$ increments and thus that these sources are not being treated differently under State law than similar sources in other States that have adopted and submitted SIP revisions to include the increments. Thus, EPA does not believe that approving the State's infrastructure SIP submissions at this time will lead to major sources in Georgia being treated differently than

[9] Although the notice was published by the **Federal Register** on June 15, 2012, the notice was signed by the Acting Regional Administrator on June 1, 2012, before the statutory deadline for submission of the SIP revision addressing the $PM_{2.5}$ increments.

similar sources in the other States as a factual matter. If the Commenter determines that sources are not being evaluated in accordance with applicable State law requirements during the interim before EPA acts on a later SIP submission, those concerns can be addressed in the State's permitting process.

Comment 4: The Commenter states that Georgia must provide assurances that the State will have adequate personnel, funding, and authority to carry out the SIP. The Commenter notes that EPD receives money from federal grants, and from permitting fees and that EPD also receives a significant portion of its funding from the State of Georgia. The Commenter explains that, in recent years, the EPD's funds from the State of Georgia have significantly declined and the Commenter believes that continued cuts in EPD's budget cast doubt on EPD's ability to adequately administer its air program. Further, the Commenter states that Georgia does not seem to be completing all of the requirements of its federal grants, putting those grants in jeopardy.

Response 4: EPA does not agree with the Commenter's contention that Georgia does not have adequate personnel and funding to carry out its implementation plan. Section 110(a)(2)(E)(i) requires that each implementation plan provide necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan. EPA does not believe, and the Commenter has not demonstrated, that the State funding levels described in the comment contravene Georgia's assurances that the State has adequate personnel and funding to carry out its implementation plan. Georgia's infrastructure SIP submission indicated that the State believes that it has sufficient resources to meet its obligations. At this juncture, EPA does not see evidence that the State's resources are in fact inadequate.

As the Commenter notes, Georgia did not finalize one of its sixty-three 2011 grant commitments.[10] Notwithstanding this fact, and as was explained in the proposed rule, EPA has determined that Georgia has provided necessary assurances that its SIP contains the adequate infrastructure requirements to address these types of issues as they arise, consistent with the obligation in CAA Section 110(a)(2)(E)(i). EPA has a process to ensure issues such as this are addressed and the Agency is currently working with Georgia to ensure that the State meets all of its commitments, including the outstanding 2011 grant commitment reference by Commenter. The fact that a process is in place to resolve the outstanding commitment supports EPA's approval of Georgia's infrastructure SIP.

[10] EPA inadvertently stated in the proposed rule for this action that Georgia had met each of its section 105 grant commitments for 2011. The Agency is hereby correcting that statement to note that Georgia did not meet its commitment to develop and submit a National Emissions Inventory QAPP.

IV. Final Action

As already described, EPD has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Georgia. EPA is taking final action to approve Georgia's July 23, 2008, and October 21, 2009, submissions, with noted exceptions for 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because these submissions are consistent with section 110 of the CAA. Today's action is not approving any specific rule, but rather making a determination that Georgia's already approved SIP meets certain CAA requirements. In addition, EPA is today clarifying the inadvertent error contained in the proposal approval for this rule as described above.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 27, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. Section 52.570(e) is revised to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316. High Occupancy Toll (HOT) lane on I–85 from Chamblee-Tucker Road to State Road 316.	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 2/5/10.	3/18/99, 4/26/99 and 11/5/09.	
2. Clean Fuel Vehicles Revolving Loan Program.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
3. Regional Commute Options Program and HOV Marketing Program.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
4. HOV lanes on I–75 and I–85	Atlanta Metropolitan Area	6/17/96	4/26/99.	
5. Two Park and Ride Lots: Rockdale County-Sigman at I–20 and Douglas County-Chapel Hill at I–20.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
6. MARTA Express Bus routes (15 buses).	Atlanta Metropolitan Area	6/17/96	4/26/99.	
7. Signal preemption for MARTA routes #15 and #23.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
8. Improve and expand service on MARTA's existing routes in southeast DeKalb County.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
9. Acquisition of clean fuel buses for MARTA and Cobb County Transit.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
10. ATMS/Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
11. Upgrading, coordination and computerizing intersections.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
12. [Reserved].				
13. Atlantic Steel Transportation Control Measure.	Atlanta Metropolitan Area	3/29/00	8/28/00.	
14. Procedures for Testing and Monitoring Sources of Air Pollutants.	Atlanta Metropolitan Area	7/31/00	7/10/01.	
15. Enhanced Inspection/Maintenance Test Equipment, Procedures and Specifications.	Atlanta Metropolitan Area	9/20/00	7/10/01.	
16. Preemption Waiver Request for Low-RVP, Low-Sulfur Gasoline Under Air Quality Control Rule 391–3–1–.02(2)(bbb).	Atlanta Metropolitan Area	5/31/00	2/22/02.	
17. Technical Amendment to the Georgia Fuel Waiver Request of May 31, 2000.	Atlanta Metropolitan Area	11/9/01	2/22/02.	
18. Georgia's State Implementation Plan for the Atlanta Ozone Nonattainment Area.	Atlanta Metropolitan Area	7/17/01	5/7/02.	
19. Post-1999 Rate of Progress Plan	Atlanta Metropolitan Area	12/24/03	7/19/04, 69 FR 42884.	
20. Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area.	Atlanta 1-hour ozone severe nonattainment area.	6/30/04	6/14/05, 70 FR 34358.	
21. Atlanta 1-hour ozone attainment area 2015 maintenance plan.	Atlanta severe 1-hour ozone maintenance area.	2/1/05	6/14/05, 70 FR 34660.	
22. Attainment Demonstration for the Chattanooga Early Action Area.	Walker and Catoosa Counties	12/31/04	8/26/05, 70 FR 50199.	

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
23. Attainment Demonstration for the Lower Savannah-Augusta Early Action Compact Area.	Columbia and Richmond Counties	12/31/04	8/26/05, 70 FR 50195.	
24. Alternative Fuel Refueling Station/ Park and Ride Transportation Center, Project DO–AR–211 is removed.	Douglas County, GA	9/19/06	11/28/06, 71 FR 68743.	
25. Macon 8-hour Ozone Maintenance Plan.	Macon, GA encompassing a portion of Monroe County.	6/15/07	9/19/07, 72 FR 53432.	
26. Murray County 8-hour Ozone Maintenance Plan.	Murray County	6/15/07	10/16/07, 72 FR 58538.	
27. Atlanta Early Progress Plan	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties.	1/12/07	2/20/08, 73 FR 9206.	
28. Rome; 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Floyd County	10/27/2009	1/12/12, 77 FR 1873.	
29. Chattanooga; Fine Particulate Matter 2002 Base Year Emissions Inventory.	Catoosa and Walker Counties	10/27/09	2/8/12; 77 FR 6467.	
30. 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Georgia	10/13/2007	2/6/2012, 77 FR 5706.	
31. Atlanta 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties and portions of Heard and Putnam Counties.	07/06/2010	3/1/2012, 77 FR 12487.	
32. Macon 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Bibb County and Monroe County	8/17/2009	3/02/12, 77 FR 12724.	
33. Atlanta 1997 8-Hour Ozone 2002 Base-Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties.	10/21/2009	4/24/2012, 77 FR 24399.	
34. Regional Haze Plan	Statewide	2/11/10	6/28/12, 77 FR 38501.	
35. Regional Haze Plan Supplement (including BART and Reasonable Progress emissions limits).	Statewide	11/19/10	6/28/12, 77 FR 38501.	
36. 110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	7/23/2008	10/25/2012 [Insert citation of publication].	With the exception of 110(a)(2)(D)(i).
37. 110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	10/21/2009	10/25/2012 [Insert citation of publication].	With the exception of 110(a)(2)(D)(i).

[FR Doc. 2012–25855 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0089; FRL–9737–2]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on February 28, 2012 and concerns oxides of nitrogen (NO_X) emissions from stationary gas turbines. Under authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

DATES: This rule is effective on November 26, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0089 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Pérez, EPA Region IX, (415) 972–2348, *perez.idalia@epa.gov.*

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On February 28, 2012 (77 FR 11992), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	1159	Stationary Gas Turbines	09/28/09	05/17/10

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because the following provision conflicts with section 110 and part D of the Act and prevents full approval of the SIP revision. Section D.3 exempts the Southern California Gas Company General Electric Model Frame 3 turbine located in Kelso, California from testing requirements. This undermines enforceability of the rule which contradicts CAA requirements for enforceability.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. Neither sanctions nor a Federal Implementation Plan (FIP) will be imposed following this final limited disapproval as explained in our proposed action.

Note that the submitted rule has been adopted by the MDAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

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

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

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132, Federalism

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

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

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

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

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

I. National Technology Transfer and Advancement Act

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 Population

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

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

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on November 26, 2012.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 5, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(379)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(E) Mojave Desert Air Quality Management District.

(*1*) Rule 1159, ''Stationary Gas Turbines,'' amended on September 28, 2009.

* * * * *

[FR Doc. 2012–26212 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0334; FRL–9746–4]

RIN 2060–AQ89

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; stay.

SUMMARY: On January 30, 2012, the EPA published in the **Federal Register** a proposed rule reconsidering certain provisions in the final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources (CMAS) that was promulgated on October 29, 2009. The compliance date for the final CMAS rule is October 29, 2012. However, the EPA is still in the process of finalizing the reconsideration action. For this reason, a short stay of the final CMAS rule pending completion of the reconsideration action is warranted. Pursuant to the Clean Air Act, the EPA is staying until December 24, 2012 the final CMAS rule.

DATES: Effective October 25, 2012, 40 CFR part 63, subpart VVVVVV, is stayed until December 24, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Parsons, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5372; fax number: (919) 541–0246; email address: *parsons.nick@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 29, 2009 (74 FR 56008), the EPA issued the final CMAS rule. On February 12, 2010, the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates (collectively referred to as ''Petitioners'') sought reconsideration of certain provisions in the final rule. On June 15, 2010, the EPA notified Petitioners that the EPA intended to initiate the reconsideration process.

On January 30, 2012 (77 FR 4522), the EPA published a proposed rule reconsidering certain aspects of the final CMAS rule, including provisions that, if finalized, would revise the applicability of the final rule. The compliance date for the final CMAS rule is October 29, 2012, and it was EPA's expectation that the reconsideration would be finalized in advance of that date. However, the EPA is still in the process of finalizing the reconsideration action. For this reason, a short stay of the final rule is appropriate to allow the EPA the time necessary to complete the reconsideration action.

Pursuant to Clean Air Act section 307(d)(7)(B), the EPA is staying for 60 days the provisions of 40 CFR part 63, subpart VVVVVV.

II. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with state officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This action also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). The requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 29, 2009, **Federal Register** document.

B. Submission to Congress and the Comptroller General

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. The EPA will submit a report containing this notice and other required information to the United States Senate, the United States House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The stay of the provisions in 40 CFR part 63, subpart VVVVVV is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Monitoring, Reporting and recordkeeping.

Dated: October 19, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart VVVVVV—[AMENDED]

■ 2. Subpart VVVVVV is stayed from October 25, 2012 until December 24, 2012.

[FR Doc. 2012–26285 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XC303

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Recreational Quota Harvested

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2012 black sea bass recreational harvest limit has been exceeded. No one may fish for or possess black sea bass in Federal waters for the remainder of calendar year 2012, unless issued a Federal moratorium permit and fishing commercially. Regulations governing the black sea bass fishery require publication of this notification to advise that the recreational quota has been harvested and to advise vessel permit holders that no Federal recreational quota is available for fishing black sea bass.

DATES: Effective at 0001 hr local time, November 1, 2012, through 2400 hr local time December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218, or *Moira.Kelly@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a recreational harvest limit (RHL) for the Atlantic coast from Cape Hatteras, North Carolina, through Maine. The process to set the annual RHL is described in § 648.142.

The initial total RHL for black sea bass for the 2012 fishing year is 1.86 million lb (844 mt) (76 FR 82189, December 30, 2011). The 2012 RHL was reduced to 1.32 million lb (599 mt) after deduction of research set-aside and discards.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the recreational harvest limit and determines when the recreational harvest limit has been met or exceeded. NMFS is required to publish notification in the **Federal Register** advising and notifying recreational vessels that, effective upon a specific date, the recreational harvest limit has been harvested. The Regional Administrator has determined based upon data from the Marine Recreational Fishing Statistical Survey and the Marine Recreational Information Program that the 2012 recreational black sea bass quota has been exceeded.

Effective 0001 hours, November 1, 2012, no one may fish for or possess black sea bass in Federal waters for the remainder of the 2012 calendar year, unless issued a commercial moratorium permit and fishing commercially. This closure also applies to vessels issued a Federal party/charter permit fishing in state waters.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 19, 2012.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–26238 Filed 10–24–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 77, No. 207

Thursday, October 25, 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.

NUCLEAR REGULATORY COMMISSION.

10 CFR Part 51

[NRC–2012–0246]

RIN 3150–AJ20

Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments on the notice of intent to prepare and environmental impact statement and notice of public meetings.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is updating its Waste Confidence Decision and Rule. The NRC intends to prepare an Environmental Impact Statement (EIS) to support the rulemaking to update the Commission's Waste Confidence Decision and Rule, and is conducting a scoping process to gather information necessary to prepare the EIS. As part of the scoping process the NRC is planning to hold two public meetings on November 14, 2012, and two webinars on December 5 and 6, 2012.

DATES: Any interested party may submit comments on the scope of the Waste Confidence environmental review. The deadline to submit comments is January 2, 2013. The NRC staff is able to ensure consideration only for comments received on or before this date. There will be no extensions to this comment period; however, to the extent practical staff will consider comments received after January 2, 2013. Interested parties will be given additional opportunities to comment on any draft EIS and proposed rule that are prepared as part of this effort.

ADDRESSES: Information and comment submissions related to this action, which the NRC possesses and are publicly available, may be accessed by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0246.

Comments may be submitted by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0246. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Lopas, NEPA Communications Project Manager, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3425; email: *Sarah.Lopas@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0246 when contacting the NRC about the availability of information related to the EIS and Waste Confidence Decision update and rule. Information related to this action, which the NRC possesses and is publicly available, may be accessed by any of the following methods:

- *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2012–0246.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Public Web site:* Additional information regarding the Waste Confidence Decision and Rule and the EIS can be accessed online at the NRC's Web site: *http://www.nrc.gov/waste/spent-fuel-storage/wcd.html.* The Web site will be periodically updated with information related to the EIS development and opportunities for public participation.

B. Submitting Comments

Comments submitted in writing or in electronic form will be posted on the Federal rulemaking Web site, *http://www.regulations.gov.* Please include Docket ID NRC–2012–0246 in the subject line of your comment submission. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information; therefore, they should not include any information in their comments that they do not want publicly disclosed.

II. Background

The Waste Confidence Decision and Rule represent the Commission's generic determination that spent nuclear fuel can be stored safely and without significant environmental impacts for a period of time after the end of the licensed life of a nuclear power plant (in 1984 and 1990 the time period was 30 years after the end of the license, and in 2010 it was increased to 60 years). This generic analysis is reflected in section 51.23 of Title 10 of the *Code of Federal Regulations* (10 CFR), which is intended to satisfy the NRC's National Environmental Policy Act (NEPA) obligations with respect to post-licensed-life storage of spent nuclear fuel. Historically, the Waste Confidence

Decision has consisted of five findings and a technical basis for each finding.

The Waste Confidence Decision and Rule were first adopted in 1984 in response to *Minnesota* v. *NRC,* 602 F.2d 412 (D.C. Cir. 1979). The Decision and Rule were amended in 1990, reviewed in 1999, and amended again in 2010. (SRM–SECY–09–0090; under ADAMS Accession No. ML102580229 and 75 FR 81037; December 23, 2010).

In response to the 2010 Decision and Rule, the States of New York, New Jersey, Connecticut, and Vermont, and several other parties challenged the Commission's NEPA analysis in the Decision, which provided the regulatory basis for the Rule. On June 8, 2012, the D.C. Circuit Court found that some aspects of the 2010 Decision did not satisfy the NRC's NEPA obligations and vacated the Decision and Rule. (*New York* v. *NRC,* 681 F.3d 471 (D.C. Cir. 2012)).

The Court concluded that the Waste Confidence Rulemaking is a major Federal action necessitating either an EIS or an Environmental Assessment (EA) that results in a Finding of No Significant Impact. In vacating the 2010 decision and rule, the Court identified three specific deficiencies in the analysis:

1. Related to the Commission's conclusion that permanent disposal will be available ''when necessary,'' the Court held that the Commission did not evaluate the environmental effects of failing to secure permanent disposal;

2. Related to the storage of spent fuel on site at nuclear plants for 60 years after the expiration of a plant's operating license, the Court concluded that the Commission failed to properly examine the risk of spent fuel pool leaks in a forward-looking fashion;

3. Also related to the post-licensed-life storage of spent fuel, the Court concluded that the Commission failed to properly examine the consequences of spent fuel pool fires.

Waste Confidence, though applicable only to the period after the licensed life of a reactor, is part of the basis for agency licensing decisions on new reactor licensing, reactor license renewal, and independent spent fuel storage installation licensing (see generally 10 CFR 51.23). The Commission has decided that no final licenses will be issued until a new Waste Confidence Decision and Rule are in effect. (CLI–12–016). The NRC is now preparing a revised Decision and Rule to address the issues identified by the Court. This **Federal Register** notice is the first step in that process.

In a rulemaking, the Commission must consider the effect of its actions on the environment in accordance with NEPA. Section 102(1) of NEPA requires that policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies consider environmental issues in their decision-making processes.

NRC regulations implementing NEPA are contained in 10 CFR Part 51, ''Environmental protection regulations for domestic licensing and related regulatory functions.'' To fulfill its responsibilities under NEPA, the NRC is preparing an EIS to support the potential update to the Waste Confidence Decision and Rule.

The Commission's regulations in 10 CFR 51.26, ''Requirement to publish notice of intent and conduct scoping process,'' contain requirements for conducting a scoping process prior to preparation of an EIS, including preparation of a notice of intent in the **Federal Register** regarding the EIS and indication that the scoping process may include holding a public scoping meeting.

III. Scoping Process for Environmental Impact Statement

The purposes of this notice are: (1) to inform the public that the NRC staff will be preparing an EIS as part of revising the Waste Confidence Decision and Rule and (2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. This step is the first opportunity for stakeholder participation in the Waste Confidence Decision and rule update following the June 2012 remand, and it occurs before the NRC has determined results or recommendations for the update. Additional opportunities for public participation will occur during the public comment period for the draft EIS, the revised Waste Confidence Decision, and the proposed Rule. Notices of these public participation opportunities will be published in the **Federal Register**.

The NRC intends to gather the information necessary to prepare an EIS to evaluate the environmental impacts of the storage of spent nuclear fuel after cessation of reactor operations. This EIS will form the technical basis for the revision of the Waste Confidence Decision and Rule. Possible scenarios to be analyzed in the EIS include temporary spent fuel storage after cessation of reactor operation until a repository is made available in either the middle of the century or at the end of the century, and storage of spent fuel if no repository is made available by the end of the century. The affected environment may include a set of general characteristics and associated ranges to bound the environmental analysis of spent fuel storage throughout the United States. It is important to note that the environmental analysis in the EIS and the update of the Waste Confidence Decision and rule are generic activities. The EIS and update of the Decision and rule are therefore not the appropriate forums to consider site-specific issues or concerns.

The NRC will first conduct a scoping process for the EIS and thereafter will prepare a draft EIS and draft Waste Confidence Decision and proposed Rule for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth, including potential spent fuel storage scenarios for evaluation, such as availability of a delayed permanent repository towards the end of the century;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant. Also note that analysis of environmental impacts for this effort would be principally intended to provide input to decision-making for updating the Waste Confidence Decision and Rule and would not involve analysis of site-specific issues;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies. No cooperating agencies are involved at this time;

h. Describe how the EIS will be prepared, including any contractor assistance to be used. The NRC will prepare a draft EIS in accordance with its regulations in 10 CFR part 51. The NRC is obtaining contractor assistance in preparation of the EIS; and

i. Obtain public input on potential locations for future public meetings on the draft EIS.

The NRC invites the following entities to participate in the scoping process:

a. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards,

b. Any affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards,

c. Any affected Indian tribe, and

d. Any person who requests or has requested an opportunity to participate in the scoping process.

IV. Notice of Public Webcast Meetings and Webinars

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC staff has elected to hold two identical public scoping meetings on November 14, 2012, at NRC's headquarters, One White Flint North, First Floor Commission Hearing Room, 11555 Rockville Pike, Rockville, Maryland 20852. Both meetings will be web-streamed via the NRC's Web site. See the NRC's Live Meeting Webcast page to participate: *http://www.nrc.gov/public-involve/public-meetings/webcast-live.html.* The first meeting will convene at 1:00 p.m. EST and will continue until approximately 4:00 p.m. EST, with in-person attendance from members of the public welcome. The second meeting will be a webstream-only meeting held later in the evening to better accommodate stakeholders in Western time zones. The webstream-only meeting will convene at 9:00 p.m. EST (6:00 p.m. PST) and will continue until approximately 12:00 a.m. EST (9:00 p.m. PST). The late evening webstream-only meeting will not be open to the public for in-person attendance. Therefore, persons wishing to attend a scoping meeting in-person at the NRC's headquarters must attend the 1:00 p.m. meeting.

Additionally, in early December, the NRC will be hosting two public scoping webinars. The first webinar will take place on December 5, 2012, from 1:00 p.m. EST through 4:00 p.m. EST. The second webinar will take place on December 6, 2012, from 9:00 p.m. EST (6:00 p.m. PST) through 12:00 a.m. EST (9:00 p.m. PST).

All meetings and webinars will be transcribed and will include the following: (1) An overview by the NRC staff of the environmental review process, the proposed scope of the EIS to support the Waste Confidence Decision and Rule update, and the proposed review schedule; and (2) an opportunity for interested government agencies, organizations, and individuals to submit comments on the environmental issues or the proposed scope of the EIS. All meetings and webinars will have a moderated teleconference phone line so that remote attendees will have the opportunity to voice their comments. In addition to a moderated phone line, webinars will also feature a real-time instant messaging tool that will allow participants to type their questions and comments and send them to the NRC during the webinar.

To be considered, comments must be provided either during the transcribed public meetings and webinars (in person, over the phone, or via the webinar instant messaging tool) or in writing, as discussed above.

To register for and request to present oral comments at the November 14 meetings, whether in-person or over the phone, please contact Ms. Susan Wittick or Ms. TR Rowe at 1–800–368–5642, extensions 3187 or 3133, respectively. You may also register for and request to present comments at these meetings via email to *WCOutreach@nrc.gov.* To attend the 1:00 p.m. at the NRC's headquarters meeting in-person, please provide your full name as it appears on a government-issued photo ID, which you must present upon entering the NRC facility. Directions and parking information will be sent to you upon registration. While pre-registration for the November 14 meetings is encouraged, members of the public may also register to speak just prior to the start of each meeting.

Public meeting notices for the November 14 meetings and the December 5 and 6 webinars will be posted on the NRC's public meeting Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* approximately 2 weeks before each meeting date. The meeting notices will contain additional information, including agendas, teleconference phone line details, and information on how to access and participate in the webinars. This information will also be provided on the NRC's Waste Confidence public Web site: *http://www.nrc.gov/waste/spent-fuel-storage/wcd.html.*

During all meetings and webinars, individual oral comments may be limited by the time available, depending on the number of persons who register to speak. Members of the public who have not registered may also have an opportunity to speak, if time permits. If special equipment or accessibility modifications (e.g., sign language interpreters, large print, oral interpreters) are needed to attend or present information at the afternoon meeting on November 14 at the NRC's headquarters, such requests should be brought to Ms. Wittick's or Ms. Rowe's attention no later than November 7, 2012, so that the NRC staff can determine whether the request can be accommodated.

At the conclusion of the scoping process, the NRC will prepare a summary of the determinations and conclusions reached on the scope of the environmental review, including the significant issues identified, and will make this summary publicly available. The staff will then prepare and issue for comment the draft EIS, and update to the Waste Confidence Decision, and proposed Rule, which will be the subject of separate **Federal Register** notices and a series of public meetings at different locations throughout the country. After receipt and consideration of comments on the EIS and proposed Rule, the NRC will prepare a final EIS and rule, which will also be available to the public.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of October 2012.

Carrie Safford,

Deputy Director, Waste Confidence Directorate, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–26295 Filed 10–24–12; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AE09

Designation of Low-Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board proposes to amend its low-income credit unions regulation by extending the time credit unions have to accept a low-income designation. Under the current rule, an FCU that has received notification from NCUA that it qualifies for a low-income designation has 30 days to notify NCUA

that it wishes to receive the designation. Some FCUs may find it difficult to respond this quickly, so the proposed rule extends the response period to 90 days. The proposed rule also makes minor, nonsubstantive technical amendments to NCUA's insurance regulation to reflect current agency practice in this regard.

DATES: Comments must be received on or before November 26, 2012.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Notice of Proposed Rulemaking for Parts 701 and 741, Designation of low-income status'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, or Pamela Yu, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6593.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of the Proposed Rule
III. Regulatory Procedures

I. Background

A. What is a low-income credit union?

Under § 701.34 of NCUA's regulations, a low income credit union (LICU) is an FCU designated as such because a majority of its membership consists of ''low-income members,'' as defined by the NCUA Board.[1] Currently, the NCUA Board defines ''low-income members'' as those members whose family income is 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater.[2]

B. What are the benefits of being designated a LICU?

The Federal Credit Union Act (Act) provides LICUs with certain statutory relief and other benefits.[3] Some of the benefits include:

- Exemption from the statutory cap on member business lending;
- Authorization to accept non-member deposits from any source;
- Authorization to accept secondary capital; and
- Eligibility for assistance from the Community Development Revolving Loan Fund.

All of these provisions help a LICU to better serve its members and community.

II. Summary of the Proposed Rule

A. Why is NCUA proposing this rule?

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing rules to make their programs more effective and less burdensome.[4] Also, the NCUA Board has a policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' [5] To carry out this internal policy, NCUA identifies one-third of its existing regulations for review each year and provides notice of this review so the public may comment. In 2012, NCUA is reviewing its LICU rule as part of this process.

Relative to these goals, the NCUA Board intends to provide regulatory relief to FCUs by improving the process for obtaining a LICU designation. Specifically, the NCUA Board believes that extending the timeframe in which a qualifying FCU may accept its LICU designation from 30 days to 90 days will make it easier for an eligible FCU to obtain its LICU designation, take advantage of the benefits afforded to LICUs, and better serve its members and community.

Additionally, the NCUA Board proposes several minor, nonsubstantive revisions to NCUA's insurance regulation. The technical corrections are necessary to reflect current agency practice in this regard.

B. How would the proposed rule change the current rule?

Under the current rule, NCUA notifies an FCU that it qualifies for LICU designation if, based on examination data, NCUA determines that a majority of the FCU's membership are low-income members.[6] Once an FCU receives notification of its eligibility, it has 30 days to ''opt-in'' by providing written notice to NCUA that it wishes to receive the designation.[7]

The NCUA Board is aware that some FCUs believe that the LICU designation process is burdensome in some cases. In particular, some FCUs have stated that the 30-day timeframe to accept the LICU designation is too short for some credit unions. For example, it may take an FCU longer than 30 days to fully analyze if it wishes to accept the LICU designation or to obtain any necessary approval from its board of directors. Accordingly, the proposed rule would allow an FCU 90 days from the date of receipt of NCUA notification to provide written notice to NCUA that it wishes to receive the LICU designation. The NCUA Board believes this extra time will ease the burden of responding.

NCUA plans to notify FCUs of their eligibility on a periodic basis. An FCU that does not or is not able to respond to a particular NCUA notification in a timely manner will have additional opportunities to accept the designation in the future. Additionally, an FCU can relinquish its LICU status at any time, for any reason, simply by notifying NCUA in writing that it wishes to do so. While the NCUA Board believes such designation is advantageous to eligible FCUs, it proposes to make it just as easy to relinquish the designation as it is to accept it. An FCU that accepts the designation only needs to accept it once, after which NCUA will not send additional notifications.

[1] 12 CFR 701.34. A state-chartered credit union may obtain a LICU designation from its state supervisory authority with concurrence from NCUA. Benefits of the state LICU designation vary by state, based on applicable state law.

[2] For members living outside a metropolitan area, NCUA will use the statewide or national, non-metropolitan area median family income instead of the metropolitan area or national metropolitan area median family income. 12 CFR 701.34(a)(2).

[3] 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1757a(c)(2)(B), 1772c–1.

[4] E.O. 13579 (July 11, 2011).

[5] NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2, Developing and Reviewing Government Regulations.

[6] 12 CFR 701.34(a)(1).

[7] *Id.*

The NCUA Board also proposes minor technical corrections to NCUA's insurance regulation to update and conform it to current agency practice.[8] Previously, regional directors had the delegated authority to designate FCUs as LICUs. Currently, NCUA's Office of Consumer Protection has that delegated authority. The proposal would update and amend § 741.204 to remove references to ''regional directors,'' and to replace those references with ''NCUA''.

C. Does the proposed rule create any new burdens for credit unions?

The proposal does not create any new regulatory burdens for credit unions. To the contrary, as mentioned above, the NCUA Board seeks to provide regulatory relief to FCUs that qualify for LICU designation. Similarly, the proposed changes to NCUA's insurance regulation are minor, nonsubstantive, and merely technical in nature. The technical amendments do not create any new or substantive requirements for credit unions.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This proposed rule would make nonsubstantive technical amendments and extend regulatory relief to FCUs. NCUA has determined and certifies that this proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[9] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. As noted above, the proposed amendments would make minor technical corrections and extend regulatory relief. The proposal would not impose or modify paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether this proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

By the National Credit Union Administration Board, on October 18, 2012.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR parts 701 and 741 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351, 120 Stat. 1966.

2. Revise § 701.34(a)(1) to read as follows:

§ 701.34 Designation of low-income status; Acceptance of secondary capital accounts by low-income designated credit unions.

(a) *Designation of low-income status.* (1) Based on data obtained through examinations, NCUA will notify a federal credit union that it qualifies for designation as a low-income credit union if a majority of its membership qualifies as low-income members. A federal credit union that wishes to receive the designation must notify NCUA in writing within 90 days of receipt of any NCUA notifications.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

§ 741.204 [Amended]

4. Amend § 741.204 by:

a. Removing the words ''the appropriate regional director'' wherever they appear and adding in their place the word ''NCUA''.

b. Removing the words ''the NCUA Regional Director'' wherever they appear and adding in their place the word ''NCUA''.

c. Removing the words ''the appropriate NCUA Regional Director'' wherever they appear and adding in their place the word ''NCUA''.

[FR Doc. 2012–26129 Filed 10–24–12; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 741 and 791

RIN 3133–AE07

Notice of Extension of Public Comment Period: Prompt Corrective Action, Requirements for Insurance, and Promulgation of NCUA Rules and Regulations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of extension of public comment period.

SUMMARY: The NCUA Board (Board) has extended the public comment period for its proposed rule titled Prompt Corrective Action, Requirements for Insurance, and Promulgation of NCUA Rules and Regulations, 77 FR 59139 (September 26, 2012), to November 26, 2012. The proposed rule addresses asset thresholds affecting regulatory relief for small credit unions.

[8] *See* 12 CFR 741.204.

[9] 44 U.S.C. 3507(d); 5 CFR part 1320.

DATES: Send your comments to reach us on or before November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Kevin Tuininga, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6543.

SUPPLEMENTARY INFORMATION: The end of the comment period for the proposed rule was previously October 26, 2012. The Board has extended the comment period to November 26, 2012.

By the National Credit Union Administration Board on October 19, 2012.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2012–26313 Filed 10–24–12; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1005; Directorate Identifier 2012–NE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Pratt & Whitney Canada Corp. (P&WC) PT6C–67C turboshaft engines. This proposed AD was prompted by five reported incidents of second stage power turbine (PT) disk damage. This proposed AD would require initial and repetitive borescope inspections to verify the presence of a retaining ring securing the PT baffle located near the second stage PT disk. If the engine fails the inspection, this proposed AD would also require removing the engine from service before further flight. We are proposing this AD to prevent damage to the PT disk which, if undetected, could cause uncontained PT disk failure and loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by December 24, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone 800–268–8000; fax 450–647–2888; Web site: *www.pwc.ca.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *james.lawrence@faa.gov;* phone: 781–238–7176; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1005; Directorate Identifier 2012–NE–27–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The Transport Canada, which is the aviation authority for Canada, has issued Canada AD CF–2012–24, dated August 2, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been 5 reported incidents of second stage Power Turbine (PT) disk damage caused by the PT baffle moving and contacting the downstream side of the second stage PT disk. In two of these incidents, the PT section of the engine failed to rotate (on ground) as a result of baffle interference.
>
> An investigation has determined that the root cause for the PT baffle displacement and the resultant PT disk damage was due to the failure of the retaining ring that holds the PT baffle in its intended position.

This proposed AD would only apply to P&WC PT6C–67C turboshaft engines that have not had P&WC Service Bulletin No. PT6C–72–41056 incorporated. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

P&WC has issued Alert Service Bulletin (SB) No. PT6C–72–A41060, Revision 2, dated February 10, 2012. P&WC has also issued SB No. PT6C–72–41056, Revision 4, dated February 13, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Canada, and is approved for operation in the United States. Pursuant to our bilateral agreement with Canada, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this proposed AD because we evaluated all information provided by Canada and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require initial and repetitive borescope inspections to verify the presence of a retaining ring securing the PT baffle located near the second stage PT disk. If the engine fails the inspection, this proposed AD would also require removing the engine from service before further flight.

Differences Between This Proposed AD and the MCAI

This proposed AD would not require engine modification at the next scheduled overhaul, as the MCAI requires. This proposed AD would require different inspection intervals from the MCAI. We changed the inspection intervals to ensure that our proposed AD is clear for U.S. operators.

Costs of Compliance

We estimate that this proposed AD would affect about 220 engines installed on helicopters of U.S. registry. We also estimate that it would take about six hours per engine to perform one inspection required by this proposed AD. The average labor rate is $85 per hour. We anticipate that two engines would fail the initial inspection. Required parts would cost about $224,636 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $561,472. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada Corp. (formerly Pratt & Whitney Canada Inc.): Docket No. FAA–2012–1005; Directorate Identifier 2012–NE–27–AD.

(a) Comments Due Date

We must receive comments by December 24, 2012.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to Pratt & Whitney Canada Corp. (P&WC) PT6C–67C turboshaft engines that have not had P&WC Service Bulletin No. PT6C–72–41056 incorporated.

(d) Reason

This AD was prompted by five reported incidents of second stage power turbine (PT) disk damage. We are issuing this AD to prevent damage to the PT disk which, if undetected, could cause uncontained PT disk failure and loss of control of the helicopter.

(e) Actions and Compliance

Unless already done, do the following actions.

(f) Borescope Inspections

(1) Borescope-inspect to verify the presence of a retaining ring securing the PT baffle located near the second stage PT disk, as follows:

(i) For engines with 2,200 PT cycles or more on the effective date of this AD, inspect within 100 operating hours or 150 PT cycles, whichever occurs first.

(ii) For engines with more than 1,400 PT cycles but fewer than 2,200 PT cycles on the effective date of this AD, inspect within 250 operating hours, 350 PT cycles, or before exceeding 2,350 PT cycles, whichever occurs first.

(iii) For engines with 1,400 PT cycles or fewer on the effective date of this AD, inspect within 500 operating hours, 750 PT cycles, or before exceeding 1,750 PT cycles, whichever occurs first.

(2) Thereafter, repetitively borescope-inspect to verify the presence of the retaining ring securing the PT baffle located near the second stage PT disk, on or before an additional 600 flight hours or 900 PT cycles, whichever occurs first.

(3) Use P&WC Alert SB No. PT6C–72–A41060, Revision 2, dated February 10, 2012, paragraphs 3.A.(1) through 3.A.(6) to do the borescope inspections required by this AD.

(4) If the retaining ring is missing or the PT baffle is out of position; then remove the engine from service before further flight.

(g) Optional Terminating Action

Performing the engine improvement modifications in P&WC SB No. PT6C–72–41056, Revision 4, dated February 13, 2012, paragraphs 3.A. through 3.C.(12) and 3.E.(1) through 3.E.(15), is an optional terminating action to the repetitive inspections required by this AD.

(h) Credit for Actions Accomplished in Accordance With Previous Service Information

(1) If you performed the initial borescope inspection before the effective date of this AD using P&WC Special Instruction No. 45–2011R2, dated July 27, 2011, or P&WC Alert SB No. PT6C–72–A41060, dated August 12, 2011, or Revision 1, dated September 29, 2011, you met the requirements of paragraph (f)(1) of this AD.

(2) If you performed the engine modification in P&WC SB No. PT6C–72–41056, dated April 1, 2011, or Revision 1, dated June 17, 2011, or Revision 2, dated October 6, 2011, or Rrevision 3, dated February 3, 2012, you met the requirements of this AD and further action is not required.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *james.lawrence@faa.gov;* phone: 781–238–7176; fax: 781–238–7199.

(2) Refer to Transport Canada AD CF–2012–24, dated August 2, 2012, for related information.

(3) For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone 800–268–8000; fax 450–647–2888; Web site: *www.pwc.ca.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Carlos Pestana,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–26277 Filed 10–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1108; Directorate Identifier 2011–NM–283–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 and ERJ 190 airplanes. This proposed AD was prompted by reports of failures of the emergency slide on the forward passenger door, which prevented the door from opening. This proposed AD would require repetitive re-packing of certain forward door escape slides. We are proposing this AD to prevent failure of the emergency slide, preventing the forward passenger door from opening, which could result in impeded emergency evacuation and possible subsequent injury to passengers and flightcrew.

DATES: We must receive comments on this proposed AD by December 10, 2012.

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

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

For EMBRAER service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br; Internet http://www.flyembraer.com.* For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; telephone 602–243–2270; email *george.yribarren@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1108; Directorate Identifier 2011–NM–283–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2011–12–01 and 2011–12–02, both effective December 27, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. MCAI Brazilian Airworthiness Directive 2011–12–01 states:

> During operational checks of escape slide P/N 4A4030–5, some operators have reported failure in the escape slide preventing the forward passenger door opening. This [Brazilian] AD is being issued to prevent failure of this system which could impede an emergency evacuation and increase the chance of injury to passengers and flight crew.

* * * * *

MCAI Brazilian Airworthiness Directive 2011–12–02 states:

> During scheduled deployment tests of escape slide P/N 104003–2, some operators have reported failure in the escape slide preventing the forward passenger door opening. This [Brazilian] AD is being issued to prevent failure of this system which could impede an emergency evacuation and increase the chance of injury to passengers and flight crew.

* * * * *

The required action is repetitive re-packing of certain forward door escape slides. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Goodrich has issued Alert Service Bulletins 4A4030–25A402 and 104003–25A403, both dated June 30, 2011. Embraer S.A. has issued Section 1 of EMBRAER 170 Maintenance Review Board Report, MRB–1621, Revision 7, dated November 11, 2010; and Section 1 of EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Difference Between the Service Information and This Proposed AD

Where Goodrich Alert Service Bulletins 4A4030–25A402 and 104003–25A403, both dated June 30, 2011, specify that Goodrich Service Bulletin 25–394 should be accomplished as a prior or concurrent action, this proposed AD would not require that service bulletin.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 253 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost between $435 and $542 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be between $153,065 and $180,136, or $605 and $712 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A.: Docket No. FAA–2012–1108; Directorate Identifier 2011–NM–283–AD.

(a) Comments Due Date

We must receive comments by December 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; equipped with Goodrich escape slides having part number (P/N) 4A4030–5.

(2) Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; equipped with Goodrich escape slides having P/N 104003–2.

(d) Subject

Air Transport Association (ATA) of America Code 25; Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of failures of the emergency slide on the forward passenger door, which prevented the door from opening. We are issuing this AD to prevent failure of the emergency slide, preventing the forward passenger door from opening, which could result in impeded emergency evacuation and possible subsequent injury to passengers and flightcrew.

(f) Compliance

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

(g) Repetitive Re-Packing of the Escape Slide

At the applicable compliance times identified in paragraphs (g)(1) and (g)(2) of this AD, re-pack the forward door escape slide in accordance with the Accomplishment Instructions of Goodrich Alert Service Bulletin 4A4030–25A402, dated June 30, 2011 (for Model ERJ 170 airplanes); or Goodrich Alert Service Bulletin 104003–25A403, dated June 30, 2011 (for Model ERJ 190 airplanes). Repeat the re-packing thereafter at intervals not to exceed 18 months.

(1) For escape slides that have not been repacked as of the effective date of this AD: Within 18 months after date of manufacture of the escape slide or within 6 months after the effective date of this AD, whichever occurs later.

(2) For escape slides that have been repacked as of the effective date of this AD: Within 18 months after the last re-pack of the escape slide or within 6 months after the effective date of this AD, whichever occurs later.

(h) Method of Compliance

Accomplishing an overhaul of the escape slide as specified in Task 25–65–01–001, Emergency Evacuation Slide Assembly, of Section 1 of EMBRAER 170 Maintenance Review Board Report, MRB–1621, Revision 7, dated November 11, 2010 (for Model ERJ 170 airplanes); or Section 1 of EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010 (for Model ERJ 190 airplanes); is acceptable for compliance with any re-pack required by paragraph (g) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227-2768; fax (425) 227-1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

(1) Refer to MCAI Brazilian Airworthiness Directives 2011–12–01 and 2011–12–02, both effective December 27, 2011, and the service information identified in paragraphs (j)(1)(i) through (j)(1)(iv) of this AD, for related information.

(i) Section 1 of EMBRAER 170 Maintenance Review Board Report, MRB–1621, Revision 7, dated November 11, 2010.

(ii) Section 1 of EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010.

(iii) Goodrich Alert Service Bulletin 4A4030–25A402, dated June 30, 2011.

(iv) Goodrich Alert Service Bulletin 104003–25A403, dated June 30, 2011.

(2) For EMBRAER service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* For Goodrich service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; telephone 602–243–2270; email *george.yribarren@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 15, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26263 Filed 10–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1106; Directorate Identifier 2012–NM–084–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200 Freighter, –200, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by a report that erroneous height indication by one radio altimeter with engaged flare and retard mode, in case of go-around, might lead to a temporary loss of airplane longitudinal control. This proposed AD would require revising the airplane flight manual. We are proposing this AD to ensure that the flightcrew applies the appropriate operational procedures in the event of an erroneous indication of the radio altimeter, which could result in temporary loss of airplane longitudinal control.

DATES: We must receive comments on this proposed AD by December 10, 2012.

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

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330–A340@airbus.com; Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1106; Directorate Identifier 2012–NM–084–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0069, dated April 24, 2012 (referred to after this as ''the MCAI''), to correct an unsafe

condition for the specified products. The MCAI states:

> Airbus performed tests to investigate the consequences of one radio altimeter providing an erroneous indication.
>
> These tests concluded that with engaged flare and retard mode, in case of go-around, the situation may lead to a temporary loss of aeroplane longitudinal control.
>
> To address this condition, Airbus issued a new Airplane Flight Manual (AFM) operational procedure.
>
> For the reasons described above, this [EASA] AD requires amendment of the applicable AFM to ensure that the flight crew applies the appropriate operational procedures.

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

Relevant Service Information

Airbus has issued Temporary Revision TR37, Issue 1.0, dated June 15, 2010; and Temporary Revision TR38, Issue 1.0, dated June 15, 2010; to the Airbus A330/A340 AFM. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

While the compliance time for doing the actions specified in EASA AD 2012–0069, dated April 24, 2012, is within 14 days after the effective date of EASA AD 2012–0069, dated April 24, 2012, this proposed AD has a required compliance time of within 30 days after the effective date of this AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 64 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,440, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2012–1106; Directorate Identifier 2012–NM–084–AD.

(a) Comments Due Date

We must receive comments by December 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–223F and –243F airplanes; Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a report that erroneous height indication by one radio altimeter with engaged flare and retard mode, in case of go-around, might lead to a temporary loss of airplane longitudinal control. We are issuing this AD to ensure that the flightcrew applies the appropriate operational procedures in the event of an erroneous indication of the radio altimeter, which could result in temporary loss of airplane longitudinal control.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

(1) Within 30 days after the effective date of this AD, revise the applicable section of the Airbus A330/A340 AFM to include the information in Airbus Temporary Revision TR37, Issue 1.0, dated June 15, 2010; or Airbus Temporary Revision TR38, Issue 1.0, dated June 15, 2010; to the Airbus A330/A340 AFM. This may be done by inserting a copy of this AD, or Airbus Temporary Revision TR37, Issue 1.0, dated June 15, 2010, and Airbus Temporary Revision TR38, Issue 1.0, dated June 15, 2010; in the AFM.

Note 1 to paragraph (g)(1) of this AD: When the information in Airbus Temporary Revision TR37, Issue 1.0, dated June 15, 2010; or Airbus Temporary Revision TR38, Issue 1.0, dated June 15, 2010, to the Airbus A3330/A340 AFM, has been included in the applicable section of the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM, provided

the relevant information in the general revisions is identical to that in Airbus Temporary Revision TR37, Issue 1.0, dated June 15, 2010; or Airbus Temporary Revision TR38, Issue 1.0, dated June 15, 2010.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(i) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0069, dated April 24, 2012, and the service information specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD, for related information.

(i) Airbus Temporary Revision TR37, Issue 1.0, dated June 15, 2010.

(ii) Airbus Temporary Revision TR38, Issue 1.0, dated June 15, 2010.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 14, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26264 Filed 10–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1107; Directorate Identifier 2011–NM–216–AD]

RIN 2120–AA64

Airworthiness Directives; Intertechnique Aircraft Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) that applies to certain Intertechnique Aircraft Systems oxygen mask regulators. This proposed AD was prompted by a report of a malfunctioning mask having an inflatable harness with a high premature rupture rate due to defective silicon. This proposed AD would require inspecting and replacing defective harnesses with new or modified serviceable units. We are proposing this AD to detect and correct defective harnesses which could lead, in case of a sudden depressurization event, to a harness rupture, thereby providing inadequate protection against hypoxia and possibly resulting in unconsciousness of the affected flightcrew member and consequent reduced control of the airplane.

DATES: We must receive comments on this proposed AD by December 10, 2012.

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

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

For service information identified in this proposed AD, contact Intertechnique Aircraft Systems, 61 Rue Pierre Curie BP 1, 78373 Plaisir Cedex—France; telephone: (33) 1 61 34 12 32; fax: (33) 1 64 86 69 84; email: *yann.laine@zodiacaerospace.com;* Internet: *www.zodiacaerospace.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Caspar Wang, Aerospace Engineer, Boston Aircraft Certification Office (ACO) ANE–150, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7799; fax: (781) 238–7170; email: *caspar.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1107; Directorate Identifier 2011–NM–216–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0090R1, dated July 13, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A malfunction of a quick donning mask was reported to Intertechnique, who initiated

an investigation in order to detect the root cause and the failure mode. Despite the fact that the analysis did not lead to any final conclusion, discrete suspected silicon batches have been identified which have shown an unusually high premature rupture rate.

Some of the affected harnesses are known to have been delivered as spares. Consequently, an inflatable harness belonging to one of the suspect batches may have become installed on an Oxygen Mask Regulator, the serial number (s/n) or [part number] P/N of which is not identified in Appendix II of Intertechnique Service Bulletin (SB) MXH–35–240.

This fact widens the Applicability of this [EASA] AD to extend beyond the individual Oxygen Mask Regulators identified by s/n and P/N in Appendix II of the SB.

This condition, if not detected and corrected, could lead, in case of a sudden depressurization event, to a harness rupture, thereby providing inadequate protection against hypoxia of the affected flight crew member, possibly resulting in unconsciousness and consequent reduced control of the aeroplane.

For the reasons described above, this [EASA] AD requires the identification and replacement of all potentially defective harnesses with serviceable units.

Note 1: The affected batches were installed on harnesses manufactured between December 2008 and August 2010, having dates codes 0850S (week 50 of 2008) through 1031S (week 31 of 2010).

Note 2: Harness assemblies that do not have a batch code were manufactured before week 33 of 2008 and are not affected by this unsafe condition.

This [EASA] AD has been revised to correct a typographical error in the Applicability, which inadvertently referred to P/N MA10–12 masks, whereas in fact, all P/N MA10 series could have an affected harness installed. In addition, this revised AD corrects Note 2 (above), which confused harness manufacturing date codes with the affected harnesses batch codes.

This [EASA] AD is also revised to make reference to the latest revisions of the referenced Intertechnique service publications which identify by s/n and P/N, in Appendix II of the SB, more oxygen mask regulators that are known or suspected to have an affected harness installed. Finally, this AD is revised to add a Note to the Required Actions section, to stress the fact that other oxygen mask regulators could be affected, in addition to those listed in Appendix II of the SB.

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

Relevant Service Information

Zodiac Aerospace Intertechnique has issued the following service bulletins:

- Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011 (for all airplanes other than Bombardier airplanes).
- Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011 (for Bombardier airplanes).

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect up to 5,500 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators up to $467,500, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Intertechnique Aircraft Systems: Docket No. FAA–2012–1107; Directorate Identifier 2011–NM–216–AD.

(a) Comments Due Date

We must receive comments by December 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Intertechnique Aircraft Systems flight crew oxygen mask regulators, all part number (P/N) MA10, MC10, MC20, MF10, MF20, MLC20, MLD20, MRA005, MRA022, and MRA023 series; certificated in

any category; installed on, but not limited to, airplanes manufactured by Airbus, ATR, BAE Systems (Type Certificate previously held by British Aerospace), Boeing, Bombardier (Type Certificate previously held by Canadair, De Havilland Canada), Cessna, Dassault, EADS CASA, EMBRAER, Gulfstream, Hawker Beechcraft (Type Certificate previously held by Raytheon, Beech), Israel Aircraft Industries (IAI), McDonnell Douglas, Piaggio, Pilatus, Piper and SOCATA.

(d) Subject

Air Transport Association (ATA) of America Code 35: Oxygen.

(e) Reason

This AD was prompted by a report of a malfunctioning mask having an inflatable harness with a high premature rupture rate due to defective silicon. We are issuing this AD to detect and correct defective harnesses which could lead, in case of a sudden depressurization event, to a harness rupture, thereby providing inadequate protection against hypoxia and possibly resulting in unconsciousness of the affected flightcrew member and consequent reduced control of the airplane.

(f) Compliance

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

(g) Inspection

(1) Except as provided by paragraph (i) of this AD: Within 24 months after the effective date of this AD, inspect the inflatable harness fitted to each flight crew oxygen mask regulator to determine if the inflatable harness is installed with a part number (P/N) and a batch number identified in Appendix I of Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011 (for all airplanes other than Bombardier airplanes); or Appendix I of Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011 (for Bombardier airplanes).

(2) Referring only to Appendix II of Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011 (for all airplanes other than Bombardier airplanes); or Appendix II of Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011 (for Bombardier airplanes); to identify a specific oxygen mask regulator is insufficient to demonstrate that the inflatable harness fitted to that oxygen mask regulator is not listed in Appendix I of Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011; or Appendix I of Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011.

(h) Replacement

If during the inspection required by paragraph (g)(1) of this AD, an inflatable harness has a part number and batch number identified in Appendix I of Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011 (for all airplanes other than Bombardier airplanes); or Appendix I of Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011 (for Bombardier airplanes): Before further flight, replace the inflatable harness with a new or re-identified harness, in accordance with the Accomplishment Instructions of Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011 (for all airplanes other than Bombardier airplanes); or Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011 (for Bombardier airplanes).

(i) Exception

Oxygen mask regulators having a date of manufacturing (DMF) code of November 2008 (112008 or 11–08) or earlier, and those with a DMF of January 2011 (012011 or 01–11) or later, are excluded from the inspection and replacement requirements of paragraphs (g) and (h) of this AD, provided it can be demonstrated that the inflatable harness has not been replaced on those masks. A review of airplane delivery or maintenance records is acceptable to make the determination as specified in this paragraph if the part number, batch number, and DMF can be conclusively determined from that review.

(j) Definition

For the purpose of this AD, Bombardier airplanes include airplanes previously manufactured by Canadair or by De Havilland Canada.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install a flight crew oxygen mask regulator having a part number and batch number on the inflatable harness that is found in Appendix I of Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011 (for all airplanes other than Bombardier airplanes); or Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011 (for Bombardier airplanes) on any airplane.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using a service bulletin specified in paragraph (l)(1), (l)(2), or (l)(3) of this AD:

(1) Intertechnique Service Bulletin MXH–35–240, Revision 6, dated August 16, 2011.

(2) Intertechnique Service Bulletin MXH–35–240, Revision 5, dated July 26, 2011.

(3) Intertechnique Service Bulletin MXH–35–240, Revision 4, dated June 10, 2011.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office (ACO) ANE–150, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Caspar Wang, Aerospace Engineer, Boston Aircraft Certification Office (ACO) ANE–150, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7799; fax: (781) 238–7170. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(n) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2011–0090R1, dated July 13, 2011, and the service information specified in paragraphs (n)(1)(i) and (n)(1)(ii) of this AD, for related information.

(i) Intertechnique Service Bulletin MXH–35–240, Revision 7, dated September 1, 2011.

(ii) Intertechnique Service Bulletin MXH–35–241, Revision 2, dated May 19, 2011.

(2) For service information identified in this AD, contact Intertechnique Aircraft Systems, 61 Rue Pierre Curie BP 1, 78373 Plaisir Cedex—France; telephone: (33) 1 61 34 12 32; fax: (33) 1 64 86 69 84; email: *yann.laine@zodiacaerospace.com;* Internet: *www.zodiacaerospace.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 15, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26266 Filed 10–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2004–C–0559 (Formerly Docket No. 2004C-0078)]

Cryovac North America; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 4C0276) proposing that the color

additive regulations be amended to provide for the safe use of synthetic iron oxide as a color additive in or on cooked meat products.

FOR FURTHER INFORMATION CONTACT: Ellen Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1309.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 27, 2004 (69 FR 9340), FDA announced that a color additive petition (CAP 4C0276) had been filed by Cryovac North America, c/o Keller and Heckman LLP, 1001 G St. NW., Suite 500 West, Washington, DC 20001. The petition proposed to amend the color additive regulations in 21 CFR part 73 *Listing of Color Additives Exempt From Certification* to provide for the safe use of synthetic iron oxide as a color additive in or on cooked meat products. Cryovac North America has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: October 19, 2012.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2012–26242 Filed 10–24–12; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0721; FRL–9745–3]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision; South Coast; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the public comment period for a proposal published in the **Federal Register** on September 19, 2012. In that action, in response to a remand by the Ninth Circuit Court of Appeals, and pursuant to the Clean Air Act, EPA proposed to find that the California State Implementation Plan (SIP) for the Los Angeles-South Coast Air Basin (South Coast) is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard. If EPA finalizes this proposed finding of substantial inadequacy as proposed, California would be required revise its SIP to correct these deficiencies within 12 months of the effective date of our final rule. Two commentors requested an extension of the comment period for this proposed rulemaking. EPA is now reopening the public comment period.

DATES: The comment period for the proposed rule published on September 19, 2012 (77 FR 58072) is reopened. Comments must be received on or before November 8, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0721, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: tax.wienke@epa.gov.*
- *Mail or deliver:* Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mail Code AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901, 415–947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a proposed rule on September 19, 2012 (77 FR 58072). In that action, in response to a remand by the Ninth Circuit Court of Appeals, and pursuant to the Clean Air Act, EPA proposed to find that the California State Implementation Plan (SIP) for the Los Angeles-South Coast Air Basin (South Coast) is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard. If the action is finalized as proposed, California would be required revise its SIP to correct these deficiencies within 12 months of the effective date of our final rule. Written comments on the proposed rule were to be submitted to EPA on or before October 19, 2012. Two commentors requested an extension of the comment period for this proposed rulemaking. EPA is now reopening the public comment period for the September 19, 2012, 1-hour ozone SIP call for California for the South Coast area proposed rulemaking for fourteen days.

Dated: October 17, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2012–26286 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R01–OAR–2012–0290; FRL–9744–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; New Hampshire; Redesignation of the Southern New Hampshire 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve: the State of New Hampshire's request to redesignate the Boston-Manchester-Portsmouth (SE), New Hampshire moderate 8-hour ozone nonattainment

area to attainment for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS); a State Implementation Plan (SIP) revision containing a 10-year maintenance plan for this area; a 2008 comprehensive emissions inventory for the area; and new motor vehicle emissions budgets (MVEBs) for the years 2008 and 2022 that are contained in the 10-year ozone maintenance plan for this area. Finally, EPA is proposing to withdraw the SIP-approved 2009 MVEBs and replace them with the 2008 MVEBs included in the maintenance plan.

DATES: Written comments must be received on or before November 26, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0290 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2012–0290,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2012–0290. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov.*

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at *www.regulations.gov,* and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What is EPA proposing?
II. What is the background for these proposed actions?
A. General Background
B. What are the impacts of the December 22, 2006 and June 8, 2007 United States Court of Appeals decisions regarding EPA's Phase I Implementation Rule?
III. What are the criteria for redesignation to attainment?
IV. What is EPA's analysis of the State's request?
A. Has the Southern NH area has attained the 1997 8-hour ozone NAAQS?
B. Has the State of New Hampshire met all applicable requirements of Section 110 and Part D and does the Southern NH area have a fully approved SIP under Section 110(k) of the CAA for purposes of redesignation to attainment?
1. Requirements Under the 1997 8-Hour Ozone Standard
2. Requirements Under the 1-Hour Ozone Standard
3. Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation for the 8-Hour NAAQS
a. Section 110 and General SIP Requirements
b. Part D SIP Requirements
C. Are the air quality improvement in the Southern NH area is due to permanent and enforceable reductions in emissions?
D. Does the Southern NH area have a fully approved maintenance plan pursuant to Section 175a of the CAA?
1. Maintenance Plan Requirements
2. EPA's Analysis of the Southern NH Maintenance Plan
a. Attainment Emissions Inventory
b. Maintenance Demonstration
c. Monitoring Network
d. Verification of Continued Attainment
e. The Maintenance Plan's Contingency Measures
V. How are MVEBs developed and what is an adequacy determination?
VI. What is the status of EPA's adequacy determination for the area's MVEBs for 2022?
VII. Proposed Actions
VIII. Statutory and Executive Order Reviews

I. What is EPA proposing?

EPA is proposing to determine that the Boston-Manchester-Portsmouth (SE), New Hampshire 1997 8-hour ozone nonattainment area (hereafter the ''Southern NH'' area) has met the requirements for redesignation under sections 107(d)(3)(E) and 175A of the Clean Air Act (CAA). EPA is thus proposing to approve New Hampshire's

request to change the legal designation of the Southern NH area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. In this rulemaking, EPA is also proposing to approve New Hampshire's maintenance plan SIP revision for the Southern NH area under CAA section 175A, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to keep the Southern NH area in attainment of the ozone NAAQS through 2022. EPA is proposing to approve the 2008 comprehensive emissions inventory for the Southern NH area as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA is proposing to approve the newly-established 2008 and 2022 MVEBs for the Southern NH area. At the state's request, EPA is proposing to remove the 2009 MVEBs prepared using MOBILE6.2 and replace them with 2008 MVEBs prepared using MOVES2010. EPA will finalize its approval of the redesignation request only if EPA also approves the 2008 comprehensive emissions inventory, vehicle inspection/maintenance (I/M) program and certain Reasonably Available Control Technology (RACT) rules for the area. EPA plans to take final action on the emission inventory, RACT rules, and revised I/M program, prior to, or in conjunction with, EPA's final approval of New Hampshire's redesignation request.

II. What is the background for these proposed actions?

A. General Background

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 1997 8-hour standard, the ozone NAAQS was based on a 1-hour standard. The Boston-Manchester-Portsmouth (SE), NH area 1997 8-hour ozone nonattainment area is composed of portions of three formerly separate 1-hour ozone nonattainment areas: (1) The Portsmouth-Dover-Rochester, NH serious 1-hour ozone nonattainment area; (2) the Boston-Lawrence-Worcester, MA–NH serious 1-hour ozone nonattainment area; and (3) the Manchester, NH marginal 1-hour ozone nonattainment area.

All three of these areas attained the 1-hour ozone standard by their respective attainment dates. Specifically, for the Boston-Lawrence-Worcester, MA–NH 1-hour area, see EPA's final determination at 77 FR 31496, May 29, 2012. For the Portsmouth-Dover-Rochester, NH 1-hour area and the Manchester, NH 1-hour area, see EPA's proposed determination at 77 FR 42470, July 19, 2012. (EPA will take final action with respect to this determination prior to taking final action on the redesignation request.)

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23858), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003. The Southern NH area was designated as nonattainment for the 1997 8-hour ozone standard and classified as a ''moderate'' nonattainment area under subpart 2 of the CAA. This area includes 54 cities and towns in Hillsborough, Merrimack, Rockingham, and Strafford Counties. See 40 CFR 81.330, for exact listing of cities and towns.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas. Under EPA's implementation rule for the 1997 8-hour ozone standard (69 FR 23951, April 30, 2004), the Southern NH area was designated as a subpart 2, 8-hour ozone moderate nonattainment area by EPA based on air quality monitoring data from 2001–2003.

The New Hampshire Department of Environmental Services (NH DES) submitted a request to redesignate the Southern NH area to attainment of the 1997 8-hour ozone standard on March 2, 2012, with a supplement submitted on September 21, 2012. Complete, quality-assured and certified data show the area first attained the 1997 8-hour NAAQS based on 2002–2004 data and has remained in attainment since then (see 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011). In addition, available preliminary ozone monitoring data for 2012 indicate continued attainment of the standard. See complete discussion of air quality data for the Southern NH area in section IV.A. of today's action. 40 CFR 50.10 and appendix I of 40 CFR part 50 provide that the 1997 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, when rounded, at all ozone monitoring sites in the area. To support the redesignation of the area to attainment of the NAAQS, the ozone data must be complete for the three attainment years. The data completeness requirement is met when the three-year average of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness, as determined in accordance with appendix I of 40 CFR part 50. Under the CAA, EPA may redesignate a nonattainment area to attainment if sufficient, complete, quality-assured data are available to show that the area has attained the standard and if the State meets the other CAA redesignation requirements specified in section 107(d)(3)(E) and section 175A.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On May 21, 2012 (77 FR 30088), EPA designated all of New Hampshire as attainment/unclassifiable under the new, more stringent 2008 8-hour ozone NAAQS (see also 40 CFR part 81.330). Today's action does not address requirements of the 2008 8-hour ozone standard.

B. What are the impacts of the December 22, 2006 and June 8, 2007 United States Court of Appeals decisions regarding EPA's Phase 1 Implementation Rule?

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's Phase 1 Implementation Rule for the 1997 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Id., Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: provisions related to classifications for areas currently classified under subpart 2 of title I, part D, of the CAA as 1997 8-hour nonattainment areas; the applicable attainment dates; and the timing for emissions reductions needed for attainment. The June 8, 2007 decision also left intact the court's rejection of

EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the D.C. Circuit let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged.

The June 8, 2007 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007 decision clarified that the court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations. More recently, EPA issued new regulations regarding 1-hour ozone anti-backsliding requirements (see 77 FR 28424, May 14, 2012) that were the subject of the court's rulings.

EPA previously concluded that the D.C. Circuit's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation to attainment, when redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

III. What are the criteria for redesignation to attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that:

(1) The Administrator determines that the area has attained the applicable NAAQS;

(2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k);

(3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993;

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What Is EPA's analysis of the State's request?

EPA is proposing to determine that the Southern NH area has met all applicable redesignation criteria under CAA section 107(d)(3)(E). The bases for EPA's proposed approval of the redesignation request are discussed below.

A. Has the Southern NH area attained the 1997 8-hour ozone NAAQS?

On March 18, 2008 (73 FR 14387), EPA first determined that the Southern NH area attained the 1997 8-hour ozone NAAQS based on monitoring data for 2002–2004. EPA determines that an area has attained the 1997 8-hour ozone NAAQS in accordance with 40 CFR 50.10 and 40 CFR part 50, appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In addition, on March 18, 2011 (76 FR 14805), EPA determined that the Southern NH area attained the 1997 8-hour ozone NAAQS based on complete, quality-assured monitoring data for 2007–2009. In the March 18, 2011 action, EPA also determined that the Southern NH area attained the 1997 ozone standard as of June 15, 2010, its applicable attainment date.

The State of New Hampshire's redesignation request that is the subject of this action, includes ozone data from 1983–2010, and shows that the area has been in attainment since 2004 (see also 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011). All ozone monitoring data have been quality-assured in accordance with 40 CFR 58.10, recorded in the AQS database, and certified. The data also meet the completeness criteria in 40 CFR 50, appendix I, which requires a minimum

completeness of 75 percent annually and 90 percent over each three-year period. Monitoring data for the years 2007 to 2011 is presented in Tables 1 and 2 below. (The tables include several years of data for thoroughness; EPA previously determined this area attained the 1997 8-hour NAAQS (see 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011).) The 2011 data were not included in the redesignation request, but have since been certified; thus, EPA is including them in this proposal to show that that the area continues to attain during the most recent three years of complete, quality-assured data for 2009–2011. Table 1 shows, as determined on March 18, 2011 (76 FR 14805), that the Southern NH area attained the 1997 ozone standard by its applicable attainment date. Table 2 shows that the Southern NH area continues to attain the 1997 ozone standard. All sites are well below the 1997 8-hour NAAQS.

TABLE 1—2007–2009 FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATIONS AND 2007–2009 DESIGN VALUES (PARTS PER MILLION) IN THE BOSTON-MANCHESTER-PORTSMOUTH (SE), NEW HAMPSHIRE AREA

Location	AQS Site ID	4th high 2007	4th High 2008	4th High 2009	Design value (07–09)
Manchester	330110020	0.074	0.064	0.060	0.066
Nashua	330111011	0.081	0.067	0.066	0.071
Portsmouth	330150014	0.078	0.069	0.070	0.072
Rye	330150016	0.086	0.075	0.068	0.076

TABLE 2—2009–2011 FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATIONS AND 2009–2011 DESIGN VALUES (PARTS PER MILLION) IN THE BOSTON-MANCHESTER-PORTSMOUTH (SE), NEW HAMPSHIRE AREA

Location	AQS Site ID	4th high 2009	4th High 2010	4th High 2011	Design Value (09–11)
Manchester	330110020	0.060	0.063	*	N/A
Londonderry	330150018	**	**	0.069	N/A
Nashua	330111011	0.066	0.065	0.066	0.066
Portsmouth	330150014	0.070	0.064	0.064	0.066
Rye	330150016	0.068	0.066	0.066	0.066

* Site moved to Londonderry; no 2009–2011 design values available.
** New site; no 2009–2011 design values available.
Preliminary data available for 2012 indicate that the area continues to attain.

In addition, as discussed below with respect to the maintenance plan, the NH DES has committed to continue to operate an EPA-approved monitoring network in the area as necessary to demonstrate maintenance of the NAAQS. New Hampshire remains obligated to continue to quality-assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines. In summary, EPA proposes to find that the area has attained the 1997 8-hour ozone NAAQS.

B. Has the State of New Hampshire met all applicable requirements of Section 110 and Part D and does the Southern NH area have a fully approved SIP under Section 110(k) of the CAA for purposes of redesignation to attainment?

1. Requirements Under the 1997 8-Hour Ozone Standard

With respect to the 1997 8-hour standard, the Southern NH area is classified under subpart 2. The June 8, 2007 opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision therefore upholds EPA's classifications for those areas classified under subpart 2 for the 8-hour ozone standard.

2. Requirements Under the 1-Hour Ozone Standard

In its June 8, 2007 decision the DC Circuit limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements which apply by virtue of the area's classification for the 1-hour ozone standard. See 40 CFR 51.900, et seq.; 70 FR 30592, 30604 (May 26, 2005). As set forth in more detail below, the area must also address four additional anti-backsliding provisions identified by the court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone standard requirements that continue to apply after revocation of the 1-hour ozone standard to former 1-hour ozone nonattainment areas that are also designated as nonattainment for the 1997 8-hour standard. 40 CFR 51.905(a)(1)(i) provides that the area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.900(f), except as provided in § 51.905 (a)(1)(iii) of this section, and except as provided in paragraph (b) of § 51.905.

40 CFR 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that ''applicable requirements'' means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

- Reasonably available control technology (RACT).
- Inspection and maintenance programs (I/M).
- Major source applicability cut-offs for purposes of RACT.
- Rate of Progress (ROP) reductions.
- Stage II vapor recovery.
- Clean fuels fleet program under section 182(c)(4) of the CAA.
- Clean fuels for boilers under section 182(e)(3) of the CAA.
- Transportation Control Measures (TCMs) during heavy traffic hours as provided section 182(e)(4) of the CAA.
- Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- Transportation controls under section 182(c)(5) of the CAA.
- Vehicle miles traveled provisions of section 182(d)(1) of the CAA.

• NO_X requirements under section 182(f) of the CAA.

• Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

• Contingency measures as provided under § 51.905(b).

Pursuant to 40 CFR 51.905(c), the Southern NH area is subject to the obligations set forth in 40 CFR 51.905(a) and 40 CFR 51.900(f).

In addition, the DC Circuit held that EPA should have retained four additional measures in its anti-backsliding provisions: (1) Nonattainment area NSR; (2) section 185 penalty fees; (3) contingency measures under section 172(c)(9) or 182(c)(9) of the Act; and (4) 1-hour MVEBs that were not yet replaced by 8-hour emissions budgets. EPA addressed portions of the court decision in a recent **Federal Register** notice (see 77 FR 28424, May 14, 2012). For the New Hampshire request EPA has addressed these four requirements as follows:

With respect to NSR, EPA has determined that an area being redesignated need not have an approved nonattainment NSR program, provided that the state demonstrates maintenance of the standard in the area without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' This policy assumes that the state's PSD program will become effective in the area immediately upon redesignation to attainment. Consequently EPA concludes that an approved NSR program is not an applicable requirement for purposes of redesignation. See the more detailed explanations in the following rulemakings: Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); and Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996). Furthermore, New Hampshire has a fully approved NSR program. The New Hampshire NSR program was last approved on February 6, 2012 (77 FR 5700).

With regard to the requirement for section 185 source penalty fee programs, no portion of the Southern NH area was classified as severe or higher for the 1-hour ozone standard, and therefore the area is not subject to this requirement.

With respect to the 1-hour MVEBs that were not yet replaced by 8-hour emissions budgets, the conformity portion of the court's June 8, 2007 ruling clarified that, for those areas with MVEBs for the 1-hour ozone standard, anti-backsliding requires that these MVEBs be used for 8-hour conformity determinations until replaced by MVEBs for the 8-hour ozone standard. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. Note below that EPA is proposing to approve 8-hour MVEBs contained in New Hampshire's redesignation request and 8-hour ozone maintenance plan for the Southern NH area.

As stated above, in 1991, all cities and towns of what is now the Southern NH 1997 8-hour ozone nonattainment area were designated nonattainment by operation of law and classified by EPA. The two largest of these areas, the Boston-Lawrence-Worcester, MA–NH 1-hour area and the Portsmouth-Dover-Rochester, NH 1-hour area were classified as serious ozone nonattainment areas 56 FR 56694 (November 6, 1991). EPA previously approved the serious attainment demonstration SIP and its associated elements, e.g., attainment MVEBs and the Reasonably Available Control Measures (RACM) demonstration, for the Boston-Lawrence-Worcester, MA–NH 1-hour area (see 63 FR 67405, December 7, 1998; 67 FR 18493, April 16, 2002; and 67 FR 72574, December 6, 2002). As stated above, the Portsmouth-Dover-Rochester, NH 1-hour area attained the 1-hour NAAQS by November 15, 1999. See 77 FR 42470, July 19, 2012. Since this area attained the 1-hour standard by its attainment deadline there is not a need for 1-hour contingency measures. Also as stated above, the Manchester, NH 1-hour area attained the 1-hour standard by its attainment deadline. In addition, since the Manchester, NH 1-hour area was a marginal area it did not need to have contingency measures for failure to attain. Neither the Portsmouth-Dover-Rochester, NH 1-hour area, the Boston-Lawrence-Worcester, MA–NH 1-hour area, nor the Manchester, NH 1-hour area needed to have section 185 fees since they were not classified as severe or extreme. In conclusion, there are no outstanding 1-hour requirements for this area (see 77 FR 42470, July 19, 2012).

We are proposing to determine that New Hampshire has met all currently applicable SIP requirements for purposes of redesignation of the Southern NH area to attainment of the 1997 8-hour ozone standard under section 110 and part D of the CAA, in accordance with section 107(d)(3)(E)(v). We are also proposing to determine that the New Hampshire SIP, with the exception of the comprehensive emission inventory, certain RACT rules, and revisions to New Hampshire's vehicle I/M program, is fully approved with respect to all applicable requirements for purposes of redesignation to attainment of the 1997 8-hour ozone standard, in accordance with section 107(d)(3)(E)(ii) of the CAA. As discussed below, in this action, EPA is proposing to approve New Hampshire's 2008 comprehensive emissions inventory as meeting the comprehensive emissions inventory requirement of section 182(a)(1) for the area. EPA is taking action on the New Hampshire RACT regulations and vehicle I/M program revisions in separate rules. Provided that the comprehensive emissions inventory, vehicle I/M program revisions, and RACT rules are approved on or before we complete final rulemaking approving the redesignation request, we determine here that, assuming that this occurs, New Hampshire will have met all applicable section 110 and part D SIP requirements of the CAA for purposes of approval of New Hampshire's ozone redesignation requests for the Southern NH area. In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved or will be fully approved under section 110(k) of the CAA by the time we complete final rulemaking on New Hampshire's ozone redesignation requests for the Southern NH area. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due

subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. See *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), and also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

As noted in the Clean Data Determination for the area (see 76 FR 14805, March 18, 2011), since EPA determined that the Southern NH area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the reasonably available control measure (RACM) requirement of section 172(c)(1) of the CAA, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and will cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble, EPA stated that:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum (dated September 4, 1992) on page 6. (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'')

3. Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation for the 8-Hour NAAQS

a. Section 110 and General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

We believe that the section 110 elements that are not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. Only the section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176 October 10, 1996) and (62 FR 24826 May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748 December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890 June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399 October 19, 2001).

We have reviewed New Hampshire's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the New Hampshire SIP addressing section 110 elements under the 1-hour ozone standard. See Table 3 below. All the VOC and NO_X control measures listed in Table 3 are permanent and enforceable controls that will remain in place following redesignation.

TABLE 3—LIST OF NEW HAMPSHIRE CONTROL MEASURES FOR VOLATILE ORGANIC COMPOUNDS AND OXIDES OF NITROGEN

[Ozone precursors]

Name of control measure	Type of measure	Approval status
On-board Refueling Vapor Recovery	federal rule	Promulgated at 40 CFR part 86.
Federal Motor Vehicle Control program	federal rule	Promulgated at 40 CFR part 86.
Heavy Duty Diesel Engines (On-road)	federal rule	Promulgated at 40 CFR part 86.
Federal Non-road Heavy Duty diesel engines	federal rule	Promulgated at 40 CFR part 89.
Federal Non-road Gasoline Engines	federal rule	Promulgated at 40 CFR part 90.
Federal Marine Engines	federal rule	Promulgated at 40 CFR part 91.
AIM Surface Coatings	federal rule	Promulgated at 40 CFR part 59.
Automotive Refinishing	federal rule	Promulgated at 40 CFR part 59.
Consumer & commercial products	federal rule	Promulgated at 40 CFR part 59.
Inspection & Maintenance	CAA SIP Requirement	SIP approved (66 FR 1868; 1/10/01).
NO_X RACT	CAA SIP Requirement	SIP approved (62 FR 17087; 4/9/97).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	CAA SIP Requirement	SIPs approved (63 FR 67405; 12/17/98); (63 FR 11600; 3/10/98); (58 FR 4902; 1/19/93); (58 FR 29973; 5/25/93).

TABLE 3—LIST OF NEW HAMPSHIRE CONTROL MEASURES FOR VOLATILE ORGANIC COMPOUNDS AND OXIDES OF NITROGEN—Continued

[Ozone precursors]

Name of control measure	Type of measure	Approval status
VOC RACT pursuant to section 182(b)(2)(A) and (C) of CAA.	CAA SIP Requirement	SIPs approved (67 FR 48034; 7/23/02); (65 FR 42290; 7/10/2000); (63 FR 11600; 3/10/98).
Stage II Vapor Recovery	CAA SIP Requirement	SIP approved (63 FR 67405; 12/7/98).
Reformulated Gasoline	state opt-in	SIP approved (63 FR 67405; 12/7/98).
National Low Emission Vehicle	state opt-in	SIP approved (65 FR 12476; 3/9/00).
Clean Fuel Fleets	CAA SIP Requirement	SIP approved (64 FR 52434; 9/29/99).
New Source Review	CAA SIP Requirement	SIP approved (66 FR 39100; 7/27/01).
Base Year Emissions Inventory	CAA SIP Requirement	SIP approved (62 FR 55521; 10/27/97).
15% VOC Reduction Plan	CAA SIP Requirement	SIP approved (63 FR 67405; 12/7/98).
9% rate of progress plan	CAA SIP Requirement	SIP approved (67 FR 18547; 4/16/02).
Emissions Statements	CAA SIP Requirement	SIP approved (63 FR 11600; 3/10/98).
Enhanced Monitoring (PAMS)	CAA Requirement	SIP approved (62 FR 55521; 10/27/97).
OTC NO_X MOU Phase II and III	state initiative	SIP approved (64 FR 29567; 6/2/99).
Stage II Vapor Recovery or comparable measures section 184(b)(2) CAA requirement.	CAA SIP requirement	SIP approved (64 FR 52434; 9/29/1999).

The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 8-hour ozone nonattainment status of the Southern NH area. Therefore, EPA concludes that these infrastructure SIP elements are not applicable requirements for purposes of review of the state's 8-hour ozone redesignation request. Nevertheless, in a submittal dated December 14, 2007, New Hampshire confirmed that the state meets the section 110 requirements for the 1997 8-hour ozone standard. EPA approved the New Hampshire 110(a)(2) SIP submittal on July 8, 2011, at 76 FR 40248, for the following elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

b. Part D SIP Requirements

EPA has reviewed the New Hampshire SIP for the Southern NH area with respect to SIP requirements applicable for purposes of redesignation under part D of the CAA for both the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. EPA believes that the New Hampshire SIP for the Southern NH area contains approved SIP measures that meet the part D requirements applicable for purposes of redesignation. EPA has approved most of the required Part D elements. EPA plans to take final action on revisions to New Hampshire's vehicle I/M program,[1] and certain RACT rules prior to, or in conjunction with, final action on the Southern NH redesignation request. In addition EPA is proposing to approve the 2008 comprehensive emissions inventory, discussed in section IV.D.2.a. of this rulemaking. Upon final approval of New Hampshire's I/M program revisions, RACT rules, and the 2008 comprehensive emissions inventory, the Southern NH area will meet all of the requirements applicable to the area under part D for purposes of redesignation.

EPA has determined that, if EPA finalizes the approval of New Hampshire's I/M program, discussed below, requirements for RACT, and the 2008 comprehensive emissions inventory, discussed in section VII.D.2.a. of this rulemaking, the New Hampshire SIP will meet the SIP requirements applicable for purposes of redesignation under part D of the CAA for the Southern NH area. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176. The applicable subpart 2 requirements are contained in sections 182(a) and (b) (marginal and moderate nonattainment area requirements).

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Southern NH area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment for the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on states containing nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached in the Southern NH area, no additional measures are needed to provide for attainment and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. See 40 CFR 51.918.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Southern NH area has met the 1997 8-hour ozone NAAQS (see General Preamble, 57 FR 13564, April 16, 1992). See also 40 CFR 51.918. In addition, because the Southern NH area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1) discussed below.

[1] The on-road mobile source emissions estimates found in the SNH redesignation request includes emissions reductions achieved as a result of the implementation of the revised New Hampshire motor vehicle I/M program; thus New Hampshire's revised I/M program should be approved into the SIP prior to, or in conjunction with, final action on the SNH redesignation request.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area.

New Hampshire has a fully approved NSR program (77 FR 5700, February 6, 2012). Even if New Hampshire did not have a fully approved NSR program, EPA has interpreted the section 184 Ozone Transport Region (OTR) requirements, including NSR, as not being applicable for purposes of redesignation. The rationale for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have New Source Review even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of its designation and classification. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997). Thus, EPA proposes to find that the Southern NH area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the New Hampshire SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Subpart 1, Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (December 7, 1995) (Tampa, Florida).

EPA approved New Hampshire's Env-A 1500 general conformity SIP on August 16, 1999 (64 FR 44417). New Hampshire submitted a revised Env-A 1500 Transportation Conformity SIP on December 9, 2011. New Hampshire has submitted onroad MVEBs for the Southern NH area of 17.8 tons per summer weekday (tpswd) VOC and 37.2 tpswd NO_X for the year 2008, and 9.2 tpswd VOC and 11.8 tpswd NO_X for the year 2022.

The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval. MVEBs are discussed further in section V.

Subpart 2 Section 182(a) and (b) Requirements

Comprehensive Emissions Inventory. Section 182(a)(1) requires the submission of a comprehensive emissions inventory. New Hampshire submitted both a 2002 comprehensive emissions inventory to EPA on June 7, 2007 and a 2008 emissions inventory with its redesignated request. As discussed below in section VII, EPA is proposing to approve the 2008 emissions inventory as meeting the section 182(a)(1) comprehensive emissions inventory requirement.

Emissions Statements. EPA approved New Hampshire's emission statement SIP, as required by section 182(a)(3)(B), on March 10, 1998 (63 FR 11600).

Reasonable Further Progress and Attainment Demonstration. For the reasons set forth earlier in this notice, because the Southern NH area has attained the 1997 8-hour ozone NAAQS, the requirements of section 182(b)(1) do not apply.

VOC and NO_X RACT Requirements. Section 182(b)(2) requires states with moderate nonattainment areas to adopt RACT under section 172(c)(1) with respect to each of the following: (1) All sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and, (3) all other major non-CTG stationary sources. In addition, Section 182(f) establishes NO_X requirements for ozone nonattainment areas. As required under the 1-hour ozone standard, New Hampshire submitted, and EPA approved, NO_X and VOC RACT regulations into the New Hampshire SIP. See 62 FR 17092, April 9, 1997; 63 FR 11600, March 10, 1998; and 67 FR 48036, July 23, 2002.

In addition, under the 1997 8-hour ozone standard, moderate and above ozone nonattainment areas, and areas in the OTR, were required to submit RACT SIPs. As noted in the EPA's Phase 2 ozone implementation rule,[2] the RACT submittal for the 1997 8-hour ozone standard was due from New Hampshire on September 16, 2006. See 40 CFR 51.916(b)(2). On January 28, 2008, New Hampshire submitted a SIP revision to EPA consisting of a certification that it met RACT for purposes of the 1997 8-hour ozone standard. EPA plans to take final action on New Hampshire's RACT certification, prior to, or in conjunction with, final action on the Southern NH redesignation request.

Furthermore, subsequent to the RACT submittal due date for the 1997 8-hour ozone standard, EPA issued additional CTGs, covering various VOC source categories. Specifically, on October 5, 2006, EPA issued four new CTGs (71 FR 58745). Then, on October 9, 2007, EPA issued three more CTGs (72 FR 57215). Lastly, on October 7, 2008, EPA issued an additional four CTGs (73 FR 58841). The State of New Hampshire submitted its SIP revision for all eleven 2006, 2007, and 2008 CTGs in one SIP revision package on July 26, 2011. EPA plans to take final action on New Hampshire's submittal for the 2006, 2007, and 2008 CTGs, prior to, or in

[2] See Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 (the Phase 2 Rule) (70 FR 71612; November 29, 2005).

conjunction with, final action on the Southern NH redesignation request.

Stage II Vapor Recovery. Section 182(b)(3) requires states to submit Stage II rules no later than November 15, 1992. New Hampshire became subject to the Stage II vapor recovery requirements under the 1-hour ozone standard. EPA approved New Hampshire's Stage II rule on December 7, 1998 (63 FR 67405). In addition, since New Hampshire is in the OTR, the State must meet the CAA Section 184(b)(2) Stage II or comparable measures requirement. EPA approved New Hampshire's Stage II or comparable measures SIP on September 9, 1999 (64 FR 52434).

On May 16, 2012 (77 FR 28772), EPA issued a final rulemaking determining that onboard refueling vapor recovery technology is in widespread use across the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. The May 16, 2012 rulemaking waives the requirement for states to implement Stage II vapor recovery systems at gasoline dispensing facilities in nonattainment areas classified as Serious and above for the ozone NAAQS. The May 16, 2012 rulemaking allows a state to remove its Stage II vapor recovery program as of a date certain, if the state revises its SIP to satisfy the requirements of CAA sections 110(l), 184(b)(2), and 193, as applicable. In addition, on August 7, 2012, EPA issued guidance, ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,'' in order to assist states with addressing the SIP CAA requirements if a state moves forward with the phase out of its Stage II vapor recovery program. New Hampshire has recently revised its State regulation to eliminate the requirement for gasoline dispensing facilities to implement Stage II vapor recovery systems as of January 1, 2012. The State has not yet submitted the revised rule to EPA as a SIP revision. NH DES is currently developing a SIP revision to address the phase out of the State's Stage II vapor recovery program in accordance with EPA's May 16, 2012 rulemaking and August 7, 2012 guidance. The Stage II phase out is a separate action from this redesignation request. The maintenance plan included in New Hampshire's redesignation request is, however, consistent with the planned Stage II phase out SIP revision. Specifically, emission estimates for 2022 do not include any emission reductions from Stage II vapor recovery controls.

Vehicle Inspection and Maintenance (I/M). EPA's final I/M regulations in 40 CFR part 85 required the states to submit a fully adopted I/M program by November 15, 1993. New Hampshire became subject to the motor vehicle I/M requirements under the 1-hour ozone standard. EPA approved New Hampshire's enhanced I/M program on January 10, 2001 (66 FR 1868). On April 5, 2001, EPA issued ''Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check'' (65 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD2) system be conducted as part of states' motor vehicle I/M programs. Subsequently, New Hampshire revised its I/M program regulations to include OBD2 testing of 1996 and newer motor vehicles. New Hampshire submitted a SIP revision, for its OBD2 I/M program, to EPA on November 17, 2011. EPA has not yet taken final action on the revised I/M SIP but plans to do so prior to the final approval of this redesignation request.

Thus, as discussed above, with approval of the comprehensive emissions inventory, certain RACT rules, and New Hampshire's revised I/M program, the Southern NH area will satisfy the requirements applicable for purposes of redesignation under section 110 and part D of the CAA.

C. Is the air quality improvement in the Southern NH area due to permanent and enforceable reductions in emissions?

EPA proposes to find that the state has demonstrated that the observed air quality improvement in the Southern NH area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures, listed in Table 3 above. As shown in the state's submittal and supported by EPA rulemaking (see 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011) the area first came into attainment of the 1997 8-hour ozone standard based on ozone data for 2002–2004. The area has remained in attainment and the air quality has improved in the area. The area is now attainment for the more stringent 2008 8-hour ozone NAAQS (77 FR 30088, May 21, 2012). Attainment is the direct result of permanent and enforceable emission reductions and not favorable meteorology or economic downturn.

New Hampshire's redesignation request documents a substantial emission reduction in ozone precursor emissions both in upwind states and within New Hampshire. For example, the state's request notes that in light of the OTC's NO_X budget program and the EPA's NO_X SIP call, NO_X emissions from budget sources declined by 62% between 2000 and 2008. Additionally, the emission inventories for New Hampshire show that between 2002 (one of the ozone seasons on which the area's nonattainment designation was based) and 2008, an attainment year, in-state NO_X and VOC emissions were reduced by approximately 68 tons per day and 51 tons per day, respectively. The following summary from the New Hampshire redesignation request (see pages 23–24) gives one example of the magnitude of emission reductions the area has experienced over the past two decades.

The observed improvement in air quality would not have occurred without the concerted efforts of EPA and the Ozone Transport Commission (OTC) to reduce the emitted amounts of both pollutants across the region. In September 1994, the OTC member states [3] adopted a memorandum of understanding to achieve regional NO_X emission reductions. Phase I began with the installation of RACT, followed in Phases II and III by the development and implementation of regulations to achieve further reductions in ozone-season NO_X emissions by 1999 and 2003, respectively. The second and third phases were modeled on the cap-and-trade principle and resulted in the creation of the OTC NO_X Budget Program.[4] This program established a *de facto* NO_X emission rate of 0.15 lbs/MMBtu for participating electric generating units and large industrial boilers. Rules for New Hampshire's participation in the OTC NO_X Budget Program are codified at Chapter Env-A 3200. In the midst of these efforts, in 1998, EPA issued a final rule aimed at reducing the regional transport of NO_X and ozone. This rule, commonly known as the NO_X SIP Call, required 22 eastern states and the District of Columbia (not including New Hampshire) to reduce ozone-season NO_X emissions. Compliance with the NO_X SIP call began on May 1, 2003, for the participating OTC

[3] The OTC includes the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and the District of Columbia.

[4] The NO_X Budget Program involves an allowance trading system which harnesses free market forces to reduce pollution, similar to the U.S. EPA's Acid Rain Program. Under this program, budget sources were allocated allowances by their state governments. Each allowance permits a source to emit one ton of NO_X during the control period (May through September) for which it is allocated or any later control period. Allowances may be bought, sold, or banked. Any person may acquire allowances and participate in the trading system. Each budget source must comply with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits (e.g., NSPS, Title IV, NO_X RACT).

states[5] and on May 31, 2004, for states outside the Ozone Transport Region. Although the NO_X SIP Call provided states with the flexibility to design their own programs to meet the NO_X reduction requirements, all affected states chose to participate in a regional cap-and-trade program.[6] The NO_X SIP Call and the NO_X Budget Trading Program (NBP) have had a major effect on reducing regional transport of this pollutant. EPA data show that total ozone-season NO_X emissions from all NBP sources fell from 1,256,000 tons in 2000 to 481,000 tons in 2008.[7] (That is a 61% reduction in NO_X.)

The New Hampshire submittal contains a discussion of meteorology as it affects ozone levels (see Attachment A). This analysis shows that the downward trend in New Hampshire's ozone levels is a direct result of emission reductions and not favorable meteorology. EPA believes that New Hampshire has adequately demonstrated that the air quality improvement in the Southern NH area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions, and not other factors such as favorable meteorology or economic downturn.

The recent D.C. Circuit decision on the Cross-State Air Pollution Rule (Transport Rule), *EME Homer Generation LP* v. *EPA,* No. 11–1302 (D.C. Cir., August 21, 2012)[8] does not disturb EPA's determination that it is appropriate to move forward with this redesignation. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Southern NH Area would be able to attain the 1997 8-hour ozone NAAQS even in the absence of either the Clean Air Interstate Rule (CAIR) or the Transport Rule. See ''Air Quality Modeling Final Rule Technical Support Document,'' App. B, B–18, B–19. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based. More importantly, the Transport Rule is not relevant to this redesignation, since the Transport Rule only addressed emissions in 2012 and beyond. The Southern NH area has been in attainment since 2004 (see 73 FR 14387, March 18, 2008), well before the Transport rule and also before CAIR (see 70 FR 25162, May 12, 2005) was an enforceable control measure. As such, the status of CAIR is irrelevant and does not impact our conclusion that the Southern NH area can be redesignated. Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. See *EME Homer Generation LP* v. *EPA,* slip op. at 60. In sum, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this redesignation request for the Southern NH area.

D. Does the Southern NH area have a fully approved maintenance plan pursuant to Section 175A of the CAA?

In conjunction with its request to redesignate the Southern NH nonattainment area to attainment status, New Hampshire submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS in the Southern NH area until 2022.

1. Maintenance Plan Requirements

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory for both VOC and NO_X;

(b) A maintenance demonstration showing maintenance for the ten years of the maintenance period;

(c) A commitment to maintain the existing monitoring network;

(d) Factors and procedures to be used for verification of continued attainment; and

(e) Contingency measures as to correct future violations of the NAAQS.

2. EPA's Analysis of the Southern NH Maintenance Plan

a. Attainment Emissions Inventory

An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment inventory year of 2008 was used for the Southern NH area since it is a year for which monitors within the area showed attainment, and is also a year for which New Hampshire prepared a comprehensive inventory pursuant to the requirements of 40 CFR Part 51, Subpart A. The 2008 inventory is consistent with EPA guidance and is based on actual ''typical summer day'' emissions of VOC and NO_X during 2008.

New Hampshire prepared comprehensive VOC and NO_X emissions inventories for the Southern NH area, including point, area, mobile on-road, and mobile non-road sources for their 2008 attainment inventory. To develop the NO_X and VOC base-year emission inventories, New Hampshire used the following approaches and sources of data:

Point source emissions—New Hampshire requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Data for the point source emissions inventory was collected by this and several other means, including direct reporting by facilities to the NH DES pursuant to the state's emission statement requirements, permit requirements, and from data collected during site visits by field engineers. Quality assurance checks were performed on the source emission estimates, and comparisons made to prior year estimates.

Area source emissions—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. New Hampshire estimates emissions from area sources using primarily the methodologies described within the EPA's Emissions Inventory Improvement Program (EIIP). Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

[5] The NO_X SIP Call superseded Phase III of the OTC NO_X Budget Program. Maine, New Hampshire, and Vermont were not participating states.

[6] The NO_X Budget Trading Program established under the NO_X SIP Call is separate and distinct from the OTC NO_X Budget Program.

[7] USEPA, The NO_X Budget Trading Program: 2008 Highlights, December 2008; available at *http://www.epa.gov/airmarkt/progress/NBP_4.html.*

[8] The court's judgment is not final, as of Sept. 30, 2012, as the mandate has not yet been issued.

On-road mobile sources—New Hampshire used EPA's Motor Vehicle Emissions Simulator (MOVES) to estimate highway vehicle emissions for 2008. Estimates of vehicle miles traveled (VMT) by vehicle type and roadway type were obtained from the relevant Metropolitan Planning Organization within the Southern NH area.

Nonroad mobile emissions—The 2008 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2008a model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft, locomotives, or commercial marine vessels (CMVs). For 2008 locomotive and commercial marine emissions, New Hampshire used standard EPA recommended emission estimation methodologies. For 2008 aircraft and airport ground service equipment, New Hampshire used the Federal Aviation's Agency's Emissions and Dispersion Modeling System (EDMS). The 2008 attainment year VOC and NO_X emissions for the Southern NH area are summarized along with the 2012 and 2022 projected emissions for this area in Table 4. The downward emissions trend demonstrates that the NAAQS should be maintained for this area. EPA has concluded that New Hampshire has adequately derived and documented the 2008 attainment year and projected year VOC and NO_X emissions for this area.

New Hampshire's 2008 inventory VOC and NO_X emissions was developed on a tons per summer weekday basis, and is summarized in Table 4 below.

b. Maintenance Demonstration

New Hampshire's March 2, 2012 SIP submittal, as amended September 21, 2012, includes a 10-year maintenance plan for the Southern NH area as required by section 175A of the Act. This plan demonstrates maintenance by showing that future emissions of VOC and NO_X remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–25432 (May 12, 2003).

New Hampshire used 2008 as the base year, 2012 as the current year, and 2022 as the last year of the maintenance plan. (In addition, per 40 CFR Part 93, a MVEB must be established for the last year of the maintenance plan. MVEBs are discussed in Section V below.) Table 4 shows the emissions inventories for 2008, 2012, and 2022, from New Hampshire's September 21, 2012 amended submittal for the Southern NH area. The emissions inventory shows a downward trend in precursor emissions from 2008 through 2012, and continuing on until 2022. By 2022, VOC emissions are expected to decrease by 13 percent and NO_X emissions to decrease by 48 percent. Analysis of the anticipated trend in emissions is a requirement of a maintenance plan. New Hampshire's submittal provides such documentation and demonstrates that a significant downward trend in emissions will occur. New Hampshire has fulfilled this maintenance plan requirement.

TABLE 4—ATTAINMENT (2008), CURRENT (2012) AND MAINTENANCE (2022) INVENTORIES FOR THE SOUTHERN NH NONATTAINMENT AREA

[Pounds per summer week day]

Source category	VOC			NO_X		
	2008	2012	2022	2008	2012	2022
Point	5,762	5,288	6,605	24,289	21,665	22,742
Area	55,871	57,885	70,195	6,528	6,243	6,432
Onroad	35,666	28,470	18,410	74,352	51,204	23,558
Nonroad	33,512	26,863	19,152	31,364	26,121	17,670
Total	130,811	118,506	114,362	136,533	105,223	70,402
Change from 2008		−12,305	−16,449		−31,310	−66,131

c. Monitoring Network

There are currently 4 monitors measuring ozone in the Southern NH area. In the maintenance plan, the State of New Hampshire has committed to continue to monitor ozone levels according to an EPA-approved monitoring plan. New Hampshire remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with federal guidelines. New Hampshire has therefore addressed the requirement for continued ozone monitoring in this area.

d. Verification of Continued Attainment

The state has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement, and enforce any subsequent emission control contingency measures determined to be necessary to correct future ozone attainment problems. To implement the ozone maintenance plan, the state will continue to monitor ozone levels in the area. New Hampshire has also committed to track the progress of the maintenance demonstration by periodically updating their emission inventory. New Hampshire has committed to do this annually. The update will be based, in part, on the annual update of the National Emissions Inventory (NEI), and will indicate new source growth and other changes from the attainment inventory, including any changes in vehicle miles traveled or in traffic patterns, as well as any changes in MOVES or its successor.

e. The Maintenance Plan's Contingency Measures

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that might occur after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. The state should also

identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment. See Section 175A(d).

As required by section 175A of the CAA, the NH DES has committed to the following procedure. At the conclusion of each ozone season, the NH DES will evaluate whether the design value for the Southern NH area is above or below the 1997 8-hour ozone standard. If the design value is above the standard, the NH DES will evaluate the potential causes of this design value increase. The NH DES will examine whether this increase is due to an increase in local in-state emissions or an increase in upwind out-of-state emissions. If an increase in in-state emissions is determined to be a contributing factor to the design value increase, New Hampshire will evaluate the projected in-state emissions for the Southern NH area for the ozone season in the following year. If in-state emissions are not expected to satisfactorily decrease in the following ozone season, in order to mitigate the violation, New Hampshire will implement one or more of the contingency measures listed in this section, or substitute a new VOC or NOx control measure(s) to achieve additional in-state emissions reductions.

As stated in New Hampshire's redesignation submittal (see page 42):

> The contingency measures(s) will be selected by the Governor or the Governor's designee within 6 months of the end of the ozone season for which contingency measures have been determined needed. New Hampshire will then initiate a course of action to implement enforceable control measure(s) to rectify the problem. New rulemaking, when required, can typically be adopted and implemented within a 12-month timeframe. NHDES will update the maintenance plan as necessary and develop and implement required regulations as soon as practicable within the guidelines established in the New Hampshire Administrative Procedures Act, but no later than 18 months after selection of the appropriate measure.

Possible contingency measures include: Additional controls for NOx at ICI Boilers (at Major Point Sources); additional controls on Emulsified Asphalt Paving operations for VOC; and additional controls on Consumer Products to lower VOC emissions (details can be found in the New Hampshire request see pages 41 to 45). In addition, NH DES is evaluating other potential NOx and VOC control measures that could be applied, if necessary, to further reduce ozone levels in the maintenance area. These control measures are listed in Table 6.4 of the New Hampshire request, along with the previously mentioned contingency measures for boilers, asphalt paving, and consumer products.

For the foregoing reasons, EPA believes that the Southern NH area maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory; maintenance demonstration; monitoring network; verification of continued attainment; and a contingency plan. Therefore, EPA is proposing to approve the maintenance plan SIP revision submitted by New Hampshire for the Southern NH area as meeting the requirements of CAA section 175A.

V. How are MVEBs developed and what is an adequacy determination?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (e.g., reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards or an interim milestone. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the Act. EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4).

VI. What is the status of EPA's adequacy determination for the area's MVEBs for 2022?

The Southern NH area's attainment plan and 10-year maintenance plan submission contains new VOC and NO_X MVEBs for the years 2008 and 2022. The availability of the SIP submission with these 2008 and 2022 MVEBs was announced for public comment on EPA's adequacy web page on March 5, 2012, at: *www.epa.gov/otaq/stateresources/transpconfor/adequacy.htm.* The EPA public comment period on adequacy of the 2008 and 2022 MVEBs for the Southern NH area closed on April 4, 2012. EPA did not receive any adverse comments. EPA New England sent a letter to the New Hampshire Department of Environmental Services on April 25, 2012, stating that the 2008 and 2022 motor vehicle emissions budgets in the March 2, 2012 SIP submittal are adequate.

On September 21, 2012, the New Hampshire Department of Environmental Services submitted minor amendments to the SIP revision entitled ''Request for Redesignating the Boston-Manchester-Portsmouth (SE), NH 8-Hour (1997 Standard) Ozone Nonattainment Area.'' One of these minor changes was running the MOVES2010b model with Stage II vapor controls turned off for 2012 and 2022 to generate new 2012 and 2022 on-road mobile VOC emissions.[9] This reflects the fact that New Hampshire's Stage II

[9] It should be noted that New Hampshire's December 2011 proposed redesignation request that was subject to public comment also included modeling runs with Stage II vapor controls turned off for 2012 and 2022. However, the final redesignation request submitted on March 2, 2012 did not include such provisions. This was corrected in the supplement submitted on September 21, 2012.

vapor recovery program will no longer be providing emissions reductions as of January 1, 2012. See section IV of this notice. Turning off Stage II vapor controls in future years increased the 2022 onroad motor vehicle VOC emissions by 581 pounds per summer weekday. This increase in onroad VOC emissions increased the 2022 VOC MVEB from 8.9 tpswd (previously determined adequate) to 9.2 tpswd.

The NH DES utilized the MOVES2010 model to calculate on-road emissions of VOC and NO_X for the Southern NH 8-hour nonattainment area. New Hampshire is establishing motor vehicle emissions budgets for the last year of the Southern NH area's 8-hour ozone maintenance plan (year 2022) at 9.2 tpswd of VOC and 11.8 tpswd of NO_X. These on-road mobile source emissions when added to emissions from all other inventory sources (stationary, other mobile (i.e., non-road, marine vessels, airplanes, locomotives) and area sources) result in year 2022 emissions inventories lower than the year 2008 attainment emissions inventory. New Hampshire is also establishing 2008 motor vehicle emissions budgets of 17.8 tpswd of VOC and 37.2 tpswd of NO_X. As part of its redesignation request, NHDES has requested that EPA withdraw the SIP-approved 2009 MVEBs prepared using MOBILE6.2 and replace them with the submitted 2008 MVEBs prepared using MOVES2010. The 2008 and 2022 adequate emissions budgets, once approved by EPA, will continue to be used for future transportation conformity determinations.

VII. Proposed Actions

EPA is proposing to approve (1) the redesignation of the Southern New Hampshire 8-hour ozone nonattainment area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA has evaluated the State of New Hampshire's redesignation request and is proposing to approve it as meeting the redesignation requirements in section 107(d)(3)(E) of the CAA provided that EPA finalizes approvals of emissions inventories under section 182(a)(1), certain RACT requirements, and New Hampshire's Vehicle I/M SIP revision. The final approval of this redesignation request would change the official designation for the Southern New Hampshire ozone nonattainment area from nonattainment to attainment for the 1997 8-hour ozone standard. EPA is also proposing to approve the 175A maintenance plan SIP revision for the Southern NH 8-hour area, including the 2008 and 2022 MVEBs submitted by New Hampshire. EPA is proposing to withdraw the SIP-approved 2009 MVEBs prepared using MOBILE6.2 and replace them with the new 2008 MVEBs included in the maintenance plan. In addition, in this notice EPA is proposing to approve the 2008 comprehensive emissions inventory for the Southern NH area under CAA section 182(a)(1). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: October 15, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2012–26210 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST–2012–0147]

RIN 2105–AE08

Disadvantaged Business Enterprise: Program Implementation Modifications

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); Correction; Extension of Comment Period.

SUMMARY: The Department is correcting a notice of proposed rulemaking (NPRM) published in the **Federal Register**. In that document, the Department proposed, among other modifications, to change the Uniform Report of DBE Commitments/Awards and Payments form found in our regulations. As this is an information collection covered by the Paperwork Reduction Act (PRA), the Department should have included a discussion of this collection in the ''Paperwork Reduction Act'' section of the NPRM in order to comply with the PRA's procedural requirements. Today, the Department is correcting this omission by including discussion of the Uniform Report collection and providing the public with 60 days from today to comment both on this collection and all other aspects of the NPRM. Thus, the original end of the comment period, November 5, 2012, has been extended until December 24, 2012.

DATES: The comment period will close December 24, 2012.

FOR FURTHER INFORMATION CONTACT: Jo Anne Robinson, Office of General Law, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–6984, *joanne.robinson@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 6, 2012, the Department published a notice of proposed rulemaking (NPRM) entitled, ''Disadvantaged Business Enterprise: Program Implementation Modifications'' in the **Federal Register** (77 FR 54952).

In that NPRM, the Department proposed various modifications of the Disadvantaged Business Enterprise (DBE) Program, including four proposed modifications to existing and/or new information collections. In the Preamble, the Department also proposed various modifications to the Uniform Report of DBE Commitments/Awards and Payments form found in Appendix B of 49 CFR part 26. This information collection is associated with OMB Control Number 2105–0510, which had expired during the drafting of the NPRM and which the Department was in the process of reinstating with this rulemaking. However, the Department inadvertently omitted discussion of this information collection in the ''Paperwork Reduction Act'' section of the NPRM.

Today, the Department is correcting this omission in order to comply with the procedural requirements of the PRA and give the public adequate time to comment on this collection. As part of these requirements, the Department must give the public 60 days to comment on this proposed revised information collection. In order to prevent confusion between comments about this collection and comments to the NPRM in general, the Department has decided to extend the comment period for the NPRM as a whole until 60 days after today. Thus, the comment deadline for all aspects of this NPRM is December 24, 2012, meaning that the Department has granted a 49-day extension to the original comment period. This extension is also consistent with informal requests to extend the comment period that the Department has recently received.

Correction

The Department is making the following correction in FR document number OST–2012–0147, appearing at the bottom of the third column on page 54967 in the **Federal Register** of Thursday, September 6, 2012 by adding this additional item under the ''Paperwork Reduction Act'' section:

5. Uniform Report of DBE Commitments/Awards and Payments

As part of this rulemaking, the Department is intending to reinstate the information collection entitled, ''Uniform Report of DBE Commitments/Awards and Payments,'' OMB Control No. 2105–0510, consistent with the changes proposed in this NPRM. This collection requires that DOT Form 4630 be submitted once or twice per year by each recipient having an approved DBE program. The report form is collected from recipients by FHWA, FTA, and FAA, and is used to enable DOT to conduct program oversight of recipients' DBE programs and to identify trends or problem areas in the program. This collection is necessary for the Department to carry out its oversight responsibilities of the DBE program, since it allows the Department to obtain information from the recipients about the DBE participation they obtain in their programs.

In this NPRM, the Department proposes to modify certain aspects of this collection in response to issues raised by stakeholders: (1) Creating separate forms for routine DBE reporting and for transit vehicle manufacturers (TVMs) and mega projects; (2) amending and clarifying the report's instructions to better explain how to fill out the forms; and (3) changing the forms to better capture the desired DBE data on a more continuous basis, which should also assist with recipients' post-award oversight responsibilities. This NPRM also discusses criticisms raised by GAO and, while not proposing to directly change the form based on this input, does request comment on the advisability of doing so.

Frequency: Once or twice per year.

Estimated Average Burden per Response: 5 hours per response.

Number of Respondents: 1,250. The Department estimates that approximately 550 of these respondents prepare two reports per year, while approximately 700 prepare one report per year.

Estimated Burden: 9,000 hours.

Dated: Issued this 17th day of October, 2012 at Washington, DC.

Robert S. Rivkin,

General Counsel.

[FR Doc. 2012–26160 Filed 10–24–12; 8:45 am]

BILLING CODE 4910–9X–P

Notices

Federal Register

Vol. 77, No. 207

Thursday, October 25, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Visitor Permit and Visitor Registration Card

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, 0596–0019 (Visitor Permit and Visitor Registration Card).

DATES: Comments must be received in writing on or before December 24, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Wilderness Program Manager; USDA Forest Service, Wilderness and Wild and Scenic River Staff; 1601 N. Kent Street, Arlington, VA 22209.

Comments also may be submitted via email to: *sboutcher@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Wilderness and Wild and Scenic River Staff, 1601 N. Kent Street, Arlington, VA during normal business hours. Visitors are encouraged to call ahead to 202–205–9530 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Steven Boutcher, Wilderness and Wild and Scenic River Staff at 802 656–1718 or *sboutcher@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for Comment; Visitor Permit and Visitor Registration Card.

OMB Number: 0596–0019.

Expiration Date of Approval: 05/31/2013.

Type of Request: Extension with No Revision.

Abstract: The Organic Administration Act (16 U.S.C. 473), the Wilderness Act (16 U.S.C. 1131), and Wild and Scenic Rivers Act (16 U.S.C. 1271) require the Forest Service, U.S. Department of Agriculture manage the forests to benefit both land and people. The information collected from the Visitor's Permit (FS–2300–30) and Visitor Registration Card (FS–2300–32) help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and is compatible with the mission of the Agency. Information will be collected from National Forest System land visitors, who will be asked to describe the location of their visit and their estimated duration of use.

The Visitor's Permit, Form FS–2300–3, is required for visitors to enter many special management areas on National Forest System Lands, including Wilderness Areas, Wild and Scenic Rivers, and restricted off-road vehicle areas. The permit is only used where public use levels must be managed and monitored to prevent resource damage, to preserve the quality of the experience, or to maintain public safety. The personal contact generated by issuance of the permit results in improved visitor education and information about proper camping techniques, fire prevention, safety, and sanitation. The information collected from the Visitor's Permit may also be used to respond to indicators or standards in a Forest Plan or Wilderness Management Plan. The Visitor's Permit captures the visitor's name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, number of dogs and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group. The Visitor's Permit is usually issued by Forest Service employees at an office location. Visitors may obtain the permit in person or call ahead and provide the required information over the phone. The information collection does not involve the use of automated, electronic, mechanical, or other technological collection techniques.

The Visitor Registration Card, Form FS–2300–32, is a voluntary registration card, which provides Forest Service managers with an inexpensive means of gathering visitor use information required by management plans, without imposing mandatory visitor permit regulations. Moreover, the information collected can be used to respond to indicators or standards in a Forest Plan or Wilderness Management Plan without requiring a mandatory permit system to gather and record the data. Use of the Visitor Registration Card is one of the most efficient means of collecting data from visitors. It allows the Forest Service to collect data in remote locations, where it is not feasible to have permanent staffing. The Visitor Registration Card is normally made available at un-staffed entry locations such as trailheads, and is completed by the visitor without Forest Service assistance. The Visitor Registration Card provides information from wilderness and special management area visitors including name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, number of dogs, number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group, and number of watercraft or vehicles. The information is collected once from visitors during their visit and later gathered by Forest Service employees who then analyze the information.

The use of these two forms allows managers to identify heavily used areas, to prepare restoration, and to monitor plans that reflect where use is occurring, and in extreme cases, to develop plans to move forest users to lesser impacted areas. They also provide managers and search and rescue personnel with information useful in locating lost forest visitors. The inability to use these forms could result in overuse and site deterioration in some environmentally sensitive areas. Furthermore, without these forms, the Forest Service would be required to undertake special studies to collect use data and could be pressed to make management decisions based on insufficient or inaccurate data. The information collected will not be shared with other organizations inside or outside the government.

Please note the Forest Service is exploring the possibility of merging the burden associated with this OMB

control number, 0596–0019, into the extension with revision Information Collection Request for OMB 0596–0106, *Recreation Administration Permit and Fee Envelope,* currently under OMB review.

Estimate of Annual Burden: 3 minutes (FS–2300–30), 3 minutes (FS–2300–32).

Type of Respondents: Individuals and groups requesting use of National Forest System Wilderness and special management areas.

Estimated Annual Number of Respondents: 517,500 respondents.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25,875 hours.

Comment Is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: October 15, 2012.

James M. Peña,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–26246 Filed 10–24–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Blacksmith Ecological Restoration Project, Eldorado National Forest, Placer and El Dorado Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, Eldorado National Forest will prepare an Environmental Impact Statement (EIS) for a proposal to treat approximately 6,970 acres of National Forest System land. The purpose of the project is to: (1) Protect, increase and perpetuate old forest ecosystem habitat components and conserve their associated wildlife species; (2) strategically reduce fuel loads to modify landscape fire behavior; (3) restore a composition of tree species and size classes that are likely to be more sustainable into the future; (4) improve access and reduce resource damage through improvements to the forest transportation system; and (5) treat hazardous fuels and implement forest health improvements in a cost-effective manner to ensure sufficient treatments occur to meet project objectives and to support the retention of local industrial infrastructure. The project area is situated on the Georgetown Ranger District northeast of Georgetown, CA in the vicinity of Ralston Ridge and Nevada Point Ridge, between the Middle Fork of the American River and the Rubicon River. The focus of each treatment is based on the desired quality of each treatment area after management rather than the quantity or quality of the products removed from each area. The Proposed Action consists of commercial and non-commercial tree thinning with follow-up tractor piling or mastication; mastication of select, existing plantations with a follow-up treatment of herbicides to reduce brush competition and fuel buildup; the planting of conifers in expanded canopy gaps with a follow-up treatment of herbicide; prescribed burning, and associated roadwork.

DATES: Comments concerning the scope of the analysis should be received by November 30, 2012. The draft environmental impact statement is expected March 2013 and the final environmental impact statement is expected October 2013.

ADDRESSES: Send written comments to 7600 Wentworth Springs Rd., Georgetown, CA 95634 Attention: Blacksmith Ecological Restoration Project. Comments may also be sent via email to *comments-pacificsouthwest-eldorado-georgetown@fs.fed.us*, or via facsimile to 530–333–5522.

FOR FURTHER INFORMATION CONTACT: Dana Walsh, Project Leader, Georgetown Ranger District, 7600 Wentworth Springs Rd., Georgetown, CA 95634, or by telephone at 530–333–4312.

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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

(1) Protect, increase and perpetuate old forest ecosystem habitat components and conserve their associated wildlife species.

(2) Strategically reduce fuel loads to modify landscape fire behavior.

(3) Restore a composition of tree species and size classes that are likely to be more sustainable into the future.

(4) Improve access and reduce resource damage through improvements to the forest transportation system.

(5) Treat hazardous fuels and implement forest health improvements in a cost-effective manner to ensure sufficient treatments occur to meet project objectives and to support the retention of local industrial infrastructure.

Proposed Action

The Proposed Action includes a combination of fuels reduction and forest health improvement actions designed to move stands toward the Desired Future Condition for the land allocation described in the Final Supplemental Environmental Impact Statement (FSEIS) for the Sierra Nevada Forest Plan Amendment dated 1/21/2004 on approximately 6,968 acres of National Forest System land on the Eldorado National Forest in Placer County and El Dorado Counties, California. The Proposed Action has been developed based on collaborative efforts during project development, and activities have been selected and designed based on a desire to balance treatment needs with the potential risks of treatments to occupancy and reproduction in individual California spotted owl territories.

- Approximately 2,519 acres are proposed for mechanical thinning with the cutting and removal of select commercial and non-commercial size trees using a combination of variable density thinning and thinning from below to maintain or increase within-stand heterogeneity while reducing ladder fuels in strategic locations and where machinery can effectively and efficiently achieve project objectives. Commercial timber removed from this project would be scaled or weighed for payment purposes.

Thinning would be performed using a combination of ground based and skyline systems. Ground based whole tree logging system would be used to thin approximately 2,462 acres on slopes generally less than 35%. A skyline system would be used to thin approximately 57 acres of treatment units with slopes generally greater than 35%. Units identified for thinning using

skyline systems would include harvest on slopes generally less than 50% with mechanical equipment to cut and bunch thinned trees. Hand falling would be used in areas with slopes generally steeper than 50%. Removal of trees ≥30″ dbh would not occur, except to allow for equipment operability or safety.

Biomass accumulated on landings could be disposed of in a number of ways, including on-site burning, commercial and personal use firewood, or used as co-generation fuel.

• Tractor pile or grapple pile activities would treat brush, slash and downed woody debris. Piling intensity would vary by slope with north slopes piled less intensively than south slopes. Tractor piling with follow-up prescribed burning is proposed on up to 2,093 acres as a follow-up treatment and 8 acres as the initial treatment.

• Mastication of competing vegetation is proposed as the follow-up treatment on approximately 279 acres and as the initial treatment on approximately 478 acres of plantation stands. This activity would treat brush, shrubs, slash, and small trees by mulching the material into fine chips. Approximately 5–20% of the area of these stands would not be treated in order to provide habitat diversity by leaving concentrations of trees or bush scattered at various locations within the treatment area.

• Mastication in 246 acres of plantations with re-sprouting brush species would have follow-up herbicide application if brush cover returns at greater than 30% following initial treatment. Depending on treatment timing and brush size, initial treatment as mastication could be converted to initial treatment with herbicide in approximately 118 acres of plantation established after the Ralston Fire. Herbicides would also potentially be applied to reduce brush competition in planted areas.

A ground based foliar application of glyphosate (Rodeo or equivalent) would be used when the plants are actively growing at a rate of 4 lbs. a.e. per acre. Glyphosate would be applied as a mixture with Hasten added as a surfactant and Hi-light blue added as a marker dye.

• A combination of hand treatment and prescribed burning is proposed on 213 acres of sensitive sites to reduce fuel loadings, and areas with mostly non-commercial removal that is best suited to lop and scatter.

• Planting of ponderosa and sugar pine would occur to restore pine in areas that have a high concentration of white fir mortality from Annosus root rot. Planting is also proposed for an area which was burned at stand-replacing intensities in the Long Fire and has since converted to deer brush.

• Pile burning and under burning are the two primary techniques of prescribed fire proposed in this project. Prescribed burning is proposed as a follow-up treatment on 6,843. Prescribed burning is proposed as the initial treatment or primary treatment for this project on 3,477 acres where land allocations, environmental constraints, or stand conditions make prescribed fire the preferred tool to achieve treatment objectives.

All proposed fire treatment areas would be ignited using ground based firing except the north eastern portion of unit 5, above the Rubicon River. In this unit, several hundred acres would be ignited through aerial firing techniques using a plastic sphere dispenser (PSD).

In preparation for prescribed fire, perimeter line construction would be needed where roads, trails, or natural barriers are absent. This may involve hand cutting of vegetation including trees up to 6-inch diameter, pruning, and scraping a bare soil line, or line construction with a D–6 or smaller dozer.

Treatments proposed for initial prescribe burn treatments may have 2–3 follow-up prescribed fire treatments to achieve objectives for reduced surface and latter fuels. These follow-up treatments would occur typically in 5 to 7 year intervals after initial treatment.

• 2 miles of new road construction are proposed in order to facilitate the treatment activities. Roads will not be designed for public use.

• Road reconstruction to facilitate treatments and to improve water quality through installation of Best Management Practices (BMPs) is proposed on approximately 36 miles of existing roads. Reconstruction activities include: road rocking, replacement of inadequate drainage crossings, cutting or trimming of trees and brush for sight distance improvement, elimination of ruts, gate or barrier installation to control seasonal use or replacement of existing non-functional gates or barriers, ditch repair, and installation of waterbars and dips on roads with inadequate runoff control.

• Within the project area, routes that are not designated routes identified in the Eldorado National Forest Public Wheeled Motorized Travel Management Final Environmental Impact Statement (FEIS) (2008), are candidates for closure and restoration. Non-System Routes (NSRs) include old skid roads, old temporary roads, trails, and unauthorized off highway vehicle trails. NSRs within identified units of either commercial or non-commercial treatments may be eliminated or closed by a variety of methods including, but not limited to: covering with brush, ripping, re-contouring barricading with use of gates or natural material, or a combination of the above in order to restore ecological function to the area.

Responsible Official

Forest Supervisor, Eldorado National Forest.

Nature of Decision To Be Made

The decision to be made is whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to improve forest health, and to reduce fuels.

Permits or Licenses Required

At this time, there is uncertainty whether a National Pollution Discharge Elimination System (NPDES) permit would be required for stormwater discharges from logging roads associated with this project. Currently, the Environmental Protection Agency is not requiring agencies to obtain NPDES permits for stormwater discharges from logging roads and on September 4, 2012, the EPA proposed revisions to its Phase I stormwater regulations to clarify that stormwater discharges from logging roads do not constitute stormwater discharges associated with industrial activity and that a NPDES permit is not required (**Federal Register**/Vol. 77, No. 171—pp. 53834–53838). Pending the outcome of this rulemaking and any associated legal challenges, a NPDES could be required at a later date.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. To facilitate public participation, information about the proposed action will be mailed to all who express interest in the Proposed Action.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: October 15, 2012.

Kathryn D. Hardy,

Forest Supervisor.

[FR Doc. 2012–26276 Filed 10–24–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest

AGENCY: Forest Service, USDA.

ACTION: Notice of contract extensions.

SUMMARY: The Chief of the Forest Service has determined there is a Substantial Overriding Public Interest (SOPI) in extending for up to 1 year certain National Forest System FS–2400–6/6T and FS–2400–13/13T contracts that terminate on or before December 31, 2013 and meet one or more of the following conditions; (1) Require removal of biomass material, (2) require removal of balsam fir, (3) have been appraised to a processing facility that has permanently closed, or (4) have been appraised to a processing facility that has not operated for at least 6 months prior to requesting an extension under this authority.

The intended effects of the SOPI finding and contract extensions are to minimize contract defaults, mill closures, and company bankruptcies while the Forest Service assesses markets to determine if other relief measures are needed. The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with Forest Service authorizing legislation. See Act of June 4, 1897 (Ch. 2, 30 Stat. 11 as amended, 16 U.S.C. 475) (Organic Administration Act).

DATES: The determination was made on October 25, 2012, by the Chief of the Forest Service.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management Staff, 970–295–5961 or Richard Fitzgerald, Forest Management Staff 202–205–1753; 1400 Independence Ave. SW., Mailstop 1103, Washington, DC 20250–1103. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service sells timber and forest products from National Forest System lands to individuals and companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA). Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract sets forth the explicit terms of the sale including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, road construction and logging requirements, and environmental protection measures to be taken. The average contract period is approximately 2 to 3 years, although some contracts may have terms of 5 or more years.

The National Forest Management Act of 1976 (16 U.S.C. 472a(c) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of 2 years or more unless, he finds that the purchaser has diligently performed in accordance with an approved plan of operations, or that the ''Substantial Overriding Public Interest'' justifies the extension.

The Forest Service timber sale contracts specify the estimated volume and utilization standards for material that is required to be cut and removed. Specifying what material to remove or leave is dependent upon a variety of factors including the resource management objectives stated in the project decision documents, available markets for the material to be treated and economic factors associated with different treatment options. Each sale has its own set of resource and economic factors affecting what material will be cut and removed. In recent years, there has been an increased emphasis on including biomass material in timber sale contracts as a method of reducing fire danger by removing hazardous fuels. On June 1, 2012, there were 98 National Forest System timber sales under contract in California that included the required removal of biomass material. Twenty-nine of these sales had the biomass appraised to facilities that are either not currently accepting material or are closed indefinitely, and an additional 15 sales had the biomass appraised to facilities that have been permanently closed. Twenty-one of these sales have contract termination dates of 12/31/2013 or sooner.

In response to concerns raised by 30 purchasers, on July 9, 2012, Congressmen Tom McClintock and Walter Herger wrote the Chief, U.S. Forest Service urging him to consider using administrative authorities under 36 CFR part 223 to extend contract terms, modify contract terms, or cancel contracts where there is mutual agreement to do so, provided that the taxpayers are unaffected by the revisions. They noted that if the problems with existing contracts are ignored, there will be a substantial number of defaults leaving the Forest Service with partially completed projects that will be difficult, and costly to complete in the future. While the focus of their letter addressed marketing problems purchasers were experiencing where biomass facilities had closed, they were also concerned about impacts to purchasers where sawmills had closed.

In August 2012, the Verso paper mill in Sartell, Minnesota, and the Georgia-Pacific hardboard plant in Duluth, Minnesota, both shut down permanently, putting more than 400 people out of work. The plant closings were among the latest blows to an industry that has been on the ropes since the last recession began. In all, six mills or about a third of the industry have closed over the past 5 years according to an August 31, 2012, Minnesota Public Radio article. Particularly hard hit by the Minnesota mill closures is an almost complete loss of markets for balsam fir.

Accordingly, and in recognition that the problems in California and Minnesota may apply to contracts in other parts of the country, the Chief, U.S. Forest Service has determined that there is a SOPI for extending up to 1 year certain National Forest System FS–2400–6/6T and FS–2400–13/13T contracts. This will allow any purchaser with a qualifying National Forest System FS–2400–6/6T timber sale or FS–2400–13/13T stewardship contract to defer operations while the Forest Service evaluates market conditions to determine if additional market related relief measures are needed. To be eligible, a contract must terminate on or before December 31, 2013, and meet at least one of the following conditions; (1) Require removal of biomass material, (2) require removal of balsam fir, (3) have been appraised to a processing facility that has permanently closed, or (4) have been appraised to a processing facility that has not operated for at least 6 months prior to requesting an extension under this authority. This finding does not apply to (1) Salvage sale contracts that were sold with the objective of

harvesting deteriorating timber, (2) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that developed following award of the contract, (3) contracts that are in urgent need of harvesting to accomplish fuel reduction objectives in wildland urban interface areas, (4) contracts with an original term of less than 2 years, (5) contracts that are in breach, or (6) contracts when the purchaser's processing facility has not operated during the preceding 6 months for reasons qualifying for a contract term addition. For contracts extended pursuant to this finding, periodic payment dates that have not been reached shall be adjusted 1 day for each additional day of contract time granted. Total contract length shall not exceed 10 years including this extension. To receive an extension and periodic payment deferral, purchasers must make a written request to the appropriate Contracting Officer prior to November 30, 2013. Purchasers must also agree to release the Forest Service from all claims and liability if a contract is suspended, modified, or terminated after a contract is extended pursuant to this SOPI.

To receive an extension and periodic payment deferral, purchasers must make a written request to the appropriate Contracting Officer prior to November 30, 2013. Purchasers must also agree to release the Forest Service from all claims and liability if a contract is suspended, modified, or terminated after a contract is extended pursuant to this SOPI.

Dated: October 16, 2012.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2012–26245 Filed 10–24–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting and briefing of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 11:30 a.m. on November 6, 2012, at 55 W. Monroe St., Fifth Floor Conference Room, Chicago, IL 60603. The purpose of the meeting is to monitor the findings and recommendations of the Committee's 2011 report on food deserts in Chicago. Participants of the meeting will include presenters at the 2010 fact finding meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by December 6, 2012. The address is 55 W. Monroe St., Suite 410, Chicago, IL 60603. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen, Administrative Assistant, (312) 353–8311, or by email: *callen@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, October 22, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–26280 Filed 10–24–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[10/03/2012 through 10/19/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Architectural Stone International d/b/a D'Vontz.	7208 E. 38th Street, Tulsa, OK 74145.	10/10/2012	Manufacturer of custom cabinetry and millwork.
BSA International Aerospace Co.	6945 Arlington Avenue, Riverside, CA 92503–1537.	10/10/2012	Manufacturer and repair of electromechanical parts and components such as aircraft fuel motors and motor actuators.
Aerospace Metal Fabrication.	25570 Rye Canyon Road, Suite B, Santa Clarita, CA 91355–1176.	10/15/2012	Manufacturer of a wide variety of materials, metals and plastics.
Northern Lights Laser, Inc.	700 S. 7th Street, Delano, MN 55328.	10/15/2012	Manufacturer of parts for non-aircraft turbines, parts for medical appliances.
Parking Products, Inc	2517 Wyandotte Road, Willow Grove, PA 19090.	10/19/2012	Manufacturer of parking control equipment including barrier gates, ticket issuing machings, access control, and revenue control.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[10/03/2012 through 10/19/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Trustile Doors, LLC	1780 E. 66th Avenue, Denver, CO 80229.	10/19/2012	Manufacturer of doors made of various materials including wood, fiberboard, resin, and glass.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: October 19, 2012.

Miriam Kearse,

Eligibility Examiner.

[FR Doc. 2012–26267 Filed 10–24–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Reviews; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting new shipper reviews (NSR) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The NSRs cover Foshan Fuyi Food Co., Ltd. (Fuyi) and Qingdao May Carrier Import & Export Co., Ltd. (Maycarrier) for the period of review (POR) November 1, 2010, through October 31, 2011. The Department has preliminarily determined that Fuyi's new shipper sales are not *bona fide*, and that Maycarrier does not qualify as a new shipper. Additionally, record evidence raises questions concerning the *bona fides* of Maycarrier's POR sales. Therefore, the Department is preliminarily rescinding these NSRs.

DATES: *Effective Date:* October 25, 2012.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2316.

Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Antidumping Duty Order: Fresh Garlic From the People's Republic of China,* 59 FR 59209 (November 16, 1994), remains dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* ''Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Fresh Garlic from the People's Republic of China'', from Susan H. Kuhbach, Director, Office 1, Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Preliminary Decision Memorandum), dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://iaaccess.trade.gov.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Rescission of Fuyi and Maycarrier

For the reasons detailed in the Preliminary Decision Memorandum, the Department finds that Fuyi's sales under review are not *bona fide*, therefore, these sales do not provide a reasonable or reliable basis for calculating a dumping margin. As result, the Department is preliminarily rescinding the NSR of Fuyi.

Based on information that Maycarrier submitted after the initiation of the NSR, the Department has now determined that Maycarrier did not meet the minimum requirements in its request for an NSR under 19 CFR 351.214(b)(2)(iv)(C). Additionally, the Department has concerns regarding whether Maycarrier's POR sales were *bona fide* commercial transactions. Therefore, the Department preliminarily determines that it is appropriate to rescind the NSR for Maycarrier.

Assessment Rates

Fuyi's and Maycarrier's entries are currently subject to the PRC-wide rate. Although the Department intends to rescind the NSRs for both companies, the Department is currently conducting an administrative review for the POR November 1, 2010, through October 31, 2011, which could include the entries subject to these NSRs. Accordingly, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend entries during the period November 1, 2010, through October 31, 2011, of subject merchandise exported by Fuyi and Maycarrier until CBP receives instructions relating to the administrative review covering the period November 1, 2010, through October 31, 2011.

Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of these NSRs, we will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Fuyi and Maycarrier. If we proceed to a final rescission of either of these NSRs, the cash deposit rate will continue to be the per-unit PRC wide rate for Fuyi and Maycarrier. If we issue final results of the NSR for any of these respondents, we will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Disclosure

The Department will disclose analysis performed to parties to the proceeding, normally not later than ten days after the day of the public announcement of, or, if there is no public announcement, within five days after the date of publication of, this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on these preliminary results and submit written arguments or case briefs within 30 days after the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later. *See* 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

Any interested party who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days after the day of publication of this notice. A request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case briefs. The Department will issue the final rescissions or final results of NSRs, including the results of our analysis of issues raised in any briefs, within 90 days after the date on which the preliminary rescissions were issued, unless the deadline for the final results is extended. *See* 19 CFR 351.214(i).

Notification to Importers

This notice serves as a preliminary reminder to the 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 double antidumping duties.

The NSRs and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f).

Dated: October 18, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–26310 Filed 10–24–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–986]

Hardwood and Decorative Plywood From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 25, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Katie Marksberry at (202) 482–3207 or (202) 482–7906, respectively, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On September 27, 2012, the Department of Commerce (''Department'') received an antidumping duty (''AD'') petition (''Petition'') concerning imports of hardwood and decorative plywood from the People's Republic of China (''PRC'') filed in proper form on behalf of Coalition for Fair Trade of Hardwood Plywood (''Petitioners'').[1] On October 2, 2012, the Department issued a request for additional information and clarification of certain areas of the Petition. On October 5 and October 9, 2012, Petitioners filed a response with respect to general questions about information in the Petition as well as questions specific to the AD Petition (''Supplement to the Petition''). On October 15, 2012, Petitioners also filed a revision to the proposed scope language and additional supporting documentation.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the ''Act''), Petitioners allege that imports of hardwood and decorative plywood from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that the Petition was filed on behalf of the domestic industry because Petitioners are an interested party as defined in sections 771(9)(C), (E), and (F) of the Act. The Department also finds that Petitioners have demonstrated sufficient industry support with respect to the antidumping duty investigation that Petitioners are requesting that the Department initiate (*see* ''Determination of Industry Support for the Petition'' section below).

Period of Investigation

The period of investigation (''POI'') is January 1, 2012, through June 30, 2012.[2]

Scope of the Investigation

The product covered by this investigation is hardwood and decorative plywood from the PRC. For a full description of the scope of the Investigation, please *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations[3], we are setting aside a period for interested parties to raise issues regarding product coverage. The period of scope

[1] *See* ''Petitions for the Imposition of Antidumping Duties And Countervailing Duties: Hardwood Plywood From The People's Republic of China,'' filed on September 27, 2012 (''Petition'').

[2] *See* 19 CFR 351.204(b)(1).

[3] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations. The Department encourages all interested parties to submit such comments by November 6, 2012, twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping and countervailing duty investigations. Comments should be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by the deadline noted above.

Comments on Product Characteristics for Antidumping Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of hardwood and decorative plywood to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe hardwood and decorative plywood, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping questionnaires, we must receive comments on product characteristics by November 16, 2012. Additionally, rebuttal comments must be received by November 23, 2012. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[4] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[5]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that hardwood and decorative plywood constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[6]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigations'' section above. To establish industry support, Petitioners provided their production of the domestic like product in 2011, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[7] Petitioners estimated 2011 production of the domestic like product by non-petitioning companies based on their knowledge of the industry. We have relied upon data Petitioners provided for purposes of measuring industry support.[8]

On October 9, 2012, we received a submission on behalf of an importer of hardwood and decorative plywood, an interested party to this proceeding as

[4] *See* section 771(10) of the Act.

[5] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[6] *See* Antidumping Duty Investigation Initiation Checklist: Hardwood and Decorative Plywood from the People's Republic of China (''AD Initiation Checklist''), at Attachment II, Analysis of Industry Support for the Petitions Covering Hardwood and Decorative Plywood from the People's Republic of China, on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

[7] *See* Volume I of the Petitions, at 3–5, and Exhibits I–3A, I–3B, and I–3C; *see also* Supplement to the Petition, at 3 and Exhibit I–9; *see also* Second Supplement to the AD/CVD Petitions, dated October 9, 2012, at 2–8.

[8] *See* AD Initiation Checklist at Attachment II.

defined in section 771(9)(A) of the Act, questioning the industry support calculation. On October 11, 2012, we received a second submission on behalf of that importer of hardwood and decorative plywood, supplementing the importer's October 9, 2012, challenge to Petitioners' industry support calculation. On October 15, 2012, Petitioners filed their response to the importer's industry support challenge.[9] On October 16, 2012, we received a third submission on behalf of the importer of hardwood and decorative plywood. On October 17, 2012, Petitioners submitted an additional response to the importer's industry support challenge.

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that Petitioners have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[10] Based on information provided in the Petition and other submissions, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[11]

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigation that they are requesting the Department initiate.[12]

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the merchandise under consideration sold at less than normal value (''NV''). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenue; reduced capacity and capacity utilization; increased inventories; decline in financial performance; and employment data.[13] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[14]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of hardwood and decorative plywood from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production (''FOPs'') are also discussed in the initiation checklist.[15]

Export Price

Petitioners calculated export price (''EP'') based on two invoices for hardwood and decorative plywood sold by Chinese exporters, as identified in affidavits regarding U.S. price.[16] Based on the invoices and delivery terms, Petitioners deducted from these prices the charges and expenses associated with exporting and delivering the product to the U.S. customer (*e.g.* brokerage and handling and foreign inland freight).[17] Petitioners made no other adjustments.[18]

Normal Value

Petitioners state that the Department has long treated the PRC as a non-market economy (''NME'') country and this designation remains in effect today.[19] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of the PRC investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on FOPs valued in a surrogate market-economy (''ME'') country in accordance with section 773(c) of the Act. In the course of the investigation, all parties will have the opportunity to provide relevant information related to the issue of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners claim that Thailand is an appropriate surrogate country under 19 CFR 351.408(a) because it is an ME country that is at a comparable level of economic development to the PRC and surrogate values data from Thailand are available and reliable. Petitioners also believe that Thailand is a significant producer of comparable merchandise.[20] Based on the information provided by Petitioners, we believe that it is appropriate to use Thailand as a surrogate country for initiation purposes. In the course of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 40 days after the date of publication of the preliminary determination.

Petitioners calculated the NV and dumping margins for the U.S. price, as discussed above, using the Department's NME methodology as required by section 773(c) of the Act, 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on the consumption rates of a producer of hardwood and decorative plywood which Petitioners assert is comparable to major hardwood and decorative plywood producers in the PRC.[21]

Petitioners valued by-products and most FOPs, including packing FOPs, based on reasonably available, public surrogate country data, specifically, Thai import statistics from the Global Trade Atlas (''GTA'').[22] Petitioners

[9] For further discussion of these submissions, *see* AD Initiation Checklist at Attachment II.

[10] *See* AD Initiation Checklist at Attachment II.

[11] *See* AD Initiation Checklist at Attachment II.

[12] *Id.*

[13] *See* Volume I of the Petition, at 14–57 and Exhibits I–9 through I–27, and Supplement to the Petition, at 1, 3–4, and Exhibits Supp I–2 through Supp I–4.

[14] *See* AD Initiation Checklist, at Attachment III.

[15] *See* AD Initiation Checklist at 6–7.

[16] *See* AD Initiation Checklist at 6; *see also* Volume II of the Petition, at 1–2 and Exhibits II–1 through 3.

[17] *See* AD Initiation Checklist at 6–7; *see also* Volume II of the Petition, at 2 and Exhibits II–4 through II–11; *see also* Supplement to the Petition, at 8.

[18] *See* Volume II of the Petition, at 2 and Exhibit II–11.

[19] *See* Volume II of the Petitions, at 3–6 and Exhibits II–12–14.

[20] *See* Volume II of the Petition, at 3–6.

[21] *See* Volume II of the Petition, at 6 and Exhibits II–15 and II–16.

[22] *See* Volume II of the Petition, at 7 and Exhibit II–17; *see also* Supplement to Petition at 5–8.

excluded from these import statistics values from countries previously determined by the Department to be NME countries, and from India, Indonesia, and the Republic of Korea, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies. Finally, the import statistics average unit values do not include imports that were labeled as originating from an ''unspecified'' country, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[23] For valuing other FOPs, Petitioners used sources selected by the Department in recent proceedings involving the PRC or publicly available sources from Thailand.[24] In addition, Petitioners made Thai Baht/U.S. dollar (''USD'') currency conversions using the POI-average Thai baht/USD exchange rate, as reported on the Department's Web site.[25]

Petitioners valued labor costs using Thai wage rates for manufacturing industries, as reported by the International Labor Organization (''ILO'') in Table 6A of its *Yearbook of Labor Statistics*.[26] Petitioners inflated the wage rate to be contemporaneous with the POI using the International Financial Statistics' consumer price index inflators, consistent with the Department's practice.[27]

Petitioners used the 2010 Annual Report of the Electricity Generating Authority of Thailand to calculate the value for electricity usage.[28] Additionally, Petitioners based factory overhead, selling, general and administrative expenses (''SG&A''), and profit on data from the financial statement Phang-Nga Timber Industries (''Phang-Nga''), for the year ending December 31, 2011.[29] Phang-Nga is a Thai producer of plywood.[30]

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of hardwood and decorative plywood from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margins for hardwood and decorative plywood from the PRC range from 298.36 percent to 321.68 percent.[31]

Initiation of Antidumping Investigation

Based upon the examination of the Petition on hardwood and decorative plywood from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of hardwood and decorative plywood from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Application of an Alternative Comparison Methodology

Pursuant to 19 CFR 351.414(c)(1) (2012), in calculating the weighted-average dumping margins in this investigation, the Department will compare weighted-average export prices (EPs) (or constructed export prices (CEPs)) with weighted-average normal values (the average-to-average method) unless it is determined that another method is appropriate in a particular case. If any interested party wishes to request the Department consider whether it is appropriate in this investigation to apply an alternative comparison methodology pursuant to 19 CFR 351.414(c)(1) (2012), such requests are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection and Quantity and Value Questionnaire

After considering the large number of producers and exporters of hardwood and decorative plywood from the PRC identified by Petitioners, and considering the resources that must be utilized by the Department to mail quantity and value questionnaires to all 481 identified producers and exporters—including entering each address in a shipping handler's Web site, researching companies' addresses to ensure correctness, organizing mailings, and following up on potentially undeliverable mailings—the Department has thus determined that we do not have sufficient administrative resources to mail quantity and value questionnaires to all 481 identified producers and exporters.[32] Therefore, the Department has determined to limit the number of quantity and value questionnaires it will send out to exporters and producers based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports under the Harmonized Tariff Schedule of the United States (''HTSUS'') numbers which cover imports of hardwood and decorative plywood and which are listed in the scope of the investigation.[33] Therefore, the Department will send quantity and value questionnaires based on the largest producers and exporters of hardwood and decorative plywood from the PRC by value in the CBP data run.[34]

The quantity and value data received from Chinese exporters/producers will be used as the basis for selecting the mandatory respondents. The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines, as discussed below and in the ''Separate Rates'' section, in order to receive consideration for separate-rate status.[35]

In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site (*http://ia.ita.doc.gov/ia-highlights-and-news.html*). Exporters and producers of hardwood and decorative plywood that do not receive quantity and value questionnaires via mail may still submit a quantity and value response and can obtain a copy from the Import Administration Web site. The quantity

[23] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008); *see also* Volume II of the Petition, at Exhibit II–17.

[24] *See* AD Initiation Checklist at 8; *see also* Volume II of the Petition at 4.

[25] *See* Volume II of the Petition, at 8 and Exhibit II–20.

[26] *See* Volume II of the Petition, at 7–8 and Exhibit II–19.

[27] *See* Volume II of the Petition, at 7 and Exhibit II–19.

[28] *See* Volume II of the Petition, at 8 and Exhibit II–21.

[29] *See* Volume II of the Petition, at 8 and Exhibits II–7, II–22 and II–23.

[30] *See* Volume II of the Petition, at 8 and Exhibit II–24.

[31] *See* AD Initiation Checklist at 10.

[32] *See* Volume I of the Petition, at Exhibit I–7.

[33] *See* the ''Scope of the Investigation,'' in Appendix I of this notice.

[34] We used the value of CBP data because CBP volume data reflect inconsistent units of measure that cannot be converted into a common unit of measure.

[35] *See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); *see also Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

and value questionnaire must be submitted by all Chinese exporters/producers no later than November 7, 2012, 21 days from the signature date of this **Federal Register** notice. All quantity and value questionnaires must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate status application.[36] The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://trade.gov/ia/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the ''Respondent Selection'' section above, the Department requires that the PRC respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's Web site at *http://trade.gov/ia-highlights-and-news.html* on the date of the publication of this initiation notice in the **Federal Register**.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[37]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the Chinese Government. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version of the Petition to the PRC Government, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than November 13, 2012, whether there is a reasonable indication that imports of hardwood and decorative plywood from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[38] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceeding initiated on or after March 14, 2011.[39] The formats for the revised certifications are provided at the end of the *Interim Final Rule* and the *Supplemental Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 17, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–26221 Filed 10–24–12; 8:45 am]

BILLING CODE 3510–DS–P

[36] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005) (''Separate Rates and Combination Rates Bulletin''), available on the Department's Web site at *http://trade.gov/ia/policy/bull05–1.pdf.*

[37] *See* Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

[38] *See* Section 782(b) of the Act.

[39] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') (amending 19 CFR 351.303(g)(1) & (2)), as supplemented by *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011) (''*Supplemental Interim Final Rule*'').

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

DATES: *Time and Date:* The meeting will be held Wednesday, November 14, 2012 from 9:15 a.m. to 5:00 p.m. and Thursday, November 15, 2012 from 8:00 a.m. to 2:30 p.m. These times and the agenda topics described below are subject to change. Please refer to the web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

ADDRESSES: *Place:* The meeting will be held at the Hilton Doubletree Hotel, 8727 Colesville Road, Silver Spring, Maryland 20910. Please check the SAB Web site *http://www.sab.noaa.gov/Meetings/meetings.html* for directions to the meeting location.

Status: The meeting will be open to public participation with a 15-minute public comment period on November 14 at 4:45 p.m. (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Individuals or groups planning to make a verbal presentation should contact the SAB Executive Director by November 7, 2012 to schedule their presentation. Written comments should be received in the SAB Executive Director's Office by November 7, 2012 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after November 7, 2012 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on November 7, 2012, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910.

Matters To Be Considered: The meeting will include the following topics: (1) Review Report on the Cooperative Institute for North Atlantic Research (CINAR); (2) Preliminary Recommendations from the SAB R&D Portfolio Review Task Force; (3) Report from the Ecosystem Sciences and Management Working Group on Ecosystem-Based Fisheries Management; (4) Final Report from the SAB Satellite Task Force (pending review of public comments); (5) Final Report of the Review of the Ocean Exploration Program by the Ocean Exploration Advisory Working Group; (6) Review of the Terms of Reference for the Environmental Information Services Working Group; (7) NOAA Response to the SAB Report from the Climate Partnership Task Force and NOAA Response to the SAB White Paper ''Towards Open Weather and Climate Services''; (8) Sea Grant Advisory Board Annual Report to Congress; (9) Presentation on the National Research Council Report ''Weather Services for the Nation: Becoming Second to None''; (10) Presentation on ''The Scientific Challenge on Predicting the Initiation and Morphology of Thunderstorms for Aviation Weather Forecasts; and (11) Updates from SAB Working Groups.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459. Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: October 19, 2012.

Andy Baldus,

Acting Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–26249 Filed 10–24–12; 8:45 am]

BILLING CODE 3510–KD–P

COMMODITY FUTURES TRADING COMMISSION

Swap Data Repositories: Interpretative Statement Regarding the Confidentiality and Indemnification Provisions of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative statement.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is issuing this interpretative statement (''Statement'') to provide guidance regarding the applicability of the confidentiality and indemnification provisions set forth in new section 21(d) of the Commodity Exchange Act (''CEA'') added by section 728 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). This Statement clarifies that the provisions of CEA section 21(d) should not operate to inhibit or prevent foreign regulatory authorities from accessing data in which they have an independent and sufficient regulatory interest, even if that data also has been reported pursuant to the CEA and Commission regulations.

DATES: Effective date: October 25, 2012

FOR FURTHER INFORMATION CONTACT: Adedayo Banwo, Counsel, Office of the General Counsel, at (202) 418.6249, *abanwo@cftc.gov;* With respect to questions relating to international consultation and coordination: Jacqueline Mesa, Director, at (202) 418.5386, *jmesa@cftc.gov*, or Mauricio Melara, Attorney-Advisor, at (202) 418.5719, *mmelara@cftc.gov*, Office of International Affairs, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background: Statutory and Regulatory Authorities

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] Title VII amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps.[2] The legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, among other things: (i) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (ii) imposing clearing and trade execution requirements on standardized derivative products; (iii) creating robust recordkeeping and real-time reporting regimes; and (iv) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

To enhance transparency, promote standardization and reduce systemic risk, section 727 of the Dodd-Frank Act

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010;'' 7 U.S.C. 1 *et seq.*

added to the CEA new section 2(a)(13)(G),[3] which requires all swaps—whether cleared or uncleared—to be reported to swap data repositories (''SDRs''). SDRs are new registered entities created by section 728 of the Dodd-Frank Act.[4] SDRs are required to perform specified functions related to the collection and maintenance of swap transaction data and information.[5]

CEA section 21(c)(7) requires that SDRs make data available to certain domestic and foreign regulators[6] under specified circumstances.[7] Separately, CEA section 21(d) mandates that prior to receipt of any requested data or information from an SDR, a regulatory authority described in section 21(c)(7) shall agree in writing to abide by the confidentiality requirements described in section 8 of the CEA,[8] and to indemnify the SDR and the Commission for any expenses arising from litigation relating to the information provided under section 8 of the CEA.[9]

Section 752 of the Dodd-Frank Act seeks to ''promote effective and consistent global regulation of swaps,'' and provides that the CFTC and foreign regulatory authorities ''may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest. * * *.''[10] In light of this statutory directive, and consistent with section 21 of the CEA, the Commission has been working to provide sufficient access to SDR data to domestic and foreign regulators.

In that regard, the Chairman of the CFTC and the Chairman of the Securities and Exchange Commission (''Chairmen'') jointly submitted a letter to Michel Barnier, European Commissioner for Internal Markets and Services,[11] highlighting their desire for international cooperation. In the letter, the Chairmen expressed their belief that indemnification and notice requirements need not apply when a registered SDR is also registered in a foreign jurisdiction and the foreign regulatory authority, acting within the scope of its jurisdiction, seeks information directly from the SDR.

On September 1, 2011, the Commission adopted regulations implementing CEA section 21's registration standards, duties, and core principles for SDRs.[12] To implement the provisions of sections 21(c)(7) and (d), the Commission adopted definitions and standards for determining access by domestic and foreign regulators to data maintained by SDRs.

The Commission acknowledged in the SDR Final Rules that the CEA's indemnification requirement could have the unintended effect of inhibiting direct access by other regulators to data maintained by SDRs due to various home country laws and regulations.[13] The SDR Final Rules provided that under specified circumstances, certain ''Appropriate Domestic Regulators''[14] may gain access to the swap data reported and maintained by SDRs without being subject to the notice and indemnification requirements of CEA sections 21(c)(7) and (d).[15] In connection with foreign regulatory authorities, the Commission determined in the SDR Final Rules that confidential swap data reported to and maintained by an SDR may be accessed by an Appropriate Foreign Regulator[16] without the execution of a confidentiality and indemnification agreement when the Appropriate Foreign Regulator has supervisory authority over an SDR registered with it pursuant to foreign law and/or regulation that is also registered with the Commission.

The confidentiality and indemnification provisions of new CEA section 21 apply only when a regulatory authority seeks access to data from an SDR. In the SDR Final Rules, the Commission noted that section 8(e) of the CEA permits the Commission (as opposed to an SDR) to share confidential information in its possession with any department or agency of the Government of the United States, or with any foreign futures authority, department or agency of any foreign government or political subdivision thereof,[17] acting within the scope of its jurisdiction.[18]

The SDR Final Rules became effective on October 31, 2011.[19] Under these rules, trade repositories may apply to the Commission for full registration as SDRs. Pending the full implementation of other, related regulatory provisions and definitions, however, such registrations are deemed ''provisional.''[20]

II. The Proposed Interpretative Statement

On May 1, 2012, the Commission issued a proposed interpretative statement (''Proposed Statement'') to address issues raised by interested members of the public and foreign regulatory authorities with respect to the scope and application of the confidentiality and indemnification provisions of new section 21(d) of the CEA.[21] Under the Proposed Statement, the Commission clarified that the confidentiality and indemnification provisions of CEA section 21(d) should not operate to inhibit or prevent foreign regulatory authorities from accessing data in which they have an independent and sufficient regulatory interest.

[3] 7 U.S.C. 2(a)(13)(G).

[4] Section 721 of the Dodd-Frank Act amends section 1a of the CEA to add a definition of the term ''swap data repository.'' Pursuant to CEA section 1a(48), the term ''swap data repository means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.'' 7 U.S.C. 1a(48).

[5] *See* 7 U.S.C. 24a(c). *See also* Commission, Final Rulemaking: Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, Jan. 13, 2012 (''Data Final Rules''). The Data Final Rules, among other things, set forth regulations governing SDR data collection and reporting responsibilities under part 45 of the Commission's regulations.

[6] The Commission's regulations designate such regulators as either an ''Appropriate Domestic Regulator'' or an ''Appropriate Foreign Regulator'' in § 49.17(b). *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538, 54554 (Sep. 1, 2011) (''SDR Final Rules'').

[7] 7 U.S.C. 24a(c)(7).

[8] 7 U.S.C. 12.

[9] 7 U.S.C. 24a(d).

[10] *See* section 752(a) of the Dodd-Frank Act.

[11] *See* letter from Gary Gensler, Chairman of the Commission, and Mary Schapiro, Chairman of the SEC, to Michel Barnier, European Commissioner for Internal Markets and Services, European Commission, dated June 8, 2011.

[12] *See, generally,* SDR Final Rules.

[13] *See* SDR Final Rules at 54554.

[14] The term ''Appropriate Domestic Regulator'' is defined in 17 CFR 49.17(b)(1) as the Securities and Exchange Commission; each prudential regulator identified in section 1a(39) of the CEA. 7 U.S.C. 1a(39); the Financial Stability Oversight Council; the Department of Justice; any Federal Reserve Bank; the Office of Financial Research; and any other person the Commission deems appropriate.

[15] In the Commission's view, it is appropriate to permit access to the swap data maintained by SDRs to Appropriate Domestic Regulators that have concurrent regulatory jurisdiction over such SDRs, without the application of the notice and indemnification provisions of sections 21(c)(7) and (d) of the CEA. *See* SDR Final Rules at 54554 n.163. Accordingly, these provisions do not apply to an Appropriate Domestic Regulator that has regulatory jurisdiction over an SDR registered with it pursuant to a separate statutory authority that is also registered with the Commission, if the Appropriate Domestic Regulator executes a memorandum of understanding (''MOU'') or similar information sharing arrangement with the Commission and the Commission, consistent with CEA section 21(c)(4)(A), designates the Appropriate Domestic Regulator to receive direct electronic access. *See* 17 CFR 17(d)(2).

[16] The term ''Appropriate Foreign Regulator'' is defined in 17 CFR 49.17(b)(2) as a foreign regulator with an existing MOU or similar type of information sharing arrangement executed with the Commission, and/or a foreign regulator without an MOU as determined on a case-by-case basis by the Commission.

[17] Section 725(f) of the Dodd-Frank Act amended section 8(e) of the CEA to include foreign central banks and ministries.

[18] *See* SDR Final Rules at 54554.

[19] *Id.*

[20] *See* 17 CFR 49.3(b).

[21] *See* 77 FR 26709 (May 7, 2012).

The Proposed Statement provided that a registered SDR would not be subject to the confidentiality and indemnification provisions of CEA section 21(d) if: (i) such registered SDR is also registered, recognized or otherwise authorized in a foreign jurisdiction's regulatory regime; and (ii) the data sought to be accessed by a foreign regulatory authority has been reported to such registered SDR pursuant to the foreign jurisdiction's regulatory regime. In addition, because some registered SDRs might also be registered, recognized or otherwise authorized in a foreign jurisdiction and may accept swap data reported pursuant to a foreign regulatory regime, the Commission concluded that the confidentiality and indemnification provisions of CEA section 21(d) generally apply only to such data reported pursuant to the CEA and Commission regulations.

As detailed in Section III.B., interested members of the public and a foreign regulatory authority responded to the Commission's request to receive public comments on all aspects of the Proposed Statement.[22] In adopting this Statement, the Commission has carefully considered these comments.

III. Considerations Relevant to the Commission's Statement [23]

A. International Considerations

As noted above, section 752(a) of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities regarding the establishment of consistent international standards for the regulation of swaps and various ''swap entities.'' Section 752(a) also provides that the Commission ''may agree to such information-sharing arrangements [*with foreign regulatory authorities*] as may be deemed to be necessary or appropriate in the public interest'' or for the protection of investors and counterparties.[24]

The Commission is committed to a cooperative international approach to the registration and regulation of SDRs, and consulted extensively with various foreign regulatory authorities in promulgating both its proposed and final regulations concerning SDRs and in the finalization of the Proposed Statement.[25] The Commission notes that the SDR Final Rules are largely consistent with the recommendations and goals of the May 2010 ''CPSS–IOSCO Consultative Report, Considerations for Trade Repositories in the OTC Derivatives Market'' (''Working Group Report'').[26]

Consistent with the international harmonization envisioned by section 752 of the Dodd-Frank Act, the Commission has engaged in consultations with foreign regulatory authorities regarding the Commission's adoption and implementation of regulations and the issuance of interpretative guidance relating to the Dodd-Frank Act. In this context, foreign regulatory authorities have expressed concern about the difficulty in complying with the indemnification provisions of CEA section 21(d).

B. Comments on the Proposed Statement [27]

The Depository Trust & Clearing Corporation (''DTCC'') stated its support of the adoption of the Proposed Statement as a ''necessary first step.'' Nevertheless, DTCC concluded that the statutory language at issue requires a ''legislative fix'' to clarify the scope and applicability of the confidentiality and indemnification provisions of CEA section 21(d) because ''the indemnification requirement'' would limit the sharing of trade repository data across borders. DTCC noted that a foreign regulator might have an interest in SDR data related to a swap transaction entered into by parties not subject to the foreign regulator's ''oversight authority.'' In this regard, DTCC noted concerns expressed by foreign regulatory authorities who believe that a ''jurisdictional nexus'' would nonetheless exist with respect to the terms of swap transactions (e.g., swap transactions using currencies or underlying reference entities subject to a foreign regulator's oversight authority) that are not reported ''pursuant to the foreign jurisdiction's regulatory regime.'' DTCC pointed out that access to such swap transaction data that is not reported ''pursuant to the foreign jurisdiction's regulatory regime'' would not be available unless the foreign regulator enters into a confidentiality and indemnification agreement with the SDR.

DTCC also suggested certain substantive modifications to the Proposed Statement.[28] Among them, DTCC suggested that the Commission expand on the meaning of ''registered, recognized or otherwise authorized'' in the Proposed Statement or, alternatively, state that operation in accordance with the PFMI Report would mean that an SDR is ''authorized'' for purposes of this Statement.

The European Securities and Markets Authority (''ESMA'') noted that it considers the Commission's ''recognition of foreign regimes and the access to data requirements originating from them'' under the Proposed Statement as a ''step in the right direction'' that would allow relevant European authorities to obtain data in accordance with relevant European Union laws and forthcoming

[22] *See* public comment file in response to the Proposed Statement, available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1198.*

[23] Legislation has been introduced in Congress that would amend the CEA to eliminate or substantially limit the SDR indemnification provision. As discussed in Section III.B., commenters expressed the general view that a ''legislative fix'' would be the best course of action to resolve issues regarding the section 21(d) requirements.

[24] *See* section 752(a) of the Dodd-Frank Act.

[25] *See* public comment file in response to the proposal for the SDR Final Rules, available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=939* and SDR Final Rules note 6 at 54539, *supra.*

[26] This working group was jointly established by the Committee on Payment and Settlement Systems (''CPSS'') of the Bank of International Settlements and the Technical Committee of the International Organization of Securities Commissions (''IOSCO''). The Working Group Report presented a set of factors to consider in connection with the design, operation and regulation of SDRs. A significant focus of the Working Group Report is access to SDR data by appropriate regulators. The Working Group Report urges that a trade repository ''should support market transparency by making data available to relevant authorities and the public in line with their respective information needs.'' The Working Group Report is available at *http://www.bis.org/publ/cpss90.pdf. See also* CPSS–IOSCO Consultative Report, Principles of Financial Market Infrastructures (March 2011) available at *http://www.bis.org/publ/cpss94.pdf* (''PFMI Report''). *See also* Financial Stability Board (''FSB''), Implementing OTC Derivatives Market Reforms, Oct. 25, 2010 (''FSB Report''); FSB, Derivative Market Reforms, Progress Report on Implementation, Apr. 15, 2010 (''FSB Progress Report'').

[27] The Commission received five comments, four of which regard the Proposed Statement. All comment letters are available on the Commission Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1198.* Specific comment letters are identified by the submitter. Comments addressing the Proposed Statement were received from: (i) The European Securities and Markets Authority, June 5, 2012; (ii) the Financial Services Roundtable, June 6, 2012; (iii) Cloud Strategix, LLC, June 5, 2012; and (iv) the Depository Trust & Clearing Corporation, June 6, 2012. The fifth comment regards the implementation of section 619 of the Dodd-Frank Act.

[28] DTCC suggested that the Commission consider the following modifications to the Proposed Statement: (i) Provide that no registration or licensing would be necessary with respect to the condition that a registered SDR is also registered, recognized or otherwise authorized in a foreign jurisdiction's regulatory regime; (ii) provide that SDRs operating in accordance with principles relevant to trade repositories under the PFMI Report should be deemed authorized; and (iii) provide that with respect to the condition that the SDR data sought to be accessed by a foreign regulator is reported pursuant to the foreign jurisdiction's regulatory regime, the meaning attributed to regulatory regime includes a foreign jurisdiction's adherence to the PFMI Report provisions outlined for market regulators.

regulations. However, ESMA noted its concern that the Commission's interpretation of the indemnification provision of CEA section 21(d) ''cannot overrule the [Dodd-Frank] Act itself'' and concluded that ''the confidentiality and indemnification issue could only be fully addressed with a legislative amendment by repealing the original provision in the Dodd-Frank Act.'' In addition, consistent in part with DTCC's comment, ESMA noted that relevant European Union authorities could have an interest in accessing swap transaction data reported to a registered SDR pursuant to the Dodd-Frank Act, but not reported pursuant to European Union laws and forthcoming regulations. Accordingly, ESMA suggested certain modifications to the Proposed Statement.[29]

The Financial Services Roundtable (''FSR'') requested that the Commission support a legislative solution which would remove the indemnification provision from CEA section 21(d). FSR also requested that the Commission continue its discussions with regulators in other jurisdictions as well as its participation in standard-setting bodies to develop international standards relevant to the swap markets.

Cloud Strategix, LLC (''Cloud Strategix''), representing the data hosting and cloud computing industry, in relevant part expressed a general concern with respect to the ''several costs, unintended consequences, and impracticalities'' related to the Proposed Statement and the SDR Final Rules. Specifically, Cloud Strategix noted that the Proposed Statement ''does not seem to consider the great cost to the data center that hosts the SDR in assisting the SDR with compliance with foreign regulators.'' In this context, Cloud Strategix suggested that the Commission ''provide an exemption for all data centers to indemnify SDRs for regulatory inquiries, enforcement proceedings, or litigation for both foreign and domestic regulators.''

C. Commission Determination

After considering the comments received to the Proposed Statement and following the aforementioned consultations with foreign regulatory authorities pursuant to the Congressional mandate for cooperation in section 752 of the Dodd-Frank Act, the Commission has concluded that the guidance described in the Proposed Statement is necessary to ensure that appropriate access by foreign regulatory authorities is not unnecessarily inhibited. Accordingly, while the SDR Final Rules address foreign regulators with supervisory authority and regulatory responsibility, the Commission is issuing this Statement to ensure that foreign regulators receive sufficient access to data reported to SDRs where such foreign regulators have an independent and sufficient regulatory interest.

In response to DTCC's comment regarding expanding on the meaning of ''registered, recognized or otherwise authorized'' of the Proposed Statement or, alternatively, stating that operation in accordance with the PFMI Report would mean that an SDR is ''authorized'' for purposes of this Statement, the Commission believes, consistent with DTCC's comment, that a foreign regulator with ''oversight responsibilities'' of an SDR pursuant to the regulatory regime of the applicable foreign jurisdiction would meet the ''registered, recognized or otherwise authorized'' prong herein. Nonetheless, the Commission declines to express a more detailed view on the regulatory or jurisdictional structures applicable to SDRs governed within foreign jurisdictions that would meet the ''registered, recognized or otherwise authorized'' prong herein. As the Commission indicated in its Proposed Statement, access by foreign regulatory authorities ''should be governed by such foreign jurisdiction's regulatory regime,'' and the Commission believes that ''registered, recognized or otherwise authorized'' is sufficiently broad to cover a wide variety of foreign regulatory structures and regimes.

Similarly, and in response to DTCC's and ESMA's comment regarding accessing data which is not reported pursuant to European Union laws and forthcoming regulations, the Commission acknowledges the difficulty that certain foreign regulators may face in this regard. The Commission reiterates that foreign and domestic regulators may nonetheless be able to receive confidential data from the Commission without the execution of a confidentiality and indemnification agreement.

In response to FSR's comment regarding consultations and participation with standard-setting bodies, the Commission agrees and notes its participation in various international regulatory and industry-led working groups.[30]

In response to the cost-benefit considerations raised by Cloud Strategix, the Commission has previously acknowledged such costs in its consideration of the costs and benefits of compliance with its SDR Final Rules[31] and Data Final Rules.[32] The Commission does not believe that the Proposed Statement changes or modifies its earlier consideration of the costs and benefits of the applicable final rules.

IV. Interpretative Statement

In consideration of the foregoing, the Commission is providing guidance regarding the confidentiality and indemnification provisions of CEA section 21(d) by adopting the substance of the Proposed Statement. In this regard, the Commission seeks to ensure an orderly transition to the Dodd-Frank Act's swap data reporting regime by providing certainty to market participants and regulators with respect to the confidentiality and indemnification provisions of CEA section 21(d).

A. Data Reported to Registered SDRs

The Commission understands that some registered SDRs also may be registered, recognized or otherwise authorized in a foreign jurisdiction and may accept swap data reported pursuant to the foreign regulatory regime. The Commission concludes that the confidentiality and indemnification provisions of CEA section 21(d) generally apply only to such data reported pursuant to the CEA and Commission regulations.

The Commission further concludes that the confidentiality and indemnification provisions should not operate to inhibit or prevent foreign regulatory authorities from accessing data in which they have an independent and sufficient regulatory interest (even if that data also has been reported

[29] ESMA suggested that the Commission consider the following alternative modifications to the Proposed Statement: (i) delete the second condition of the Proposed Statement (i.e., ''The data sought to be accessed by a foreign regulatory authority is reported to such registered SDR pursuant to the foreign regulatory regime.''); or (ii) add the following bracketed language to the second condition such that it would read as follows: ''The data sought to be accessed by a foreign regulatory authority has been reported to such registered SDR pursuant to the foreign jurisdiction's regulatory regime [or the foreign regulatory authority is entitled to access such data pursuant to its regulatory regime to fulfill its respective responsibilities and mandates.]''

[30] Among the working groups the Commission is actively participating in to develop consistent international standards are the FSB, CPSS and IOSCO working group on data access (*see infra* n. 36), the Technical Committee of IOSCO which developed the ''Report on OTC derivatives and aggregation requirements,'' and the FSB's Legal Entity Identifier Expert Group.

[31] *See* SDR Final Rules, *supra* n. 6, at 54572.

[32] *See* Data Final Rules, *supra* n. 5, at 2176.

pursuant to the CEA and Commission regulations).

Accordingly, and consistent with the Commission's SDR Final Rules, the Commission interprets CEA section 21(d) such that a registered SDR would not be subject to the confidentiality and indemnification provisions of that section if:

- Such registered SDR also is registered, recognized or otherwise authorized in a foreign jurisdiction's regulatory regime; and
- The data sought to be accessed by a foreign regulatory authority has been reported to such registered SDR pursuant to the foreign jurisdiction's regulatory regime.

This Statement is grounded in principles of international law and comity. For example, in *F. Hoffmann-La Roche Ltd.* v. *Empagran S.A.,* the U.S. Supreme Court, in reviewing the extraterritorial applicability of a different federal statute, stated that extraterritorial jurisdiction should be construed, where ambiguous, ''to avoid unreasonable interference with the sovereign authority of other nations.''[33] In cases considering concepts of international law and comity in evaluating the extraterritorial scope of federal statutes, the Supreme Court has noted that the principles in the Third Restatement of Foreign Relations Law are relevant to the interpretation of U.S. law.[34]

Specifically, section 403 of the Third Restatement of Foreign Relations Law states, in relevant part:

Whether exercise of jurisdiction over a person or activity is unreasonable is determined by evaluating all relevant factors, including, where appropriate:

(a) The link of the activity to the territory of the regulating state, i.e., the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;

(b) The connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;

(c) The character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;

(d) The existence of justified expectations that might be protected or hurt by the regulation;

(e) The importance of the regulation to the international political, legal, or economic system;

(f) The extent to which the regulation is consistent with the traditions of the international system;

(g) The extent to which another state may have an interest in regulating the activity; and

(h) The likelihood of conflict with regulation by another state.[35]

To avoid unnecessary interference with the sovereign authority of foreign regulatory authorities, this Statement is supported and underpinned by principles of international law and comity.

B. Foreign Regulatory Access

In the Commission's view, a foreign regulator's access to data held in a registered SDR that also is registered, recognized, or otherwise authorized in a foreign jurisdiction's regulatory regime, should be governed by such foreign jurisdiction's regulatory regime where the data sought to be accessed has been reported pursuant to that regulatory regime. The Commission concludes that it is appropriate not to apply the requirements of CEA section 21(d) in these circumstances, in light of, among other things, the importance of such data to the foreign jurisdiction's regulatory regime, foreign regulators' interest in unfettered access to such data, and the traditions of mutual trust and cooperation among international regulators.[36]

Therefore, the Commission concludes that a foreign regulator's access to data from a registered SDR that also is registered, recognized, or otherwise authorized in a foreign jurisdiction's regulatory regime, where the data to be accessed has been reported pursuant to that regulatory regime, will be dictated by that foreign jurisdiction's regulatory regime and not by the CEA or Commission regulations. Such access is appropriate, in the Commission's view, even if the applicable data is also reported to the registered SDR pursuant to the Commission's Data Final Rules.[37]

Additionally, the Commission reiterates that a foreign regulatory authority, like domestic regulators, can nonetheless receive confidential data, without the execution of a confidentiality and indemnification agreement, from the Commission (as opposed to an SDR) pursuant to section 8(e) of the CEA.[38] Such data sharing and access would be governed by the confidentiality provisions of section 8 of the CEA.[39] The Commission is committed to continuing its close cooperation with: (i) foreign regulatory authorities to promptly address such information requests; and (ii) registered SDRs that request the Commission's assistance in determining if a foreign regulatory authority has an independent and regulatory interest in data that has been reported to such registered SDR pursuant to the relevant foreign jurisdiction's regulatory regime.

* * * * *

Issued in Washington, DC on October 22, 2012 by the Commission.

Stacy D. Yochum,

Counsel.

Appendices to Swap Data Repositories: Interpretative Statement Regarding the Confidentiality and Indemnification Provisions of Section 21(d) of the Commodity Exchange Act—

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative; Commissioners Sommers and O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final interpretative guidance regarding the confidentiality and

[33] *F. Hoffmann-LaRoche, Ltd.* v. *Empagran S.A.,* 542 U.S. 155, 164 (2004). In *Hoffmann-LaRoche,* the Supreme Court also stated that canons of statutory construction ''assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws.'' *Id.*

[34] *Id.* at 164–165.

[35] Rest. 3d., Third Restatement Foreign Relations Law section 403 (scope of a statutory grant of authority must be construed in the context of international law and comity including, as appropriate, the extent to which regulation is consistent with the traditions of the international system).

[36] The Commission notes that access to data held by trade repositories is a concept under discussion and development among international regulators. At the request of the FSB, CPSS and IOSCO have established a working group of relevant authorities to produce a forthcoming report regarding authorities' access to trade repository data.

[37] Regarding the Commission's access to SDR data, section 21(b)(1)(A) of the CEA states that the Commission ''shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.'' Section 21(c)(1) of the CEA requires registered SDRs to ''accept data prescribed by the Commission for each swap under subsection (b).'' With respect to Commission access to data held in registered SDRs, the Commission concludes that the direct electronic access provisions of CEA section 21(c)(4) apply only to such data that the SDR is required to accept under section 21(c)(1), which is further defined by part 45 of the Commission's regulations. In this respect, the Commission concludes that its direct electronic access applies only to such data reported pursuant to section 21 and Commission regulations promulgated thereunder.

[38] CEA section 8(e), 7 U.S.C. 12(e), allows the Commission to share confidential information in its possession obtained in connection with the administration of the CEA with ''any department or agency of the Government of the United States'' or with any foreign futures authority or a department, central bank or ministry, or agency of a foreign government or political subdivision thereof, acting within the scope of its jurisdiction.

[39] 7 U.S.C. 12.

indemnification provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

The confidentiality and indemnification provisions in the Dodd-Frank Act state that before a registered swap data repository (SDR) may share information with certain domestic and foreign regulators, those regulators must first agree in writing to abide by the confidentiality provisions of Section 8 of the Commodity Exchange Act (CEA). In addition, the Dodd-Frank Act requires that regulators also must indemnify both the SDR and the Commodity Futures Trading Commission (Commission) for any expenses arising from litigation relating to the information provided under Section 8 of the CEA.

The Commission recognizes the importance to foreign regulators of swap data reported under foreign regulatory regimes. The Commission's final SDR rules specified that confidential swap data reported to and maintained by an SDR may be accessed by an ''appropriate foreign regulator'' without a confidentiality and indemnification agreement when the SDR is also registered with that foreign regulator.

To provide further clarity for foreign regulators, the Commission is issuing this interpretative guidance on the Dodd-Frank Act confidentiality and indemnification provisions. The final interpretative guidance makes clear that a foreign regulator will not be prevented from accessing data in which it has an independent and sufficient regulatory authority over the SDR and such data has been reported pursuant to the foreign jurisdiction's regulatory regime.

With this interpretive guidance, the Commission has taken another important step to ensure appropriate access to SDRs by foreign regulatory authorities consistent with the provisions of the Dodd-Frank Act.

Appendix 3—Statement of Commissioners Jill E. Sommers and Scott D. O'Malia

We respectfully dissent from issuing this Final Interpretative Statement Regarding the Confidentiality and Indemnification Provisions of Section 21(d) of the Commodity Exchange Act (CEA) (Final Interpretative Statement). When the Commission issued the proposed guidance (Proposed Interpretative Statement) in May of this year, we were concerned that the statement did not actually solve the problem with the statutory language beyond providing some additional clarity to the Swap Data Repository (SDR) rules and we called for a permanent solution by way of a legislative repeal of the indemnification provisions.

When finalizing the SDR rules, the Commission stated that a foreign regulator may have direct access to confidential swap data reported to and maintained by an SDR registered with the Commission without executing a Confidentiality and Indemnification Agreement when the SDR is also registered with the foreign regulator and the foreign regulator is acting in a regulatory capacity with respect to the SDR. *See Swap Data Repositories: Registration Standards, Duties and Core Principles,* 76 FR 54,538, 54,554 (Sept. 1, 2011). The Final Interpretative Statement expands this to SDRs that are registered, recognized or otherwise authorized in a foreign regulator's regulatory regime and clarifies that direct access to data should be granted even if the data the foreign regulator seeks also has been reported pursuant to the CEA and Commission regulations.

The Commission received a comment from the European Securities and Markets Authority (ESMA) suggesting that we consider modifying the conditions that would need to be met so that a foreign regulator could escape being subject to the indemnification provisions. Specifically, ESMA suggested that the Commission consider the following alternative modifications: (1) delete the second condition of the Proposed Interpretative Statement, (i.e., ''The data sought to be accessed by a foreign regulatory authority is reported to such registered SDR pursuant to the foreign regulatory regime''), which would leave the sole condition that the SDR be registered, recognized or otherwise authorized in the foreign regulatory regime; or (2) add language to the second condition such that it would read as follows: ''The data sought to be accessed by a foreign regulatory authority has been reported to such registered SDR pursuant to the foreign jurisdiction's regulatory regime *or the foreign regulatory authority is entitled to access such data pursuant to its regulatory regime to fulfill its respective responsibilities and mandates.''* Although the Commission acknowledges the comment in the Final Interpretative Statement, we do not adopt either suggestion and do not justify their exclusion.

Our second concern involves the distinction the Commission made in the SDR rules between an Appropriate Domestic Regulator and an Appropriate Domestic Regulator with Regulatory Responsibilities. Under the current rules only the CFTC and the SEC are able to directly access SDR data absent an indemnification agreement. All other U.S. Regulators (i.e. ''Appropriate Domestic Regulators'') would have to execute an indemnification agreement—something that we are told they are prohibited from doing. Adopting the second ESMA option and extending it to Appropriate Domestic Regulators would allow them direct access to data they believe is necessary to fulfill their regulatory mandate, and in our view is something that is within the Commission's discretion. Instead, the Commission has purposely chosen to interpret the statute in a manner that constrains other domestic regulators' ability to examine swap market data. For these reasons we cannot support the guidance issued today by the Commission.

[FR Doc. 2012–26298 Filed 10–24–12; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 31, 2012, 10:00 a.m.–11:00 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: *Briefing Matter:* Safety Standard for Bedside Sleepers.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 23, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–26369 Filed 10–23–12; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed revision of the National Service Trust Interest Payment Form to update the burden hour information. This form is used by AmeriCorps members to request interest payments on qualified loans based on their AmeriCorps service, by schools and lenders to verify their eligibility, and by both parties to satisfy certain legal requirements.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 24, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn.: Bruce Kellogg, 3809C, 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3492, Attn.: Bruce Kellogg.

(4) Electronically through *www.regulations.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by email at *bkellogg@cns.gov*.

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including 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).

Background

With this form AmeriCorps members request interest payments on qualified loans based on their AmeriCorps service, schools and lenders verify their eligibility, and both parties certify certain legal requirements. These procedures are increasingly performed online.

Current Action

CNCS seeks only to revise the burden hour information to reflect the increased electronic volume of this form. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on October 31, 2014.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Interest Payment Form.

OMB Number: 3045–0053.

Agency Number: None.

Affected Public: AmeriCorps members, school staff, and lenders.

Total Respondents: 14,000.

Frequency: One per loan per term.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 2,333 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 18, 2012.

Maggie Taylor-Coates,

Chief Trust Operations.

[FR Doc. 2012–26287 Filed 10–24–12; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed revision of the National Service Trust Voucher & Payment Request Form to update the burden hour information. This form is used by AmeriCorps members to request Segal Education Award payments, by schools and lenders to verify their eligibility, and by both parties to satisfy certain legal requirements.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 24, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn.: Bruce Kellogg, 3809C, 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3492, Attn.: Bruce Kellogg.

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by email at *bkellogg@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are expected to respond, including 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).

Background

With this form AmeriCorps members request Segal Education Award payments, schools and lenders verify their eligibility, and both parties certify certain legal requirements. These procedures are increasingly performed online.

Current Action

CNCS seeks only to revise the burden hour information to reflect the increased electronic volume of this form. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2014.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Voucher & Payment Request Form.

OMB Number: 3045–0014.

Agency Number: None.

Affected Public: AmeriCorps members, school staff, and lenders.

Total Respondents: 142,000.

Frequency: One or more per member award.

Average Time per Response: Averages 5 minutes.

Estimated Total Burden Hours: 11,833 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 18, 2012.

Maggie Taylor-Coates,

Chief Trust Operations.

[FR Doc. 2012–26290 Filed 10–24–12; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed revision of the CNCS Forbearance Request for National Service Form to update the burden hour information. This form is used by AmeriCorps members to request forbearances based on their AmeriCorps service, by schools and lenders to verify their eligibility, and by both parties to satisfy certain legal requirements.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section December 24, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn.: Bruce Kellogg, 3809C, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3492, Attn.: Bruce Kellogg

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by email at *bkellogg@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including 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).

Background

With this form AmeriCorps members request forbearances based on their AmeriCorps service, schools and lenders verify their eligibility, and both parties certify certain legal requirements. These procedures are increasingly performed online.

Current Action

CNCS seeks only to revise the burden hour information to reflect the increased electronic volume of this form. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on October 31, 2014.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: CNCS Forbearance Request for National Service Form.

OMB Number: 3045–0030.

Agency Number: None.

Affected Public: AmeriCorps members, school staff, and lenders.

Total Respondents: 3,800.

Frequency: One per loan per term of service.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 633 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the

information collection request; they will also become a matter of public record.

Dated: October 18, 2012.

Maggie Taylor-Coates,

Chief Trust Operations.

[FR Doc. 2012–26293 Filed 10–24–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–57]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–57 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 22, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

OCT 16 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-57, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Netherlands for defense articles and services estimated to cost $60 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

For William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 12–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Netherlands

(ii) *Total Estimated Value:*

Major Defense Equipment*	$39 million
Other	$21 million
Total	$60 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 28 AIM–9X–2 SIDEWINDER Block II All-Up-Round Missiles, 20 CATM–9X–2 Captive Air Training Missiles, 2 AIM–9X–2 NATM Special Air Training Missiles, 2 CATM–9X–2 Block II Missile Guidance Units, 2 AIM–9X–2 Block II Tactical Guidance Units, 2 Dummy Air Training Missiles, containers, missile support and test equipment, provisioning, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor

technical assistance and other related logistics support.

(iv) *Military Department:* USN (AGE)

(v) *Prior Related Cases:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* October 16, 2012

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands –AIM—9X–2 SIDEWINDER Missiles

The Government of the Netherlands has requested a possible sale of 28 AIM–9X–2 SIDEWINDER Block II All-Up-Round Missiles, 20 CATM–9X–2 Captive Air Training Missiles, 2 AIM–9X–2 NATM Special Air Training Missiles, 2 CATM–9X–2 Block II Missile Guidance Units, 2 AIM–9X–2 Block II Tactical Guidance Units, 2 Dummy Air Training Missiles, containers, missile support and test equipment, provisioning, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support. The estimated cost is $60 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve security of a NATO ally which has been, and continues to be, an important force for political stability and economic progress in Northern Europe.

The Royal Netherlands Air Force (RNAF) is modernizing its fighter aircraft to better support the Netherlands' air defense needs. This proposed sale of AIM–9X missiles will improve the RNAF's capability to conduct self defense and regional security missions, and enhance its interoperability with the U.S. and other NATO members. The Netherlands will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of these missiles and related support will not alter the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company in Tucson, Arizona. There are no known offset proposed in connection with this potential sale.

Implementation of this proposed sale will require travel of U.S. Government or contractor representatives to the Netherlands on a temporary basis for program technical support and management oversight.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–9X–2 Block II SIDEWINDER Missile represents a substantial increase in missile acquisition and kinematics performance over the AIM–9M and replaces the AIM–9X Block I Missile configuration. The missile includes a high off-boresight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portion of the AIM–9X–2 missile. The software continues to be modified via a pre-planned product improvement (^{3}I) program in order to improve its counter-countermeasure capabilities. No software source code or algorithms will be released. The missile is classified as Confidential.

2. The AIM–9X–2 will result in the transfer of sensitive technology and information. The equipment, hardware, and documentation are classified Confidential. The software and operational performance are classified Secret. The seeker/guidance control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Manuals and technical documentation that are necessary or support operational use and organizational management are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are classified Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar advanced capabilities.

[FR Doc. 2012–26271 Filed 10–24–12; 8:45 am]

BILLING CODE 5001–06–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: RP13–163–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 10/17/12 Negotiated Rates—Citigroup (RTS) 6075–04 & –05 to be effective 11/1/2012.
Filed Date: 10/17/12.
Accession Number: 20121017–5075.
Comments Due: 5 p.m. ET 10/29/12.

Docket Numbers: RP13–164–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 10/17/12 Negotiated Rates—ConocoPhillips (RTS) 3015–19 & –20 to be effective 11/1/2012.
Filed Date: 10/17/12.
Accession Number: 20121017–5090.
Comments Due: 5 p.m. ET 10/29/12.

Docket Numbers: RP13–165–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Clean-Up Filing—October 2012 to be effective 12/1/2012.
Filed Date: 10/17/12.
Accession Number: 20121017–5110.
Comments Due: 5 p.m. ET 10/29/12.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP10–960–005.
Applicants: B–R Pipeline Company.
Description: Withdrawal.
Filed Date: 10/17/12.
Accession Number: 20121017–5055.
Comments Due: 5 p.m. ET 10/29/12.

Docket Numbers: RP12–259–001.
Applicants: USG Pipeline Company, LLC.
Description: Withdrawal.
Filed Date: 10/17/12.
Accession Number: 20121017–5056.
Comments Due: 5 p.m. ET 10/29/12.

Docket Numbers: RP13–5–001.
Applicants: Texas Gas Transmission, LLC.
Description: Correction to Order 587–V Compliance Filing to be effective 12/1/2012.

Filed Date: 10/18/12.
Accession Number: 20121018–5036.
Comments Due: 5 p.m. ET 10/30/12.

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 5:00 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: October 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26275 Filed 10–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–5–000.
Applicants: Blue Creek Wind Farm LLC.
Description: Self-Certification of EWG of Blue Creek Wind Farm LLC.
Filed Date: 10/17/12.
Accession Number: 20121017–5087.
Comments Due: 5 p.m. ET 11/7/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–1933–002; ER10–2441–002.
Applicants: Green Mountain Power Corporation, Central Vermont Public Service Corporation.
Description: Green Mountain Power Corporation and Central Vermont Public Service Corporation submits Second Supplement to Notice of Material Change in Status.
Filed Date: 10/11/12.
Accession Number: 20121011–5067.
Comments Due: 5 p.m. ET 11/1/12.

Docket Numbers: ER12–2642–002.
Applicants: North Eastern States, Inc.
Description: Baseline Amendment Filing to be effective 12/1/2012.
Filed Date: 10/18/12.
Accession Number: 20121018–5052.
Comments Due: 5 p.m. ET 11/8/12.

Docket Numbers: ER13–8–001.
Applicants: Hermiston Generating Company, L.P.
Description: Compliance to filing 1 to be effective 10/3/2012.
Filed Date: 10/18/12.
Accession Number: 20121018–5001.
Comments Due: 5 p.m. ET 11/8/12.
Docket Numbers: ER13–151–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Depreciation Filing to be effective 4/1/2012.
Filed Date: 10/17/12.
Accession Number: 20121017–5000.
Comments Due: 5 p.m. ET 11/7/12.

Docket Numbers: ER13–152–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3408; Queue No. X3–002 to be effective 10/5/2012.
Filed Date: 10/17/12.
Accession Number: 20121017–5018.
Comments Due: 5 p.m. ET 11/7/12.

Docket Numbers: ER13–153–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Certificate of Concurrence for Gaylord-Livingston IFA to be effective 10/5/2012.
Filed Date: 10/17/12.
Accession Number: 20121017–5038.

Comments Due: 5 p.m. ET 11/7/12.
Docket Numbers: ER13–154–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Northern States Power Company, a Minnesota corporation submits a Notice of Cancellation of the Municipal Transmission Agreement with City of Blue Earth, MN.
Filed Date: 10/17/12.
Accession Number: 20121017–5101.
Comments Due: 5 p.m. ET 11/7/12.

Docket Numbers: ER13–155–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits Notice of Cancellation of Rate Schedules with North Carolina Municipal Power Agency No. 1.
Filed Date: 10/18/12.
Accession Number: 20121018–5043.
Comments Due: 5 p.m. ET 11/8/12.

Docket Numbers: ER13–156–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Amendment to Rate Schedule 318—Amended 2012 Confirmation to be effective 7/3/2012.
Filed Date: 10/18/12.
Accession Number: 20121018–5055.
Comments Due: 5 p.m. ET 11/8/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26270 Filed 10–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF11–4–002]

Western Area Power Administration; Notice of Filing

Take notice that on September 12, 2012, Western Area Power Administration submitted revisions to its Open Access Transmission Tariff to correct formatting and technical errors, to be effective September 13, 2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 9, 2012.

Dated: October 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26269 Filed 10–24–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9744–7]

National Environmental Justice Advisory Council; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public teleconference meeting and public comment.

SUMMARY: The Environmental Protection Agency (EPA) hereby provides notice in agreement with the Federal Advisory Committee Act, that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference meeting on Wednesday, November 14, 2012, from 2:00 p.m. to 4:00 p.m. Eastern Time. The primary topics of discussion will be:

- Proposed Recommendations for Fostering Environmental Justice for Tribes and Indigenous Peoples.
- Enhancing Public Engagement and Environmental Justice into Permitting.
- Revisions to the NEJAC Model Plan for Public Participation.

There will be a public comment period from 2:15 p.m. to 2:45 p.m. Eastern Time. Members of the public are encouraged to provide comments relevant to the topics of the meeting.

For additional information about registering to attend the meeting or to provide public comment, please see the ''REGISTRATION'' and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come basis. Pre-registration is required. Registration for the teleconference meeting closes at 12:00 p.m. Eastern Time on Friday, November 9, 2012. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also Friday, November 9, 2012.

DATES: The NEJAC teleconference meeting on Wednesday, November 14, 2012, will begin promptly at 2:00 p.m. Eastern Time.

Registration: Registrations will primarily be processed via the NEJAC meeting Web page, *www.epa.gov/environmentaljustice/nejac/meetings.html.* Registrations can also be submitted by email to *NEJACNov2012Mtg@AlwaysPursuingExcellence.com* with ''Register for the NEJAC November 2012 Teleconference'' in the subject line; or by phone or fax to 877–773–0779. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the Friday, November 9, 2012, deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may also make appropriate arrangements using the email address or telephone/fax number.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Mr. Aaron Bell, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC2201A), Washington, DC 20460; by telephone at 202–564–1044; via email at *Bell.Aaron@epa.gov;* or by fax at 202–564–1624. Additional information about the NEJAC and upcoming meetings is available at: *www.epa.gov/environmentaljustice/nejac.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

A. Public Comment: Members of the public who wish to attend the Wednesday, November 14, 2012 public teleconference or provide public comment must pre-register by 12:00 p.m. Eastern Time on Friday, November 9, 2012. Individuals or groups making remarks during the public comment period will be limited to five minutes. To accommodate the large number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by 12:00 p.m. Eastern Time on Friday, November 9, 2012, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to EPA's support contractor, APEX Direct, Inc., via email or fax as listed in the **FOR FURTHER INFORMATION CONTACT** section above.

B. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779 or via email at *NEJACNov2012Mtg@AlwaysPursuingExcellence.com.* To request special accommodations for a disability, please contact Ms. Rosas at least seven working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the ''REGISTRATION'' section above.

Dated: October 17, 2012.

Heather Case,

Acting Office Director, Office of Environmental Justice, U.S. EPA.

[FR Doc. 2012–26321 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Notice of Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, November 1, 2012 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 321, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank Advisory Committee for 2013.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION CONTACT: For further information, contact: Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571 (202) 565–3336.

Lisa V. Terry,

Assistant General Counsel.

[FR Doc. 2012–26282 Filed 10–23–12; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, October 30, 2012 At 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2012–26401 Filed 10–23–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 9, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Moishe Gubin,* Hillside, Illinois; to acquire additional voting shares of OptimumBank Holdings, Inc., Ft. Lauderdale, Florida, and thereby indirectly acquire voting shares of OptimumBank, Plantation, Florida.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Byron Dirk Bagenstos, Cherokee, Oklahoma; Greggory Earl Glass, Kevin Russell Murrow, Mike Lee Mackey, all of Alva, Oklahoma; and Warren Dean Hughes,* Carmen, Oklahoma; as a group acting in concert to acquire voting shares of S G Bancshares, Inc., and thereby indirectly acquire voting shares of State Guaranty Bank, both in Okeene, Oklahoma.

Board of Governors of the Federal Reserve System, October 22, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26297 Filed 10–24–12; 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 November 19, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Circle I Bank Group, Inc.,* Amarillo, Texas: to become a bank holding company by acquiring 100 percent of the voting shares of, and thereby merge with Western Bancshares, Inc., and indirectly acquire voting shares of Western Bank, both in Coahoma, Texas.

Board of Governors of the Federal Reserve System, October 22, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26296 Filed 10–24–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date: November 13, 2012 9:00 a.m.–2:45 p.m. EST; November 14, 2012 8:15 a.m.–1:00 p.m. EST.

Place: Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Hyattsville, MD 20782.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day, the Committee will hear updates from HHS components, including the Office of the Assistant Secretary for Planning and Evaluation, the Centers for Medicare and Medicaid Services (CMS), the Office of the National Coordinator for Health Information Technology (ONC), and the Office for Civil Rights (OCR). The Committee will also discuss its draft report on Data Stewardship in Community Health Data for approval. After the lunch break, Subcommittee Co-chairs will brief the Committee on the Community as a Learning Health System, incorporating a quality perspective, and privacy role and contributions.

The agenda for morning of the second day includes a review of the final action item discussed on the first day, a briefing on Data Standards as a continuing theme for the NCVHS and the activities of the Working Group on HHS Data Access and Use. Once the full Committee adjourns, NCVHS's Working Group on HHS Data Access and Use will convene to discuss best practices and suggestions for release of HHS data, and summarize future plans of the Working Group. Further information will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov/*.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon on the first day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 18, 2012.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012–26228 Filed 10–24–12; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on November 7, 2012, from 10:00 a.m. to 3:00 p.m./Eastern Time.

Location: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: MacKenzie Robertson, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20201, 202–205–8089, Fax: 202–260–1276, email: *mackenzie.robertson@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the Federal Register about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: ONC is committed to the orderly conduct of its advisory committee meetings. 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 two days prior to the Committee's meeting date. Oral comments from the public will be scheduled in the agenda. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact MacKenzie Robertson at least seven (7) days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: October 22, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–26301 Filed 10–23–12; 11:15 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–13–12LR]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Community Transformation Grants: Evaluation of Nutrition, Physical Activity, and Obesity-related Television Media Campaigns—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Although there is growing evidence of the impact of tobacco control media campaigns on tobacco use, less is known about the effectiveness of media campaigns targeting nutrition, physical activity, and obesity (NPAO). A number of Community Transformation Grant (CTG) program awardees have developed messages about the importance of regular physical activity, fruit and vegetable consumption, and avoidance of sugar-sweetened beverages. These efforts provide a

unique opportunity to establish an evidence base for obesity prevention communication efforts operating within the broader context of community-level change efforts.

As part of a multi-component evaluation plan for the CTG program, CDC is seeking OMB approval to collect the information needed to evaluate the effectiveness of NPAO-targeted local television media campaigns. The items of information to be collected focus on the following areas: Audience awareness and recall of local campaigns; reactions to and perceptions of campaign messages; NPAO-related knowledge, attitudes, and beliefs; support for NPAO-related policy/environmental change; intentions to change NPAO-related behaviors; NPAO-related behaviors; and socio-demographic characteristics. This information will be used to evaluate the impact of these efforts on key NPAO-related outcomes and to examine the extent to which campaign effectiveness varies by characteristics and stylistic features of different campaign advertisements. The information will inform the CTG Program and other NPAO-targeted media campaigns and help to improve the clarity, salience, appeal, and persuasiveness of messages and campaigns supporting CDC's mission.

Information will be collected through Web surveys to be self-administered at home on personal computers. Surveys will be administered to approximately 15,399 adult members of Research Now (RN) panel, a large online panel of the U.S. population. Information will be collected once, with an expected burden of approximately 30 minutes per survey. CDC estimates that approximately 25,665 individuals must be contacted for screening and consent in order to yield the target number of completed surveys. The estimated burden response for the initial contact is three minutes.

Participation is voluntary and there are no costs to respondents other than their time. CDC's authority to collect information for public health purposes is provided by the Public Health Service Act (41 U.S.C. 241) Section 301. Approval for this information collection is requested for one year. The total estimated annualized burden hours are 8,983.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults, ages 18–54 in the U.S	Welcome to the Health and Media Survey	25,665	1	3/60
	Health and Media Survey	15,399	1	30/60

Dated: October 18, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–26272 Filed 10–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0666]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB No. 0920–0666), exp. 01/31/2015—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. The data will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks. The NHSN consists of four components: Patient Safety, Healthcare Personnel Safety, Biovigilance, and Long-Term Care Facility (LTCF). In general, the data reported under the Patient Safety Component protocols are used to (1) determine the magnitude of the healthcare-associated adverse events under study, trends in the rates of events, in the distribution of pathogens, and in the adherence to prevention practices, and (2) to detect changes in the epidemiology of adverse events resulting from new medical therapies and changing patient risks. Additionally, reported data will be used to describe the epidemiology of antimicrobial use and resistance and to understand the relationship of antimicrobial therapy to this growing problem. Under the Healthcare Personnel Safety Component protocols, data on events, both positive and adverse, are used to determine (1) the magnitude of adverse events in healthcare personnel and (2) compliance with immunization and sharps injuries safety guidelines. Under the Biovigilance Component, data on adverse reactions and incidents associated with blood transfusions are used to provide national estimates of adverse reactions and incidents. The Long-Term Care Facility (LTCF) Component is used to more specifically and appropriately capture data from the residents of skilled nursing facilities. Surveillance methods and definitions for this component specifically address the nuances of LTCF residents.

This revision submission includes major revisions to the Patient Safety Component—Outpatient Dialysis Center Practices Survey (Form 57.104) in an effort to provide further clarification to those collecting the information. Additionally, some of the changes have been made to improve surveillance data available for the outpatient dialysis population. Due to the CMS End Stage Renal Disease (ESRD) Quality Improvement Program (QIP) reporting

requirements, over 5,700 dialysis facilities have already enrolled or will enroll into NHSN to report data in 2012. Form 57.104 is completed by each facility upon enrollment into NHSN and then every January thereafter.

Furthermore, minor revisions have been made to 28 other forms within the package to clarify and/or update surveillance definitions. Six forms have been removed for the purposes of simplification from the Healthcare Personnel Safety Component of the package due to changes within NHSN reporting of healthcare personnel influenza vaccination. Old functionality of individual level vaccination reporting will be removed from NHSN. CMS Inpatient Quality Reporting (IQR) requirements designate that all acute care facilities will report healthcare personnel vaccination counts at the summary level for the 2012–2013 flu season.

The previously approved NSHN package included 54 individual collection forms; the current revision request removes six forms for a total of 48 forms. The reporting burden will decrease by 415,523 hours, for a total of 3,562,653 hours.

Healthcare institutions that participate in NHSN report their data to CDC using a Web browser based technology for data entry and data management. Data are collected by trained surveillance personnel using written standardized protocols. Participating institutions must have a computer capable of supporting an Internet service provider (ISP) and access to an ISP. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form number and name	Type of respondents	Number of respondents	No. of responses per respondent	Avg. burden per response (in hours)
57.100: NHSN Registration Form	Registered Nurse (Infection Preventionist).	2,000	1	5/60
57.101: Facility Contact Information	Registered Nurse (Infection Preventionist).	2,000	1	10/60
57.103: Patient Safety Component—Annual Hospital Survey	Registered Nurse (Infection Preventionist).	6,000	1	30/60
57.104: Patient Safety Component—Outpatient Dialysis Center Practices Survey.	Registered Nurse (Infection Preventionist).	5,700	1	1.5
57.105: Group Contact Information	Registered Nurse (Infection Preventionist).	6,000	1	5/60
57.106: Patient Safety Monthly Reporting Plan	Registered Nurse (Infection Preventionist).	10,000	12	35/60
57.108: Primary Bloodstream Infection (BSI)	Registered Nurse (Infection Preventionist).	6,000	36	35/60
57.109: Dialysis Event	Staff RN	5,700	60	16/60
57.111: Pneumonia (PNEU)	Registered Nurse (Infection Preventionist).	6,000	72	32/60
57.112: Ventilator-Associated Event	Registered Nurse (Infection Preventionist).	6,000	144	25/60
57.114: Urinary Tract Infection (UTI)	Infection Preventionist	6,000	27	32/60
57.116: Denominators for Neonatal Intensive Care Unit (NICU).	Staff RN	6,000	9	3
57.117: Denominators for Specialty Care Area (SCA)/Oncology (ONC).	Staff RN	6,000	9	5
57.118: Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	Staff RN	6,000	18	5
57.119: Denominator for Outpatient Dialysis	Staff RN	5,700	12	6/60
57.120: Surgical Site Infection (SSI)	Registered Nurse (Infection Preventionist).	6,000	36	32/60
57.121: Denominator for Procedure	Staff RN	6,000	540	5/60
57.123: Antimicrobial Use and Resistance (AUR)—Microbiology Data Electronic Upload Specification Tables.	Laboratory Technician	6,000	12	5/60
57.124: Antimicrobial Use and Resistance (AUR)—Pharmacy Data Electronic Upload Specification Tables.	Pharmacy Technician	6,000	12	5/60
57.125: Central Line Insertion Practices Adherence Monitoring.	Registered Nurse (Infection Preventionist).	1,000	100	5/60
57.126: MDRO or CDI Infection Form	Registered Nurse (Infection Preventionist).	6,000	72	32/60
57.127: MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	Registered Nurse (Infection Preventionist).	6,000	24	10/60
57.128: Laboratory-identified MDRO or CDI Event	Registered Nurse (Infection Preventionist).	6,000	240	15/60
57.130: Vaccination Monthly Monitoring Form—Summary Method.	Registered Nurse (Infection Preventionist).	6,000	5	14
57.131: Vaccination Monthly Monitoring Form—Patient-Level Method.	Registered Nurse (Infection Preventionist).	2,000	5	2
57.133: Patient Vaccination	Registered Nurse (Infection Preventionist).	2,000	250	10/60
57.137: Long-Term Care Facility Component—Annual Facility Survey.	Registered Nurse (Infection Preventionist).	250	1	45/60
57.138: Laboratory-identified MDRO or CDI Event for LTCF	Registered Nurse (Infection Preventionist).	250	8	15/60

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Form number and name	Type of respondents	Number of respondents	No. of responses per respondent	Avg. burden per response (in hours)
57.139: MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	Registered Nurse (Infection Preventionist).	250	12	5/60
57.140: Urinary Tract Infection (UTI) for LTCF	Registered Nurse (Infection Preventionist).	250	9	30/60
57.141: Monthly Reporting Plan for LTCF	Registered Nurse (Infection Preventionist).	250	12	5/60
57.142: Denominators for LTCF Locations	Registered Nurse (Infection Preventionist).	250	12	3
57.143: Prevention Process Measures Monthly Monitoring for LTCF.	Registered Nurse (Infection Preventionist).	250	12	5/60
57.150: LTAC Annual Survey	Registered Nurse (Infection Preventionist).	400	1	30/60
57.151: Rehab Annual Survey	Registered Nurse (Infection Preventionist).	1,000	1	25/60
57.200: Healthcare Personnel Safety Component Annual Facility Survey.	Occupational Health RN/Specialist.	100	1	8
57.203: Healthcare Personnel Safety Monthly Reporting Plan.	Occupational Health RN/Specialist.	100	9	10/60
57.204: Healthcare Worker Demographic Data	Occupational Health RN/Specialist.	100	200	20/60
57.205: Exposure to Blood/Body Fluids	Occupational Health RN/Specialist.	100	50	1
57.206: Healthcare Worker Prophylaxis/Treatment	Occupational Health RN/Specialist.	100	30	15/60
57.207: Follow-Up Laboratory Testing	Laboratory Technician	100	50	15/60
57.210: Healthcare Worker Prophylaxis/Treatment—Influenza.	Occupational Health RN/Specialist.	600	50	10/60
57.300: Hemovigilance Module Annual Survey	Medical/Clinical Laboratory Technologist.	500	1	2
57.301: Hemovigilance Module Monthly Reporting Plan	Medical/Clinical Laboratory Technologist.	500	12	2/60
57.302: Hemovigilance Module Monthly Incident Summary	Medical/Clinical Laboratory Technologist.	500	12	2
57.303: Hemovigilance Module Monthly Reporting Denominators.	Medical/Clinical Laboratory Technologist.	500	12	30/60
57.304: Hemovigilance Adverse Reaction	Medical/Clinical Laboratory Technologist.	500	120	10/60
57.305: Hemovigilance Incident	Medical/Clinical Laboratory Technologist.	500	72	10/60

Dated: October 18, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–26268 Filed 10–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Child Care and Development Fund Financial Report (ACF 696) for States and Territories

OMB No.: 0970–0163

Description: States and Territories use the Financial Report Form ACF–696 to report Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is found in section 658G of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR part 98, subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

The form provides specific data regarding claims and provides a mechanism for States to request Child Care grant awards and to certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor Child Care and Development Fund expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

The American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L. 111–5) provides an additional $2 billion for the Child Care and Development Fund to help States, Territories, and Tribes provide child care assistance to low income working families. CCDF Program Instruction (CCDF–ACF–PI–2009–03) provided guidance on ARRA spending requirements.

Section 1512 of the ARRA legislation requires recipients to report quarterly spending and performance data on the public Web site, ''Recovery.gov''. Federal agencies are required to collect ARRA expenditure data and performance data and these data must be clearly distinguishable from the regular CCDF (non-ARRA) funds. To ensure transparency and accountability, the ARRA authorizes Federal agencies and grantees to track and report separately on expenditures from funds made available by the stimulus bill. Office of Management and Budget (OMB) guidance implementing the

ARRA legislation indicates that agencies requiring additional information for oversight should rely on existing authorities and reflect these requirements in their award terms and conditions as necessary, following existing procedures. Therefore, to capture ARRA expenditures, the ACF–696 has been modified (by the addition of a column) for reporting ARRA expenditure data. In addition, a new data element will ask States and Territories to estimate the number of child service months funded with ARRA dollars. The collection will not duplicate other information.

Respondents: States and Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	56	4	5	1,120

Estimated Total Annual Burden Hours: 1,120.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–26314 Filed 10–24–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number 93.600]

Announcement of the Award of Four Single-Source Program Expansion Supplement Grants To Support Activities Associated With the Tribal Early Learning Initiative

AGENCY: Office of Head Start, Administration for Children and Families, Health and Human Services.

ACTION: Notice of award of four single-source program expansion supplement grants to Head Start/Early Head Start American Indian and Alaska Native (AIAN) grantees to support their activities as participants in the Tribal Early Learning Initiative.

SUMMARY: The Administration for Children and Families, Office of Head Start, announces the award of single-source program expansion supplement grants to four grantees in the Head Start/Early Head Start American Indian and Alaska Native (AIAN) grantees to support their participation in the Tribal Early Learning Initiative. Each of the following grantees is receiving a supplement in the amount of $15,750.

Grantee	Location
Choctaw Nation of Oklahoma.	Durant, OK.
Pueblo of San Felipe	San Felipe, NM.
Confederated Tribes of Salish and Kootenai.	Pablo, MT.
White Earth Band of Chippewa Indians.	White Earth, MN.

The program expansion supplement awards will support expanded services to identify and analyze systems that will improve effectiveness and efficiencies across early childhood programs. The grantees will share action plans to improve outcomes and developing peer learning relationships.

DATES: September 29, 2012–September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Yvette Sanchez Fuentes, Director, Office of Head Start, 1250 Maryland Ave SW., Washington, DC 20024. Telephone: 202–205–8573; Email: *yvette.sanchezfuentes@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The program expansion supplemental grants will support the effective identification and analysis of actual and potential systems issues faced by tribes receiving all three ACF early learning grants: Head Start/Early Head Start, Tribal Child Care, and Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV). The program expansion supplements will support coordination and collaboration activities such as identifying obstacles that could block efforts to build and maintain partnerships, piloting more effective coordination of Tribal Early Learning Programs, and development of alternative interventions and strategies in line with tribal community values, traditions, and priorities. The Tribal Early Learning Initiative is expected to accomplish the following:

- Identify and analyze systems issues, including obstacles that could block efforts to build and maintain partnerships in tribal communities, to fully and effectively coordinate Tribal Head Start/Early Head Start, Tribal Child Care, and Tribal MIECHV programs (Tribal Early Learning Programs), and to develop a menu of alternative interventions and strategies in line with tribal community values, traditions, and priorities.
- Develop tribally-driven goals and concrete objectives in each local tribal community for building effective and efficient early childhood systems and improved outcomes for young children and families including strategies to support parent, family, and community engagement.
- Develop and carry out concrete community plans for supporting and

strengthening cooperation, coordination, and resource sharing and leveraging among programs that support young children and families in the tribal community

• Share plans of action, barriers and challenges, opportunities and solutions, and the results of action plans with other tribal communities in an effort to further develop peer learning relationships

The Office of Child Care will separately announce the award of four single-source program expansion supplement grants of up to $15,750 to the same Tribal grantees to support Tribal MIECHV-related activities as part of the Tribal Early Learning Initiative.

Statutory Authority: Improving Head Start for School Readiness Act of 2007 (Pub.L. 110–134). Sections 642 (e)(3) and 648 of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2012–26302 Filed 10–24–12; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.658]

Announcement of the Award of a Single-Source Program Expansion Supplement Grant to the Tribal Law and Policy Institute in West Hollywood, CA

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Health and Human Services.

ACTION: Announcement of the award of a single-source program expansion supplement grant to the Tribal Law and Policy Institute in West Hollywood, CA, to support technical assistance to Tribes in the development of oversight plans for prescription medicines for children in Tribal foster care systems.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Children's Bureau (CB) announces the award of a single-source program expansion supplement grant in the amount of $100,000 to the Tribal Law and Policy Institute, West Hollywood, CA, to provide new or modified technical assistance to assist States and Tribes in implementing the Administration on Children, Youth and Families' well-being framework in the context of the new requirements of the Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) and explore the need for technical assistance to Tribes in the development of oversight plans for prescription medicines for children in Tribal foster care systems.

The Tribal Law and Policy Institute administers the National Resource Center for Tribes (NRC4Tribes) under a cooperative agreement where technical assistance is provided to Tribes to assist in building organizational capacity so that Tribes may operate their own foster care programs under title IV–E of the Social Security Act. Under the agreement, Tribal Law and Policy Institute identifies promising practices in Tribal child welfare systems, identifies and effectively implements community, and culturally-based strategies and resources that strengthen Tribal child and family services.

DATES: September 30, 2012 through September 29, 2013.

FOR FURTHER INFORMATION CONTACT: Jane Morgan, Children's Bureau, 1250 Maryland Avenue SW., Washington, DC 20024. Telephone: 202–205–8807; Email: *jane.morgan@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Tribes receiving funding under title IV–B, subpart 1, are required to address in the Annual Progress and Services Report (APSR) how the Health Care Oversight and Coordination plan requirements are being met for Tribal children in foster care. The NRC4Tribes will address this need through the following:

1. The NRC4Tribes will convene a technical assistance key informant workgroup on the topic of Title IV–B Plan Prescription Medication Oversight for American Indian/Alaska Native children in tribal foster care systems. Tribal input will also be elicited to determine what type of technical assistance can support tribes in the development of prescription medication oversight plans.

2. Based upon the information gathered during these meetings and telephone calls the NRC4Tribes, with input from the technical assistance key informant workgroup, will develop easy to understand step-by-step recommendations for tribes to follow in development of their plan for oversight and coordination of health care services for children in foster care.

Additional training and technical assistance will be provided through peer-to-peer training and technical assistance, webinars, training teleconferences, and resource materials located on the NRC4Tribes Web site.

Statutory Authority: Section 476(c)(2)(iii) of the Social Security Act, as amended by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351).

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2012–26244 Filed 10–24–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number 93.652]

Announcement of the Award of a Single-Source Program Expansion Supplement Grant to the Regents of the Board of the University of Michigan in Ann Arbor, MI

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Health and Human Services.

ACTION: Announcement of the award of a single-source program expansion supplement grant to the Regents of the Board of the University of Michigan in Ann Arbor, MI, to support the National Quality Improvement Center on the Representation of Children in the Child Welfare System in providing additional training, technical assistance and support to multiple research and demonstration sites.

SUMMARY: The Administration for Children and Families (ACF), Children's Bureau (CB) announces the award of a single-source year program expansion supplement in the amount of $250,000 to the Regents of the Board of the University of Michigan, Ann Arbor, MI, to provide more intensive technical assistance and conduct a rigorous evaluation of research and demonstration sites.

DATES: September 30, 2012 through September 29, 2013.

FOR FURTHER INFORMATION CONTACT: Jane Morgan, Children's Bureau, 1250 Maryland Avenue SW., Washington, DC 20024. Telephone: 202–205–8807; Email: *jane.morgan@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Regents of the University of Michigan administers the National Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep) under a cooperative agreement. The purpose of the QIC-ChildRep is to improve the

quality of legal representation for children and youth in child welfare cases so the States and Tribes achieve the best safety, permanency and well-being outcomes for children and youth. This systems improvement model supports three research and demonstration sites, each involving a rigorous evaluation. Given the complexity of the models being implemented, considerable training, technical assistance, monitoring and support are necessary for each site to design and implement evaluation plans. Program expansion supplement funds will allow for an increased level of effort in conducting the evaluations in order to meet the requirements of the cooperative agreement. Additional training, technical assistance, and support to each research and demonstration site, coupled with more intensive monitoring of site specific evaluation efforts, will enhance the depth and rigor of all evaluation results.

The supplemental funding will also afford QIC-ChildRep the opportunity to provide new or modified technical assistance to assist States and Tribes in implementing the Administration on Children, Youth and Families' well-being framework in the context of the new requirements of the Child and Family Services Improvement and Innovation Act (Pub. L. 112–34).

Statutory Authority: Section 203 (42 U.S.C. 5113) of the Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA) of 1978, (Pub. L. 95–266), as amended.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2012–26305 Filed 10–24–12; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number 93.674]

Announcement of the Award of a Single-Source Program Expansion Supplement Grant to the University of Oklahoma in Tulsa, OK

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Health and Human Services.

ACTION: Announcement of the award of a single-source program expansion supplement grant to the University of Oklahoma, National Resource Center for Youth Development, in Tulsa, OK, to provide technical assistance to States to devise effective procedures and strategies to implement National Youth in Transition Database regulations effectively.

SUMMARY: The Administration for Children and Families (ACF), Children's Bureau (CB) announces the award of a single-source program expansion supplement in the amount of $103,685 to the University of Oklahoma, National Resource Center for Youth Development, Tulsa, OK, to support expanded technical assistance to address emerging technical assistance needs for States and Tribes as they seek to implement legislation and changing programs dedicated to former foster youth. The grantee is the recipient of a cooperative agreement to administer the National Resource Center for Youth Development (NRCYD). The grantee has been providing technical assistance services through a cooperative agreement since September 30, 2009, pursuant to the legislative authority of the Promoting Safe and Stable Families Program, Section 436(d), Title IV–B, subpart 2, of the Social Security Act (42 U.S.C. 629e).

DATES: September 30, 2012 through September 29, 2013.

FOR FURTHER INFORMATION CONTACT: Jan Shafer, Children's Bureau, 1250 Maryland Avenue SW., Washington, DC 20024. Telephone: 202–205–8172; Email: *jan.shafer@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: In February 2008, the National Youth in Transition Database (NYTD) final regulation was promulgated. NYTD requires States to begin collecting information from youth in foster care and young adults formerly in foster care every six months, beginning October 1, 2010. State representatives continue to identify implementation of NYTD as a significant challenge, particularly since it will require State agencies to remain in contact with youth who may no longer be receiving services from the agency. The implementation of NYTD will require the NRCYD to continue to provide additional technical assistance to States to implement this regulation effectively.

Additionally, many States see the implementation of NYTD as a method to engage youth and to strengthen youth involvement in services at the State and local level. This type of youth engagement work involves long-term systemic technical assistance. The single-source expansion supplement will allow the NRCYD to support these State initiatives over the long term.

Another significant development affecting the provision of services to youth and young adults was the passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110–351, signed into law October 7, 2008. Among other provisions, the law requires States to develop a transition plan for all youth emancipating from foster care and provides States and Tribes an option to receive Federal reimbursement under title IV–E of the Social Security Act to extend foster care to older youth until age 21. In addition, the law for the first time provided an opportunity for certain Tribes to receive direct funding for independent living services and education and training vouchers under the Chafee Foster Care Independence Program. The single-source program expansion supplement grant will allow the NRCYD to provide more intensive technical assistance and on-site consultation to States and Tribes to continue to assist them in implementing these provisions.

The supplemental funding will afford the National Resource Center for Youth Development the opportunity to provide new or modified technical assistance to assist States and Tribes in implementing the Administration on Children, Youth and Families' well-being framework in the context of the new requirements of the Child and Family Services Improvement and Innovation Act (Pub. L. 112–34).

Statutory Authority: Promoting Safe and Stable Families Program, § 436(d), Title IV–B, subpart 2, of the Social Security Act (42 U.S.C. 629e).

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2012–26304 Filed 10–24–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number 93.556]

Announcement of the Award of a Single-Source Program Expansion Supplement Grant to the Research Foundation of CUNY on Behalf of Hunter College School of Social Work, New York, NY

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Health and Human Services.

ACTION: Announcement of the award of a single-source program expansion supplement grant to the Research Foundation of CUNY on behalf of Hunter College School of Social Work in New York, NY, to provide targeted technical assistance to Family Connections grantees.

SUMMARY: The Administration for Children and Families (ACF), Children's Bureau (CB) announces the award of a single-source program expansion supplement in the amount of $420,000 to the Research Foundation of CUNY on behalf of Hunter College School of Social Work, New York, NY, to provide targeted technical assistance to address continuing challenges in the field as child welfare programs work to implement the requirements of new legislation. The Research Foundation of CUNY on behalf of Hunter College is the recipient of a cooperative agreement to act as the administrator for the National Resource Center for Permanency and Family Connections (NRCPFC).

DATES: September 30, 2012 through September 29, 2013.

SUPPLEMENTARY INFORMATION: The supplemental funding will afford the National Resource Center on Permanency and Family Connections the opportunity to provide new or modified technical assistance to assist States and Tribes in implementing the Administration on Children, Youth and Families' well-being framework in the context of the new requirements of the Child and Family Services Improvement and Innovation Act (Pub. L. 112–34). In addition, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351) provides for a discretionary matching grant program to implement projects in the areas of Kinship Navigator, Family Finding, Family Group Decision Making and Residential Family Treatment. The law also added a requirement at section 471(a)(29) that directs State foster care and adoption agencies (title IV–E agencies) to exercise due diligence to identify and notify all adult relatives of a child, within 30 days of the child's removal, of the relative's options to become a placement resource for the child. In total, the supplemental funding will allow the NRCPFC to do the following:

1. Provide focused technical assistance to Family Connections grantees.

2. Engage States that did not receive discretionary grants in on-site consultation regarding effectively involving relatives in child welfare practice.

3. Proactively transfer the knowledge developed under the discretionary grant program to States to assist in meeting new plan requirements.

The NRCPFC will increase technical assistance efforts to enhance the achievement of permanency by assisting agencies to better locate, notify and involve families and relatives in the engagement and planning process while maintaining awareness of confidentiality issues.

FOR FURTHER INFORMATION CONTACT: Jane Morgan, Children's Bureau, 1250 Maryland Avenue SW., Washington, DC 20024. Telephone: 202–205–8807; Email: *jane.morgan@acf.hhs.gov*.

Statutory Authority: Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351).

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2012–26303 Filed 10–24–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0007]

Generic Drug User Fee—Abbreviated New Drug Application, Prior Approval Supplement, and Drug Master File Fee Rates for Fiscal Year 2013

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rate for the Abbreviated New Drug Application (ANDA), Prior Approval Supplement (PAS), and Drug Master File (DMF) fees related to the Generic Drug User Fee Program for fiscal year (FY) 2013. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Generic Drug User Fee Amendments of 2012 (GDUFA), as further amended by the FDA User Fee Correction Act of 2012, authorizes FDA to assess and collect user fees for certain applications and supplements for human generic drug products, on applications in the backlog as of October 1, 2012, on finished dosage form (FDF) and active pharmaceutical ingredient (API) facilities, and on type II active pharmaceutical ingredient DMFs to be made available for reference. GDUFA directs FDA to establish each year the Generic Drug User Fee rates for the upcoming year. In the first year of GDUFA (FY 2013), some rates will be published in separate **Federal Register** notices because of the timing specified in the statute. Each year thereafter the GDUFA fee rates will be published 60 days before the start of the FY. This document establishes FY 2013 rates for an ANDA ($51,520), PAS ($25,760), and DMF ($21,340). These fees are effective on October 1, 2012, and will remain in effect through September 30, 2013.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., PI50, rm. 210J, Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42), as added by GDUFA (Title III of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), which was signed by the President on July 9, 2012), as further amended by the FDA User Fee Correction Act of 2012 (Pub. L. 112–193) (signed by the President on October 5, 2012), establish fees associated with human generic drug products. Fees are assessed on the following: (1) Certain applications in the backlog as of October 1, 2012; (2) certain types of applications and supplements for human generic drug products; (3) certain facilities where APIs and FDFs are produced; and (4) certain DMFs associated with human generic drug products (section 744B(a) of the FD&C Act). This notice will focus on the ANDA, PAS, and DMF fees.

II. Fee Revenue Amount for FY 2013

The total fee revenue amount for FY 2013 is $299,000,000, as set in the statute. GDUFA directs FDA to use the yearly revenue amount as a starting point to set the fee rates for each fee type. GDUFA states that the backlog fee will make up $50,000,000 of the total revenue collected for FY 2013. Therefore, the rest of the fees will make up a percentage of the remaining $249,000,000 of the total revenue. For more information about GDUFA, please refer to the FDA Web site (*http://www.fda.gov/gdufa*). The ANDA, PAS, and DMF fee calculations for FY 2013 are described in this document.

III. ANDA and PAS Fees

Under GDUFA, the ANDA and PAS fees are owed by each applicant that submits, on or after October 1, 2012, an ANDA or a PAS. These fees are due on the date of submission of the ANDA or PAS or 30 days after the publication date of this notice, whichever is later. Section 744B(b)(2)(B) specifies that the

ANDA and PAS fees will make up 24 percent of the $249,000,000, which is $59,760,000.

In order to calculate the ANDA fee, FDA needed to estimate the number of full application equivalents (FAEs) that will be submitted in FY 2013. Over the past 4 years, the average number of ANDAs that would have been subject to the fee was approximately 850. Because the number of prior approval supplements submitted in FY 2012 is significantly lower than the number submitted in the 2 previous years, FDA has utilized available data concerning FY 2012 to estimate the number of such supplements for FY 2013. The estimated number of PASs to be received in FY 2013 is 576 based on an annualized estimate of the number of receipts for FY 2012.

In estimating the number of fee-paying FAEs, applications count as one FAE and supplements count as one-half an FAE, since the fee for a PAS is one-half of the fee for an ANDA. GDUFA requires that 75 percent of the fees paid for an ANDA or PAS be refunded if its receipt is refused due to issues other than failure to pay fees (section 744B(a)(3)(D) of the FD&C Act). Therefore, an application or supplement that is considered not to have been received by the Secretary due to reasons other than failure to pay fees counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid the supplement fee (one-half of the full application fee amount).

Taking into account estimates of the number of ANDAs and PASs that are likely to be refused due to issues other than failure to pay fees, and the number that are likely to be resubmitted in the same fiscal year, FDA estimates that the total number of fee-paying FAEs that will be received in FY 2013 is 1,160.

The FY 2013 application fee is estimated by dividing the number of full application equivalents that will pay the fee in FY 2013 (1,160) into the fee revenue amount to be derived from application fees in FY 2013 ($59,760,000). The result, rounded to the nearest $10, is a fee of $51,520 per ANDA. Section 744B(b)(2)(B) of the FD&C Act states that the PAS fee is equal to half the ANDA fee; therefore the PAS fee is $25,760. We note that the statute provides that those ANDAs that include information about the production of active pharmaceutical ingredients other than by reference to a DMF will pay an additional fee that is based on the number of such active pharmaceutical ingredients and the number of facilities proposed to produce those ingredients. (See section 744B(a)(3)(F) of the FD&C Act.) FDA considers this additional fee to be unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs and PASs.

IV. DMF Fee

Under GDUFA, the DMF fee is owed by each person that owns a type II active pharmaceutical ingredient drug master file that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization. This is a one-time fee for each individual DMF. This fee is due no later than the date on which the first generic drug submission is submitted that references the associated DMF, or 30 days after publication of this notice, whichever is later. (Under section 744B(a)(2)(D)(iii) of the FD&C Act, if the DMF successfully undergoes an initial completeness assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference. Thus some DMFs holders may choose to pay the fee prior to the date that it would otherwise be due in order to have the DMF placed on that list.) Section 744B(b)(2)(A) of the FD&C Act specifies that the DMF fee will make up 6 percent of the remaining $249,000,000, which is $14,940,000.

In order to calculate the DMF fee, FDA must estimate the number of DMFs that will be referenced by an initial letter of reference in FY 2013. This number will include DMFs that have been referred to in ANDAs prior to FY 2013, but that are first referred to in an initial letter of reference in an ANDA during that year. Based on the numbers of DMFs referenced by ANDAs and PASs in 2011, the last full calendar year for which DMF information is available, FDA is estimating that 700 DMFs will be referenced by an initial letter of reference in FY 2013. Dividing the DMF revenue of $14,940,000 by the estimated number of first-referenced DMFs (700), and rounding to the nearest $10, yields a DMF fee of $21,340 for FY 2013.

V. Fee Payment Options and Procedures

To pay the ANDA, PAS, or DMF fee, you must complete a generic drug user fee cover sheet, available at *http://www.fda.gov/gdufa* starting in October 2012, and generate a user fee identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after completing the generic drug user fee cover sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order and make payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD 20850. The tax identification number of the Food and Drug Administration is 53–0196965.

Dated: October 16, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–26256 Filed 10–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0007]

Generic Drug User Fee—Backlog Fee Rate for Fiscal Year 2013

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

rate for the backlog fee related to generic drug user fees for fiscal year (FY) 2013. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Generic Drug User Fee Amendments of 2012 (GDUFA), authorizes FDA to assess and collect user fees for certain applications and supplements associated with human generic drug products, on applications in the backlog as of October 1, 2012, on finished dosage form (FDF) and active pharmaceutical ingredient (API) facilities, and on type II API drug master files (DMFs) to be made available for reference. GDUFA directs FDA to establish each year the Generic Drug User Fee rates for the upcoming year. In the first year of GDUFA (FY 2013), some rates will be published in separate **Federal Register** notices because of the timing specified in the statute. Each year thereafter the GDUFA fee rates will be published 60 days before the start of the FY. This document establishes the FY 2013 rate for the backlog fee ($17,434). This fee is effective on October 1, 2012.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., PI50, rm. 210J, Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42), as added by GDUFA (Title III of the Food and Drug Administration Safety and Innovation Act (Public Law 112–144), which was signed by the President on July 9, 2012), establish user fees associated with human generic drug products. Fees are assessed on the following: (1) Applications in the backlog as of October 1, 2012; (2) certain types of applications and supplements associated with human generic drug products; (3) certain facilities where APIs and FDFs are produced; (4) certain type II API DMFs associated with human generic drug products. This notice focuses solely on the backlog fee.

II. Fee Revenue Amount for FY 2013

The total fee revenue amount for FY 2013 is $299,000,000, as set in the statute (section 744B(b)(1)(A) of the FD&C Act). Under that provision, FDA uses the yearly revenue amount as a starting point to set the fees. The GDUFA statute states that the backlog fee will make up $50,000,000 of the total revenue collected for FY 2013 (section 744B(b)(1)(A)(i) of the FD&C Act). For more information about GDUFA, please refer to the FDA Web site (*http://www.fda.gov/gdufa*). The backlog fee calculation for FY 2013 is described in this document.

III. Backlog Fee

Under GDUFA, each person that owns an abbreviated new drug application that is pending on October 1, 2012, and that has not received a tentative approval prior to that date, shall be subject to a backlog fee for each such application (section 744B(a)(1)(A) of the FD&C Act). The backlog fee is due no later than 30 days after publication of this notice (section 744B(a)(1)(D) of the FD&C Act). The backlog fee is assessed one time only, for FY 2013, and no backlog fee will be assessed in subsequent years. Once incurred, the backlog fee obligation can only be discharged by payment in full.

Under section 744B(a)(1)(B) of the FD&C Act, FDA calculates the backlog fee by taking the exact number of pending abbreviated new drug applications in the backlog that have not received tentative approval as of October 1, 2012, and dividing $50,000,000 by that number. Since there are 2,868 applicable applications in the backlog, the backlog fee is calculated to be $17,434 ($50,000,000 divided by 2,868 rounded to the nearest dollar).

IV. Fee Payment Options and Procedures

To make a payment of the backlog fee, you must complete a generic drug user fee cover sheet, available on the FDA Web site (*http://www.fda.gov/gdufa*) and generate a user fee payment identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after completing the generic drug user fee cover sheet and generating the user fee payment ID number.

Please include the user fee payment ID number on your check, bank draft, or postal money order and make payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference the user fee payment ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the wire transfer fee and include it with your payment to ensure that your backlog fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD, 20850. The tax identification number of the Food and Drug Administration is 53–0196965.

Dated: October 16, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–26257 Filed 10–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–N247; FX3ES11130300000D2–123–FF03E00000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Bald Eagle Post-delisting Monitoring

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on November 30, 2012. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before November 26, 2012.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the

Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email). Please include ''1018–0143'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0143.

Title: Bald Eagle Post-delisting Monitoring.

Type of Request: Extension of a currently approved collection.

Description of Respondents: States, tribes, and local governments; Federal land managers; and nongovernmental partners.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once every 5 years.

Note: For each 5-year survey, we estimate a total of 48 respondents will provide 48 responses totaling 1,478 burden hours. The burden estimates below are annualized over the 3-year period of OMB approval.

Estimated Annual Number of Respondents: 16.

Estimated Total Annual Responses: 16.

Estimated Time per Response: 30.8 hours.

Estimated Total Annual Burden Hours: 493.

Abstract: This information collection implements the requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA). There are no corresponding Service regulations for the ESA's post-delisting monitoring requirement.

The bald eagle (*Haliaeetus leucocephalus*) in the lower 48 States was removed from the List of Endangered and Threatened Wildlife (delisted) on August 8, 2007 (72 FR 37346, July 9, 2007). Section 4(g) of the ESA requires that all species that are recovered and removed from the List of Endangered and Threatened Wildlife be monitored in cooperation with the States for a period of not less than 5 years. The purpose of this requirement is to detect any failure of a recovered species to sustain itself without the protections of the ESA. We work with relevant Federal, State, and tribal entities, and other species experts to develop plans and procedures for systematically monitoring recovered wildlife and plants after a species is delisted. The bald eagle has a large geographic distribution that includes a substantial amount of non-Federal land. Although the ESA requires that monitoring of recovered species be conducted for not less than 5 years, the life history of bald eagles is such that it is appropriate to monitor this species for a longer period of time in order to meaningfully evaluate whether or not the bald eagle continues to maintain its recovered status.

We plan to monitor the status of the bald eagle in the 48 contiguous States by collecting data on nests over a 20-year period with sampling events held once every 5 years. The Post-delisting Monitoring Plan for the Bald Eagle (Plan) describes monitoring procedures and methods. The Plan is available at *http://www.fws.gov/midwest/eagle/protect/FINAL_BEPDM11May2010.pdf.* We will use the monitoring data to review the status of the bald eagle in the United States and determine if it remains recovered and, therefore, does not require the protections of the ESA.

Comments: On June 7, 2012, we published in the **Federal Register** (77 FR 33765) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on August 6, 2012. We received one comment. The commenter objected to the removal of the bald eagle from the endangered species list, but did not address the information collection requirements. We did not make any changes to our requirements based on this comment.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 19, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–26260 Filed 10–24–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–MB–2012–N246; FF09M21200–123–FXMB1231099BPP0L2]

Proposed Information Collection; Alaska Migratory Bird Subsistence Harvest Household Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to renew approval for the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on April 30, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by December 24, 2012.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (email). Please include ''1018–0124'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712) and the Fish and

Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for managing migratory bird populations that frequent the United States and for setting harvest regulations that allow for the conservation of those populations. These responsibilities include gathering accurate geographical and temporal data on various characteristics of migratory bird harvest. We use harvest data to review regulation proposals and to issue harvest regulations.

The Migratory Bird Treaty Act Protocol Amendment (1995) (Amendment) provides for the customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska. The Amendment states that its intent is not to cause significant increases in the take of species of migratory birds relative to their continental population sizes. A submittal letter from the Department of State to the White House (May 20, 1996) accompanied the Amendment and specified the need for harvest monitoring. The submittal letter stated that the Service, the Alaska Department of Fish and Game (ADFG), and Alaska Native organizations would collect harvest information cooperatively within the subsistence eligible areas. Harvest survey data help to ensure that customary and traditional subsistence uses of migratory birds and their eggs by indigenous inhabitants of Alaska do not significantly increase the take of species of migratory birds relative to their continental population sizes.

Between 1989 and 2004, we monitored subsistence harvest of migratory birds using annual household surveys in the Yukon-Kuskokwim Delta, which is the region of highest subsistence bird harvest in the State of Alaska. In 2004, we began monitoring subsistence harvest of migratory birds in subsistence eligible areas Statewide. The Statewide harvest assessment program helps to track trends and changes in levels of harvest. The harvest assessment program relies on collaboration among the Service, the ADFG, and a number of Alaska Native organizations.

We gather information on the annual subsistence harvest of about 50 bird species/species categories (ducks, geese, swans, cranes, upland game birds, seabirds, shorebirds, and grebes and loons) in the subsistence eligible areas of Alaska. The survey covers 10 regions of Alaska, which are further divided in 29 subregions. We survey the regions and villages in a rotation schedule to accommodate budget constraints and to minimize respondent burden. The survey covers spring, summer, and fall harvest in most regions.

In collaboration with Alaska Native organizations, we hire local resident surveyors to collect the harvest information. The surveyors list all households in the villages to be surveyed and provide survey information and harvest report forms to randomly selected households that have agreed to participate in the survey. To ensure anonymity of harvest information, we identify households by a numeric code. The surveyor visits households three times during the survey year. At the first household visit, the surveyor explains the survey purposes and invites household participation. The surveyor returns at the end of the season of most harvest and at the end of the two other seasons combined to help the household complete the harvest report form.

We have designed the survey methods to streamline procedures and reduce respondent burden. We plan to use two forms for household participation:

- FWS Form 3–2380 (Tracking Sheet and Household Consent). The surveyor visits each household selected to participate in the survey to provide information on the objectives and to obtain household consent to participate. The surveyor uses this form to record consent and track subsequent visits for completion of harvest reports.
- FWS Forms 3–2381–1, 3–2381–2, 3–2381–3, and 3–2381–4 (Harvest Report). The Harvest Report has drawings of bird species most commonly available for harvest in the different regions of Alaska with fields for writing down the numbers of birds and eggs taken. There are four versions of this form: Interior Alaska, North Slope, Southern Coastal Alaska, and Western Alaska. This form has a sheet for each season surveyed, and, on each sheet, there are fields for the household code, community name, harvest year, date of completion, and comments.

II. Data

OMB Control Number: 1018–0124.

Title: Alaska Migratory Bird Subsistence Harvest Household Survey.

Service Form Number(s): 3–2380, 3–2381–1, 3–2381–2, 3–2381–3, and 3–2381–4.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Households within subsistence eligible areas of Alaska (Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range).

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually for Tracking Sheet and Household Consent; three times annually for Harvest Report.

Activity	Number of respondents	Number of responses	Completion time per response (min.)	Total annual burden hours
3–2380—Tracking Sheet and Household Consent	2,760	2,760	5	230
3–2381–1 thru 3–2381–4—Harvest Report (three seasonal sheets)	2,300	6,900	5	575
Totals	5,060	9,660	.....	805

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: October 18, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–26262 Filed 10–24–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–ES–2012–N245; FXES111309WLLF0D2–123–FF09E30000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Wolf-Livestock Demonstration Project Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before November 26, 2012.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email). Please include ''1018–WLDPGP'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–XXXX. This is a new collection.

Title: Wolf-Livestock Demonstration Project Grant Program.

Service Form Number: None.

Type of Request: Request for a new OMB control number.

Description of Respondents: States and Indian tribes.

Number of Respondents: 22.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of responses	Completion time per response	Total annual burden hours
Applications	22	8 hours	176
Reports and Recordkeeping	20	14 hours	280
Totals	42		456

Abstract: Subtitle C of Title VI of the Omnibus Public Land Management Act of 2009 (Act) (Pub. L. 111–11) authorizes the Secretary of the Interior and the Secretary of Agriculture to develop a Wolf-Livestock Demonstration Project Grant Program (WLDPGP) to:

- Assist livestock producers in undertaking proactive, nonlethal activities to reduce the risk of livestock loss due to predation by wolves; and
- Compensate livestock producers for livestock losses due to such predation.

The Act directs that the program be established as a grant program to provide funding to States and tribes, that the Federal cost-share not exceed 50 percent, and that funds be expended equally between the two purposes. The Act included an authorization of appropriations up to $1 million each fiscal year for 5 years. The U.S. Fish and Wildlife Service Endangered Species Program will allocate the funding as competitively awarded grants to States and tribes with a prior history of wolf depredation. States with delisted wolf populations are eligible for funding, provided that they meet the eligibility criteria contained in Public Law 111–11.

The following additional criteria apply to all WLDPGP grants and must be satisfied for a project to receive WLDPGP funding:

- A proposal cannot include U.S. Fish and Wildlife Service full-time equivalent (FTE) costs.
- A proposal cannot seek funding for projects that serve to satisfy regulatory requirements of the Endangered Species Act (ESA) including complying with a biological opinion under section 7 or fulfilling commitments of a Habitat Conservation Plan (HCP) under section 10, or for projects that serve to satisfy other Federal regulatory requirements (e.g., mitigation for Federal permits).
- State administrative costs must be assumed by the State or included in the proposal in accordance with Federal requirements.

We will publish notices of funding availability on the Grants.gov Web site at *http://www.grants.gov* as well as in the Catalog of Federal Domestic Assistance at *http://cfda.gov.* To compete for grant funds, eligible States and tribes must submit an application that describes in substantial detail project locations, project resources, future benefits, and other characteristics that meet the Wolf-Livestock Demonstration Project Grant Program purposes as listed above. In accordance with the Act, States and tribes that receive a grant must:

- Maintain files of all claims received under programs funded by the grant, including supporting documentation; and
- Submit an annual report that includes a summary of claims and expenditures under the program during the year and a description of any action taken on the claims.

Materials that describe the program and assist applicants in formulating project proposals will be available on our Web site at *www.fws.gov/grants.* Persons who do not have access to the Internet may obtain instructional materials by mail.

Comments: On April 2, 2012, we published in the **Federal Register** (77 FR 19682) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on June 1, 2012. We received one comment in response to that notice. The commenter objected to this grant program, but did not address the information collection requirements. We did not make any changes to the requirements.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 18, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–26261 Filed 10–24–12; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–893 (Second Review)]

Honey From China; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Honey From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on honey from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 5, 2012.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 5, 2012, the Commission determined that the domestic interested party group response to its notice of institution (77 FR 39257, July 2, 2012) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 30, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before November 2, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by November 2, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 10, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–26265 Filed 10–24–12; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by the American Honey Producers Association and the Sioux Honey Association to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed Collection; Comment Request: Equal Employment Opportunity Plan Certification of Compliance and Short Form

ACTION: 60-Day Notice.

The U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to

obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 24, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact George Mazza, (202) 305–3146, Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Certification Form: Compliance with the Equal Employment Opportunity Plan (EEOP) Requirements and EEOP Short Form.

(3) *Agency form number, if any, and the applicable component of the U.S. Department of Justice sponsoring the collection:* Office for Civil Rights, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, and local, government instrumentalities. Other: For-profit Institutions. Federal regulation, 28 CFR part 42, subpt. E authorizes the Department of Justice to collect information regarding employment practices from State or Local units of government; agencies of State and Local governments; and Private entities, institutions or organizations to which the Office of Justice Programs, the Office on Community Oriented Policing Services, or the Office on Violence Against Women extend Federal financial assistance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 17,865 respondents. It will take all these respondents one quarter hour to complete and submit the cerification to the Office of Justice Programs. It is estimated that it will take 3,286 respondents receiving a grant of $500,000 or more four hours to complete the Equal Employment Opportunity Plan Short Form and submit it to the Office of Justice Programs. The estimated time to complete and submit the Certification is one quarter hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* For the EEOP Short Form and the Certification form it will take a total estimated 17,610 burden hours.

If additional information is required, contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Dated: October 22, 2012.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2012–26278 Filed 10–24–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Amended Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

This Notice amends and replaces the original notice published on October 19, 2012, 77 FR 64353–64354. Notice is hereby given that on October 10, 2012, the Department of Justice lodged a proposed consent decree with the United States District Court for the Central District of California in the lawsuit entitled *City of Colton* v. *American Promotional Events, Inc., et al.,* Civil Action No. CV 09–01864 PSG [Consolidated with Case Nos. CV 09–6630 PSG (SSx), CV 09–06632 PSG (SSx), CV 09–07501 PSG (SSx), CV 09–07508 PSG (SSx), CV 10–824 PSG (SSx) and CV 05–01479 PSG (SSx)].

In this action, the United States filed a complaint under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, (''CERCLA''), to recover past response costs incurred and other relief in connection with the B.F. Goodrich Superfund Site located approximately 60 miles east of Los Angeles in San Bernardino County, California. The consent decree requires Pyro Spectaculars, Inc., Astro Pyrotechnics, Inc., Trojan Fireworks Company, Peters Parties, Stonehurst Site, LLC, and related entities, to pay a combined $5,663,000 to the United States, San Bernardino County, the City of Colton, and the City of Rialto. Of this amount, the United States shall receive $4,330,000; Colton shall receive $500,000; Rialto shall receive $500,000; and San Bernardino County shall receive $333,000. In return, the United States provides covenants not to sue pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of the Resource Conservation and Recovery Act. A hearing will be held on the proposed settlement if requested in writing within the public comment period.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *City of Colton* v. *American Promotional Events, Inc., et al.,* D.J. Ref. No. 90–11–2–09952. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $15.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–26250 Filed 10–24–12; 8:45 am]

BILLING CODE 4410–15–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Amendment of Privacy Act System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Notice of amendment to system of records.

SUMMARY: The Merit Systems Protection Board (MSPB) is issuing public notice of its intent to amend a Government-wide system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a). MSPB/GOVT–1, ''Appeals and Case Records,'' is being amended to reflect that its location is in the Office of the Clerk of the Board.

Also, the purpose(s) under the authority for maintenance of the system was amended to reflect that these records may be used to document and adjudicate appeals and other matters arising under the Board's appellate and original jurisdiction; locate appeal documents and files, physical or electronic; provide statistical data for reports, staff productivity, and other management functions; and provide information to support other statutory functions of the Board, such as studies of the civil service under 5 U.S.C. 1204(a)(3), and review of regulations of the Office of Personnel Management (OPM) under 5 U.S.C. 1204(f), and reporting under 5 U.S.C. 1206. The MSPB is also adding a routine use: release to the public, including via the agency's Web site following issuance of a decision.

MSPB/GOVT–1

SYSTEM NAME:

Appeals and Case Records.

SYSTEM LOCATION:

Office of the Clerk of the Board, Merit Systems Protection Board (MSPB), Suite 500, 1615 M Street NW., Washington, DC 20419, and MSPB regional and field offices (see list of office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB or its predecessor agency, or with respect to whom the Office of Special Counsel (OSC) or another Federal agency has petitioned MSPB concerning any matter over which MSPB has jurisdiction.

b. Current and former employees of State and local governments who have been investigated by OSC and have had an appeal before MSPB concerning possible violation of the Hatch Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. These records contain information or documents such as briefs, pleadings, motions, exhibits, hearing transcripts, and MSPB decisions, which comprise the administrative records of appeals and other matters arising under the adjudicatory authority of the Board. These records may also contain individual appellants' names, social security numbers, home addresses, veterans' status, race, sex, national origin, and disability status data.

b. This system also includes the Board's case processing system (CPS). The CPS was designed to manage all documents created by the Board during the processing of a case, as well as documents that are received electronically from the parties. At the present time, the CPS includes: a document assembly system to create documents; a document management system to manage and store documents; a case management system to record activities in cases, track the location of case files, and produce statistical reports on cases; and an electronic filing and electronic publishing system to allow the parties to send and receive case documents electronically.

Note: This system includes records and documents compiled by Federal agencies in processing adverse actions and actions based on unacceptable performance, covered by OPM/GOVT–3, when such actions are appealed to MSPB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1204.

Purpose(s):

These records may be used to:

a. Document and adjudicate appeals and other matters arising under the Board's appellate and original jurisdiction;

b. Locate appeal documents and files, whether physical or electronic;

c. Provide statistical data for reports, staff productivity, and other management functions; and

d. Provide information to support other statutory functions of the Board, such as studies of the civil service under 5 U.S.C. 1204(a)(3), review of regulations of the Office of Personnel Management under 5 U.S.C. 1204(f), and reporting under 5 U.S.C. 1206.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from the record may be disclosed:

a. To officials of the Equal Employment Opportunity Commission (EEOC) or a Special Panel convened under authority of 5 U.S.C. 7702 when requested in connection with the performance of their authorized duties;

b. To officials of the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), EEOC, and OSC in connection with the performance of their authorized duties;

c. To the Government Accountability Office (GAO) in response to an official inquiry or investigation;

d. To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual;

e. To an appropriate Federal or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation;

f. To the Office of Management and Budget (OMB) at any stage in the legislative process in connection with private relief legislation as set forth in OMB Circular No. A–19;

g. To the Department of Justice (DOJ) when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the Department of Justice (DOJ) has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such

litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required;

h. In any proceeding before a court or adjudicative body before which the Board is authorized to appear when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required;

i. To any person making a status inquiry regarding a proceeding before MSPB;

j. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

k. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding;

l. To Federal and State agencies for the purpose of providing MSPB with information concerning MSPB appellants, which information will be used, absent personal identifiers, in MSPB research projects mandated by 5 U.S.C. 1204(a)(3);

m. To officials of the United States Court of Appeals for the Federal Circuit in connection with the performance of their judicial functions;

n. To officials of State or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before the Board; and

o. To the public, including to the agency's Web site following issuance of a decision.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and in computer storage media.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained and by MSPB docket numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Personal screening is employed to prevent unauthorized disclosure. Automated records in this system are maintained in a secure computer room in a building with restricted access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Paper records are maintained for up to one year after a final determination by MSPB or, in some instances, other administrative authorities or the courts. Thereafter, they are transferred to Regional Federal Records Centers or other appropriate facilities. Paper records are destroyed by the Federal Records Centers when the records are seven years old. Electronic records of the case management system may be maintained indefinitely, or until the Board no longer needs them.

SYSTEM MANAGER(S) AND ADDRESS:

The Clerk of the Board, Merit Systems Protection Board, Suite 500, 1615 M Street NW., Washington, DC 20419, and MSPB regional and field offices (see list of office addresses in the Appendix).

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR part 1205 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (see list of office addresses in the Appendix). Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR part 1205.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment should write to the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (see list of office addresses in the Appendix).

Requests for amendment of records must follow the MSPB Privacy Act regulations at 5 CFR part 1205.

These provisions for amendment of the record are not intended to permit the alteration of evidence presented in the course of adjudication before MSPB either before or after MSPB has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The individual to whom the record pertains;

b. The agency employing the above individual;

c. The MSPB, OPM, EEOC, OSC; and

d. Other individuals or organizations from whom MSPB has received testimony, affidavits or other documents.

Appendix

Regional and Field Offices of the Merit Systems Protection Board:

1. Atlanta Regional Office, Merit Systems Protection Board, 401 W. Peachtree Street, NE., Suite 1050, Atlanta, Georgia 30308.
2. Central Regional Office, Merit Systems Protection Board, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604.
3. Dallas Regional Office, Merit Systems Protection Board, 1100 Commerce Street, Room 620, Dallas, Texas 75242.
4. Denver Field Office, Merit Systems Protection Board, 165 South Union Blvd., Suite 318, Lakewood, Colorado 80228.
5. New York Field Office, Merit Systems Protection Board, 26 Federal Plaza, Room 3137–A, New York, New York 10278.
6. Northeastern Regional Office, Merit Systems Protection Board, 1601 Market Street, Suite 1700, Philadelphia, Pennsylvania 19103.
7. Western Regional Office, Merit Systems Protection Board, 201 Mission Street, Suite 2310, San Francisco, California 94105.
8. Washington, DC Regional Office, Merit Systems Protection Board, 1800 Diagonal Road, Suite 205, Alexandria, VA 22314.

DATES: Comments on this amendment must be received by the Clerk of the Board on or before November 26, 2012. (The Privacy Act, at 5 U.S.C. 552a(e)(11), requires that the public be provided a 30-day period in which to comment on an agency's intended use of information in a system of records.

Appendix I to Office of Management and Budget (OMB) Circular A–130 requires an additional 10-day period—for a total of 40 days—in which to make such comments). The amended system of records will be effective, as proposed, at the end of the comment period unless the Board determines, upon review of the comments received, that changes should be made. In that event, the Board will publish a revised notice in the **Federal Register**.

ADDRESSES: Submit comments to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, Suite 500, 1615 M St., NW., Washington, DC 20419. Comments may be submitted by regular mail to this address, by facsimile to (202) 653–7130, or by email to *mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: William Spencer, Clerk of the Board, at (202) 653–7200.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2012–26241 Filed 10–24–12; 8:45 am]

BILLING CODE 7400–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–3098; NRC–2011–0081]

Notice of Consideration of Approval of Application Regarding Proposed Indirect Transfer of Control of the Construction Authorization for the Mixed Oxide Fuel Fabrication Facility in Aiken, SC

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for approval of an indirect transfer of a construction authorization; opportunity to request a hearing or provide written comments.

DATES: Submit comments by November 26, 2012. A request for a hearing must be filed by November 14, 2012.

FOR FURTHER INFORMATION CONTACT: David H. Tiktinsky, Sr. Project Manager, Mixed Oxide and Deconversion Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone: 301–492–3229; fax number: 301–492–3359; email: *David.Tiktinsky@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for approval of an indirect transfer of control regarding construction authorization (CA) CAMOX–001. The application, dated August 30, 2012 (ADAMS Accession No. ML12243A498), was supplemented on October 1, 2012 (ADAMS Accession No. ML12276A108), This notice of the application (in section II below) discusses the procedures applicable to submitting requests for a hearing, which are set forth in Title 10 of the *Code of Federal Regulations* (10 CFR), part 2. In accordance with 10 CFR 2,1305(a), written comments on the application may be submitted as an alternative to requesting a hearing, as discussed in section IV below.

The CA was originally issued to Duke Cogema Stone and Webster on March 25, 2005. The CA was modified in 2006, to change the name of the CA holder to Shaw AREVA MOX Services (MOX Services) (ADAMS Accession No. ML063110298). Under the CA, MOX Services is now constructing a Mixed Oxide Fuel Fabrication Facility (MFFF) at the Department of Energy (DOE) Savannah River Site in Aiken, South Carolina. MOX Services has separately requested the NRC's authorization to operate the MFFF, which is currently under review.

In its August 30, 2012, application, MOX Services proposes to make changes in its ownership structure, whereby its ultimate parent corporation (''The Shaw Group, Inc.'') would become a wholly-owned subsidiary of Chicago Bridge and Iron Company NV Shaw (CB&I Shaw), based on a purchase transaction agreement dated July 30, 2012 (ADAMS Accession No. ML12269A340). MOX Services would continue to hold the CA, and no physical changes to the MFFF are being proposed. An NRC administrative review, documented in an email sent to MOX Services on September 11, 2012 (ADAMS Accession No. ML12269A087), found the application acceptable to begin a more detailed technical review.

If the August 30, 2012 application is granted, the CA would be amended for administrative purposes to reflect the indirect transfer. No physical changes would be made at the MFFF site as a result of the indirect transfer. An environmental assessment of the proposed action will not be prepared because such transfers are actions which are categorically excluded from the need to conduct any further environmental review, pursuant to 10 CFR 51.22(c)(21). If the application is granted, an evaluation will document the approval of the indirect transfer of control, and the evaluation would contain the required findings as discussed further below.

Pursuant to 10 CFR 70.36, no license granted under 10 CFR part 70, and no right thereunder to possess or utilize special nuclear material (SNM), shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through transfer of control of any license to any person unless the Commission, after securing full information, finds that the transfer is in accordance with the Atomic Energy Act (AEA), and gives its consent in writing. The CA does not authorize MOX Services to use SNM at the MFFF—it only authorizes MOX Services to construct the MFFF. The CA is thus analogous to a construction permit, and it has served as the mechanism under which the NRC has overseen the MFFF construction activities. Because the term ''license'', as defined in 10 CFR 2.4, includes a construction permit, and because the Administrative Procedure Act's definition of the term ''license'', in 5 U.S.C. 551(8), includes any agency approval or other form of permission, the NRC finds that the 10 CFR 70.36 requirements are applicable here.

The NRC will approve the August 30, 2012, application for the indirect transfer of the CA if it determines that the proposed restructuring and reorganization will not affect the qualifications of MOX Services to hold the CA, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and any NRC orders that may be applicable.

II. Opportunity To Request a Hearing and Leave To Intervene

Requirements for submitting hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Mail Stop: O1–F21, Rockville, MD 20852. You may also call the PDR at 1–800–397–4209 or 301–415–4737. The NRC regulations are also accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*

Pursuant to 10 CFR 2.309(a), any person whose interest may be affected by this proceeding, and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. Pursuant to 10

CFR 2.309(d), the petition must provide the name, address, and telephone number of the petitioner; and explain the reasons why intervention should be permitted with particular reference to: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest.

A request for hearing or petition for leave to intervene must also identify specific contentions that the petitioner seeks to have litigated in the proceeding. As required by 10 CFR 2.309(f), for each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. The petitioner also must demonstrate that the issue raised by each contention is within the scope of the proceeding, and is material to the findings that NRC must make to support the granting of a license in response to the application. In addition, the petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner, and on which the petitioner intends to rely at the hearing—together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact, including references to specific portions of the August 30 application that the petitioner disputes and the supporting reasons for each dispute; or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure, and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC's regulations, policies, and procedures. The Licensing Board will set the time and place for any pre-hearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene and requests for hearing, and motions for leave to file new or amended contentions that are filed after the deadline in 10 CFR 2.309(b) will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition must be submitted to the Commission by November 14, 2012. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding.

III. Electronic Submission (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities, must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's public Web site. Further information on the Web-based submission form, including the installation of the Web browser

plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC's Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

IV. Opportunity To Provide Written Comments

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the CA transfer application, as provided for in 10 CFR 2.1305. The NRC will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

For further details with respect to this CA transfer application, see the application dated August 30, 2012. Publicly-available records will be accessible electronically from the Agency Wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of October, 2012.

For the Nuclear Regulatory Commission.

David H. Tiktinsky,

Senior Project Manager, Mixed Oxide and Deconversion Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–26300 Filed 10–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0255; EA–12–148]

In the Matter of Licensee Identified in Attachment 1 and all Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)

I

The Licensee identified in Attachment 1[1] to this Order, holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or the Commission), authorizing them to engage in an activity subject to regulation by the Commission or Agreement States. In accordance with Section 149 of the AEA, fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check are required of any person who is to be permitted to have access to Safeguards Information (SGI).[2] The AEA permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (*see* 10 CFR 73.59, 71 FR 33989; June 13, 2006). Individuals relieved from fingerprinting and criminal history records checks

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the AEA fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person, from any person,[3] whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 149 of the AEA requires fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know the information and satisfies the trustworthy and reliability requirements described in Attachment 3 to Order EA–12–147.

In order to provide assurance that the Licensee identified in Attachment 1 to this Order is implementing appropriate measures to comply with the fingerprinting and criminal history records check requirements for access to SGI, the Licensee identified in Attachment 1 to this Order shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 73, *it is hereby ordered, effective immediately, that the licensee identified in attachment 1 to this order and all other persons who seek or obtain access to safeguards information, as described above, shall comply with the requirements set forth in this order.*

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted or who has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 (71 Fed. Reg. 33,989 (June 13, 2006)), or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active Federal security clearance, provided in the latter two cases that the appropriate documentation is made available to the Licensee's NRC-approved reviewing official described in paragraph III.C.2 of this Order.

2. No person may have access to any SGI if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. The Licensee identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order.

2. The Licensee shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who a) the Licensee nominates as the ''reviewing official'' for determining access to SGI by other individuals, and b) has an established need-to-know the information and has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 3 to Order EA–12–147. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the Licensee's reviewing official.[4] The Licensee may, at the same time or later, submit the fingerprints of other individuals to whom the Licensee seeks to grant access to SGI or designate an additional reviewing official(s). Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 of this Order.

3. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order, including Attachment 2 to this Order, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

Licensee responses to C.1., C.2., and C.3. above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

[4] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 5 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the

adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, this 16th day of October, 2012.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: Applicable Materials Licensees Redacted

Attachment 2: Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A. 1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the criminal history records check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements included in Attachment 3 to NRC Order EA–08–161, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The Licensee shall document the basis for its determination whether to grant access to SGI.

B. The Licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the Licensee's reviewing official.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to Safeguards Information, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 301–415–7232, or by email to *forms.resource@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, or money order, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301–415–7404.] Combined payment for multiple applications is acceptable. The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes. The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to

the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the Licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Guidance for Licensee's Evaluation of Access to Safeguards Information With the Inclusion of Criminal History Records (Fingerprint) Checks

When a Licensee submits fingerprints to the NRC pursuant to an NRC Order, it will receive a criminal history summary of information, provided in Federal records, since the individual's eighteenth birthday. Individuals retain the right to correct and complete information and to initiate challenge procedures described in Attachment 2 of Enclosure 1. The Licensee will receive the information from the criminal history records check of those individuals requiring access to Safeguards Information, and the reviewing official should evaluate that information using the guidance below. Furthermore, the requirements of all Orders which apply to the information and material to which access is being granted must be met.

The Licensee's reviewing official is required to evaluate all pertinent and available information in making a determination of access to SGI, including the criminal history information pertaining to the individual as required by the NRC Order. The criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have access to SGI. Each determination of access to SGI, which includes a review of criminal history information, must be documented to include the basis for the decision made.

(i) If negative information is discovered that was not provided by the individual, or which is different in any material respect from the information provided by the individual, this information should be considered, and decisions made based on these findings, must be documented.

(ii) Any record containing a pattern of behaviors which indicates that the behaviors could be expected to recur or continue, or recent behaviors which cast questions on whether an individual should have access to SGI, should be carefully evaluated prior to any authorization of access to SGI.

It is necessary for a Licensee to resubmit fingerprints only under two conditions:

(1) the FBI has determined that the fingerprints cannot be classified due to poor quality in the mechanics of taking the initial impressions; or

(2) the initial submission has been lost.

If the FBI advises that six sets of fingerprints are unclassifiable based on conditions other than poor quality, the licensee may submit a request to NRC for alternatives. When those search results are received from the FBI, no further search is necessary.

Process To Challenge NRC Denials or Revocations of Access to Safeguards Information

1. Policy.

This policy establishes a process for individuals whom NRC licensees nominate as reviewing officials to challenge and appeal NRC denials or revocations of access to Safeguards Information (SGI). Any individual nominated as a licensee reviewing official whom the NRC has determined may not have access to SGI shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to require the disclosure of SGI to any person, nor shall it be construed to create a liberty or property interest of any kind in the access of any individual to SGI.

2. Applicability.

This policy applies solely to those employees of licensees who are nominated as a reviewing official, and who are thus to be considered by the NRC for initial or continued access to SGI in that position.

3. SGI Access Determination Criteria.

Determinations for granting a nominated reviewing official access to SGI will be made by the NRC staff. Access to SGI shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued access to SGI shall be resolved in favor of the national security and access will be denied or revoked.

4. Procedures to Challenge the Contents of Records Obtained from the FBI.

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency.

(ii) Be afforded 10 days to initiate an action challenging the results of an FBI criminal history records check (described in (i), above) after the record is made available for the individual's review. If such a challenge is initiated, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures to Provide Additional Information.

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of access to SGI only upon receipt of the additional information submitted by the individual, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedures to Notify an Individual of the NRC Facilities Security Branch Chief Determination to Deny or Revoke Access to SGI.

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be provided a written explanation of the basis for this determination.

7. Procedures to Appeal an NRC Determination to Deny or Revoke Access to SGI.

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within 20 days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within 60 days after receipt of the appeal.

8. Procedures to Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal.

a. A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to SGI is final and not subject to further administrative appeals.

[FR Doc. 2012–26292 Filed 10–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0254; EA–12–147]

In the Matter of Licensee Identified in Attachment 1 and all Other Persons Who Obtain Safeguards Information Described Herein; Order Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately)

I

The Licensee, identified in Attachment 1 [1] to this Order, holds a license issued in accordance with the Atomic Energy Act of 1954, as amended, (AEA) by the U.S. Nuclear Regulatory Commission (NRC or the Commission), authorizing it to possess, use, and transfer items containing radioactive material quantities of concern. The NRC intends to issue a security Order to this Licensee in the near future. The Order will require compliance with specific Additional Security Measures to enhance the security for certain radioactive material quantities of concern. The Commission has determined that these documents will contain Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in Attachments 2 and 3 to this Order and in Order EA–12–148, so that the Licensee can receive these documents. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,[2] whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the AEA grants the Commission explicit authority to ''* * * issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *.'' This authority extends to information concerning the security measures for the physical protection of special nuclear material, source material, and byproduct material. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachments 2 and 3 to this Order. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachments 2 and 3 to this Order, applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States.

Access to Safeguards Information is limited to those persons who have established the need-to-know the information and are considered to be trustworthy and reliable, and meet the requirements of Order EA–12–148. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

The Licensee and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in Attachments 2 and 3 to this Order. The Licensee must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the Licensee's policies and procedures on Safeguards Information or develop, or maintain and implement their own acceptable policies and procedures. The Licensee remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachments 2 and 3 to this Order must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; removal of the Safeguards Information category; the need-to-know the information; and background checks to determine access to the information.

In order to provide assurance that the Licensee is implementing prudent measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, the Licensee shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to Attachments 2 and 3 to this Order, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, 10 CFR Part 32, 10 CFR Part 35, 10 CFR Part 70, and 10 CFR Part 73, *it is hereby ordered, effective immediately, that the licensee identified in attachment 1 to this order and all other persons who produce, receive, or acquire the additional security measures identified above (whether draft or final) or any related safeguards information shall comply with the requirements of attachments 2 and 3.*

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d). Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee or any other person adversely affected by this Order may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, ungrounded allegations or error.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must

apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 16th day of October, 2012.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: Applicable Materials Licensees Redacted

Attachment 2—Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M) General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are safeguards information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the safeguards information for reactors and fuel cycle facilities that require a higher level of protection, the term ''Safeguards Information—Modified Handling'' (SGI–M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI–M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI–M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees would fall under this requirement if they possess facility SGI–M. A licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection. (See more under Conditions for Access) State or local police units who have access to SGI–M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, i.e., need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again, it would be prudent for licensees who have arrangements with local police to advise them of the existence of these requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, ''whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.'' Furthermore, willful violation of any regulation or order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. *See sections 147b. and 223 of the Act.*

Conditions for Access

Access to SGI–M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI–M by licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the licensee, as well as a determination concerning the trustworthiness of individuals having access to the information. Employees of an organization affiliated with the licensee's company (e.g., a parent company), may be considered as

employees of the licensee for access purposes.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI–M that a proposed recipient's access to SGI–M is necessary in the performance of official, contractual, or licensee duties of employment. The recipient should be made aware that the information is SGI–M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI–M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

A. An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;

B. A member of a duly authorized committee of the Congress;

C. The Governor of a State or his designated representative;

D. A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

E. A member of a State or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

F. A person to whom disclosure is ordered pursuant to Section 2.744(e) of Part 2 of Part 10 of the *Code of Federal Regulations.*

G. State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

In a generic sense, the individuals described above in (A) through (G) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (A) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI–M, they are not authorized to receive SGI–M.

Information Considered for Safeguards Information Designation

Information deemed SGI–M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction.

SGI–M identifies safeguards information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI–M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI–M shall be under the control of an authorized individual. This requirement is satisfied if the SGI–M is attended by an authorized individual even though the information is in fact not constantly being used. SGI–M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible;

Administrative offices (e.g., central records or purchasing) if visitors are escorted and information is not clearly visible.

Protection While in Storage

While unattended, SGI–M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI–M shall be limited to a minimum number of personnel for operating purposes who have a ''need-to-know'' and are otherwise authorized access to SGI–M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI–M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words ''Safeguards Information—Modified Handling.'' The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI–M.

SGI–M may be transported by any commercial delivery company that provides nation-wide overnight service with computer tracking features, US first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements. Within a facility, SGI–M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI–M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific information may be designated as ''SGI–M,'' originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI–M shall be marked ''Safeguards Information—Modified Handling'' in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) the name, title, and organization of the individual authorized to make a SGI–M determination, and who has determined that the document contains SGI–M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI–M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting

''Safeguards Information Modified Handling.''

In additional to the ''Safeguards Information—Modified Handling'' markings at the top and bottom of each page, transmittal letters or memoranda which do not in themselves contain SGI–M shall be marked to indicate that attachments or enclosures contain SGI–M but that the transmittal does not (e.g., ''When separated from SGI–M enclosure(s), this document is decontrolled'').

In addition to the information required on the face of the document, each item of correspondence that contains SGI–M shall, by marking or other means, clearly indicate which portions (e.g., paragraphs, pages, or appendices) contain SGI–M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI–M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Removal From SGI–M Category

Documents containing SGI–M shall be removed from the SGI–M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI–M. Licensees have the authority to make determinations that specific documents *which they created* no longer contain SGI–M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI–M in some other form or be combined with other unprotected information to disclose SGI–M.

The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document shall indicate the name and organization of the individual removing the document from the SGI–M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI–M

SGI–M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining SGI–M information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI–M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI–M may be processed or produced on an ADP system provided that the system is assigned to the licensee's or contractor's facility and requires the use of an entry code/password for access to stored information. Licensees are encouraged to process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI–M. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information offsite. (Note: if SGI–M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI–M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI–M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI–M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at *http://csrc.nist.gov/cryptval/1401/1401val.htm*. SGI–M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI–M files shall be properly labeled as ''Safeguards Information—Modified Handling'' and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI–M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI–M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI–M shall be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI–M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

Attachment 3—Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information

In order to ensure the safe handling, use, and control of information designated as Safeguards Information, each licensee shall control and limit access to the information to only those individuals who have established the need-to-know the information, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that individuals

granted access to Safeguards Information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the information.

The Licensee shall comply with the requirements of this attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual).

(b.) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history. The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends. In order for an individual to be granted access to Safeguards Information, the individual must be determined to be trustworthy and reliable, as describe in requirement 1 above, and meet the requirements of NRC Order EA–12–148.

DG–SGI–1, Designation Guide for Safeguards Information Redacted

[FR Doc. 2012–26288 Filed 10–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0257; EA–12–062]

Certain Licensees Requesting Unescorted Access to Radioactive Material; Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material (Effective Immediately)

I

The Licensee identified in Attachment 1 [1] to this Order holds a license issued by an Agreement State, in accordance with the Atomic Energy Act (AEA) of 1954, as amended. The license authorizes it to perform services on devices containing certain radioactive material for customers licensed by the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State to possess and use certain quantities of the radioactive materials listed in Attachment 2 to this Order. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement State regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued immediately effective security Orders to NRC and Agreement State Licensees under the Commission's authority to protect the common defense and security of the nation. The Orders required certain manufacturing and distribution (M&D) Licensees to implement Additional Security Measures (ASMs) for the radioactive materials listed in Attachment 2 to this Order (the radionuclides of concern), to supplement the existing regulatory requirements. The ASMs included requirements for determining the trustworthiness and reliability of individuals that require unescorted access to the radionuclides of concern. Section 652 of the Energy Policy Act of 2005, which became law on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for ''any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks.'' Section 149 of the AEA also requires that ''all fingerprints obtained by a Licensee or applicant* * *shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.'' As a result, the trustworthiness and reliability requirements of the ASMs were updated and the M&D Licensees were issued additional Orders imposing the new fingerprinting requirements.

In late 2005, the NRC and the Agreement States began issuing Increased Controls (IC) Orders or other legally binding requirements to Licensees who are authorized to possess the radionuclides of concern. Paragraph IC 1.c of the IC requirements stated that ''service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a Manufacturing and Distribution Licensee.'' Starting in December 2007, the NRC and the Agreement States began issuing additional Orders or other legally binding requirements to the IC Licensees, imposing the new fingerprinting requirements. In the December 2007 Fingerprinting Order, Paragraph IC 1.c of the IC requirements was superseded by the requirement that ''Service provider Licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation.'' However, NRC did not require background investigations for non-M&D service provider Licensees. Consequently, only service representatives of certain M&D Licensees may be granted unescorted access to the radionuclides of concern at an IC Licensee facility, even though non-M&D service provider Licensees provide similar services and have the same degree of knowledge of the devices they service as M&D Licensees. To maintain appropriate access control to the radionuclides of concern, and to allow M&D Licensees and non-M&D service provider Licensees to have the same level of access at customers' facilities, NRC is imposing trustworthiness and reliability requirements for unescorted access to radionuclides of concern, as set forth in this Order. These requirements apply to non-M&D service provider Licensees that request and have a need for unescorted access by their representatives to the radionuclides of concern at IC Licensee facilities. These trustworthiness and reliability requirements are equivalent to the requirements for M&D Licensees who perform services requiring unescorted access to the radionuclides of concern.

In order to provide assurance that non-M&D service provider Licensees are implementing prudent measures to achieve a consistent level of protection for service providers requiring unescorted access to the radionuclides of concern at IC Licensee facilities, the Licensee identified in Attachment 1 to this Order shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, because of potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted

[1] Attachment 1 contains sensitive information and will not be released to the public.

access to the radionuclides of concern, I find that the public health, safety, and interest require this Order to be effective immediately.

III

Accordingly, pursuant to Sections 81, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 20, 30 and 33, *it is hereby ordered,* effective immediately, that the licensee identified in attachment 1 to this order comply with the requirements set forth in this order.

A.1. The Licensee shall establish and maintain a fingerprinting program that meets the requirements of Attachment 3 to this Order for individuals that require unescorted access to the radionuclides of concern. The Licensee shall complete implementation of the requirements of Attachment 3 to this Order within one hundred eighty (180) days of the date of this Order, or before providing written verification to another Licensee subject to the IC requirements, or attesting to or certifying the trustworthiness and reliability of a service provider for unescorted access to the radionuclides of concern at a customer's facility.

A.2. Within ninety (90) days of the date of this Order, the Licensee shall designate a ''Reviewing Official'' for determining unescorted access to the radioactive materials as listed in Attachment 2 to this Order by other individuals. The designated Reviewing Official shall be determined to be trustworthy and reliable by the Licensee in accordance with the requirements described in Attachment 3 to this Order and must be authorized to have unescorted access to the radioactive materials listed in Attachment 2 to this Order as part of his or her job duties.

A.3. Fingerprints for unescorted access need not be taken if a designated Reviewing Official is relieved from the fingerprinting requirement by 10 CFR 73.61, or has been favorably adjudicated by a U.S. Government program involving fingerprinting and a FBI identification and criminal history records check [2] within the last five (5) years, or for any person who has an active Federal security clearance (provided in the latter two cases that they make available the appropriate documentation [3]). The Licensee may provide, for NRC review, written confirmation from the agency/employer which granted the Federal security clearance or reviewed the FBI identification and criminal history records results based upon a fingerprint identification check. The NRC will determine whether, based on the written confirmation, the designated Reviewing Official may have unescorted access to the radioactive materials listed in Attachment 2 to this Order, and therefore, be permitted to serve as the Licensee's Reviewing Official.[4]

A.4. A designated Reviewing Official may not review the results from the FBI identification and criminal history records checks or make unescorted access determinations until the NRC has approved the individual as the Licensee's Reviewing Official.

A.5. The NRC will determine whether this individual (or any subsequent Reviewing Official) may have unescorted access to the radionuclides of concern, and therefore, will be permitted to serve as the Licensee's Reviewing Official. The NRC-approved Reviewing Official shall be the recipient of the results of the FBI identification and criminal history records check of the other Licensee employees requiring unescorted access to the radioactive materials listed in Attachment 2 to this Order, and shall control such information as specified in the ''Protection of Information'' section of Attachment 3 to this Order.

A.6. The NRC-approved Reviewing Official shall determine whether an individual may have unescorted access to radioactive materials that equal or exceed the quantities in Attachment 2 to this Order, in accordance with the requirements described in Attachment 3 to this Order.

B. Prior to requesting fingerprints from a Licensee employee, a copy of this Order shall be provided to that person.

C.1. The Licensee shall, in writing, within twenty-five (25) days of the date of this Order, notify the Commission (1) if it is unable to comply with any of the requirements described in this Order, including Attachment 3 to this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

C.2. The Licensee shall complete implementation of the requirements of Attachment 3 to this Order within one hundred eighty (180) days of the date of this Order.

C.3. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 3 to this Order. The report shall be made within twenty-five (25) days after full compliance has been achieved.

C.4. If during the implementation period of this Order, the Licensee is unable, due to circumstances beyond its control, to meet the requirements of this Order by [December 3, 2012], the Licensee shall request, in writing, that the Commission grant an extension of time to implement the requirements. The request shall provide the Licensee's justification for seeking additional time to comply with the requirements of this Order.

C.5. Licensees shall notify the NRC's Headquarters Operations Office at 301–816–5100 within 24 hours if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

Licensee responses to C.1, C.2., C.3., and C.4. above shall be submitted in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

[2] Examples of such programs include (1) National Agency Check, (2) Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, (3) Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, (4) Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, and (5) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade (FAST) Program. The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[3] This documentation must allow the NRC or NRC-approved Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and a FBI identification and criminal history records check.

[4] The NRC's determination of this individual's unescorted access to the radionuclides of concern in accordance with the process described in Enclosure 4 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty-five (25) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty-five (25) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded

pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be (final twenty-five (25) days) from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 16th day of October, 2012.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachments:

1. Applicable Materials Licensee
2. Table 1: Radionuclides of Concern
3. Requirements for Service Provider Licensees Providing Written VerificationAttesting to or Certifying the Trustworthiness and Reliability of Service Providers forUnescorted Access to Certain Radioactive Material at Customer Facilities, including Requirements for Fingerprinting and Criminal History Checks

Attachment 1: Applicable Materials Licensee Redacted

Attachment 2: Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material

TABLE 1—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226 [3]	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above [4]	See Footnote Below [5].	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

[4] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[5] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i* of radionuclide, *n,* $A_{(i,n)}$, to the quantity of concern for radionuclide *n,* $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc.* * * >1.

Guidance for Aggregation of Sources

NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS–G–1.9, ''Categorization of Radioactive Sources,'' (2005) (see *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf*) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1. Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, ''When are sources considered collocated for purposes of aggregation''? For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12 ÷ 0.2) + (0.18 ÷ 0.3) + (0.3 ÷ 0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage —''operations'' (active source usage) and ''shutdown'' (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures:

- Include any single source equal to or greater than the quantity of concern in Table 1
- Include multiple collocated sources *of the same radionuclide* when the combined quantity equals or exceeds the quantity of concern
- For combinations of radionuclides, include multiple collocated sources of *different radionuclides* when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc. * * * ≥ 1

Attachment 3: Requirements for Service Provider Licensees Providing Written Verification Attesting to or Certifying the Trustworthiness and Reliability of Service Providers for Unescorted Access to Certain Radioactive Material at Customer Facilities, Including Requirements for Fingerprinting and Criminal History Records Checks

A. General Requirements

Licensees subject to the provisions of this Order shall comply with the requirements of this attachment. The term ''certain radioactive material'' means the radionuclides in quantities equal to or greater than the quantities listed in Attachment 2 to this Order.

1. The Licensee shall provide the customer's facility written verification attesting to or certifying the trustworthiness and reliability of an individual as a service provider only for employees the Licensee has approved in writing (see requirement A.3 below). The Licensee shall request unescorted access to certain radioactive material at customer licensee facilities only for approved service providers that require the unescorted access in order to perform a job duty.

2. The trustworthiness, reliability, and true identity of a service provider shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check as required in Section B, verification of employment history, education, and personal references. If a service provider's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

3. The Licensee shall document the basis for concluding that there is reasonable assurance that a service provider requiring unescorted access to certain radioactive material at a customer facility is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of the radioactive material. The Licensee shall maintain a list of service providers approved for unescorted access to certain radioactive material.

4. The Licensee shall retain documentation regarding the trustworthiness and reliability of approved service providers for (3) years after the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

5. Each time the Licensee revises the list of approved service providers (see requirement 3 above), the Licensee shall retain the previous list for three (3) years after the revision.

6. The Licensee shall provide to a customer written certification for each service provider for whom unescorted access to certain radioactive material at the customer's facility is required and requested. The written certification shall be dated and signed by the Reviewing Official. A new written certification is not required if an individual service provider returns to the customer facility within three (3) years, provided the customer has retained the prior certification.

B. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

1. The Licensee shall fingerprint each service provider to be approved for unescorted access to certain radioactive materials following the procedures outlined in Enclosure 3 of the transmittal letter. The Licensee shall review and use the information received from the FBI identification and criminal history records check and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program [5]) within the last five (5) years, or any person who has an active Federal Security Clearance (provided in the latter two cases that they make available the appropriate documentation [6]). Written confirmation from the Agency/employer which granted the Federal Security Clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the

[5] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[6] This documentation must allow the Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of Section A of this attachment, in making a determination whether to approve and certify the individual for unescorted access to certain radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to certain radioactive materials.

7. The Licensee shall document the basis for its determination whether to approve the individual for unescorted access to certain radioactive materials.

C. Prohibitions

A Licensee shall not base a final determination to not provide certification for unescorted access to certain radioactive material for an individual solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

D. Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

E. Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining whether to verify the individual for unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprints and criminal history records from the FBI, or a copy if the individual's file has been transferred:

a. for three (3) years after the individual no longer requires unescorted access, or

b. for three (3) years after unescorted access to certain radioactive material was denied.

After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Implementing Guidance for Service Provider Licensees That are not Manufacturers or Distributors

A. Initial Actions

1. The U.S. Nuclear Regulatory Commission (NRC) issued a Regulatory Issue Summary (RIS 2007–15) informing all NRC licensees that are non-manufacturer and distributor (non-M&D) service providers, and all Agreement State Radiation Control Program Directors and State Liaison Officers about the non-M&D Service Provider Order.

2. Each non-M&D service provider licensee should review the RIS and determine if a need exists for its service representatives to have unescorted access to radioactive material in quantities of concern at client facilities.

3. If the licensee determines that unescorted access is required the licensee must request, in writing, that NRC issue the Order.

B. NRC Issues Order in Response to the Licensee's Request

1. After receiving the Order, the licensee selects a candidate Reviewing Official. As part of the selection, the licensee must perform a trustworthiness and reliability review per the requirements in Attachment 3 of the Order. **Note:** the Reviewing Official MUST BE an individual that requires unescorted access to radioactive material in quantities of concern as part of his/her job duties.

2. The licensee designates the Reviewing Official to NRC by submitting the individual's fingerprints and processing fee.

3. NRC processes the fingerprints through the Federal Bureau of Investigation, and reviews the results of the criminal history investigation. If the investigation does not find disqualifying information, NRC will authorize the designated individual to serve as the licensees Reviewing Official.

4. The Reviewing Official performs the trustworthiness and reliability reviews for other licensee service representatives that require unescorted access to radioactive material in quantities of concern. The Reviewing Official must submit the fingerprints of the service representatives to NRC and receive the criminal history investigation results. The reviews must be performed per the requirements in Attachment 3 of the Order and Enclosure 4 of the transmittal letter. Based on the information and investigation results, the Reviewing Official determines if the service representative is trustworthy and reliable and that the service representative may be granted unescorted access to radioactive materials in quantities of concern.

5. The Reviewing Official prepares, on company letterhead, an attestation or certification that indicates the service representative (by name) has been determined to be trustworthy and reliable in accordance with the NRC security Order for non-M&D Service Providers. The Reviewing Official signs and dates this document.

6. Client licensees may accept the signed and dated document in lieu of conducting their own trustworthiness and reliability review of the named service representative.

C. NRC Actions During Future Inspections

1. During future inspections, both the service provider licensee and the client licensee will be audited to assure compliance with the Order requirements and the implementation process.

Questions and Answers With Regards to Fingerprinting and FBI Criminal History Records Checks

1. Information on how I would be required to respond to this notice when I receive it does not appear to be included with the implementing guidance? Will my response include sensitive information?

The information on how to respond to the NRC Order requiring implementation of the fingerprinting requirements is contained in the Order itself. The NRC Orders are not considered sensitive information. Examples of previous Orders can be found by searching ADAMS or NRC's Web site.

Licensee responses to the Order are considered sensitive information and should be marked appropriately at the top of the page with ''Security Related Information—Withhold Under 10 CFR 2.390.''

2. Does a National Agency Check (NAC) satisfy the provisions of the Order?

If the NAC has been conducted within the past five (5) calendar years and the employee can provide documentation of favorable results to the NRC or licensee's Reviewing Official, as appropriate, then this would satisfy the provisions of the Order.

3. Can the Human Resources department be designated as the licensee's Reviewing Official to review criminal history records? Do they have to be fingerprinted to be able to review and approve others?

The requirements for fingerprinting and criminal history records should be incorporated into the licensee's current program of reviewing and approving background information of its employees. The duties of a Reviewing Official can be delegated to the Human Resources department or any other appropriate department as long as the individual(s) involved in the determining of an employee's trustworthiness and reliability have been determined themselves to be trustworthy and reliable by the licensee, are permitted to have unescorted access to radioactive material in quantities of concern as part of their job duties, and have been approved by the NRC to be the licensee's Reviewing Official.

4. What is a Reviewing Official? Who can be a Reviewing Official?

A Reviewing Official is an NRC-approved individual that requires unescorted access to radioactive material in quantities of concern as part of his/her job duties, and who shall make the trustworthiness and reliability determinations of other Licensee employees to determine whether the individual may have, or continue to have, unescorted access.

5. I was only provided a few fingerprint cards, where can I get more?

You can request more fingerprint cards by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling (301) 492–3531, or by email to *forms@nrc.gov.*

6. What information do I need to include on the card?

Incomplete fingerprint cards will not be processed and will be returned to the licensee. Licensees need to include the following information on each card:

a. Last name, first name, middle name
b. Signature of person being fingerprinted
c. Residence of person being fingerprinted
d. Date
e. Signature of official taking the fingerprints
f. Employer and address
g. Reason for being fingerprinted
h. Aliases
i. Citizenship
j. Social security number and any of the other corresponding numbers requested on the card if applicable
k. Date of birth
l. Place of birth
m. Sex
n. Race
o. Height
p. Weight
q. Eye color
r. Hair color

7. I was able to get more fingerprint cards from my local law enforcement agency, can I use those instead?

No, because of problems that have been experienced in the past with some of the cards.

8. Who do I send my fingerprints to?

A completed fingerprint card should be sent to: Director, Division of Facilities and Security, U.S. NRC, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, ATTN: Criminal History Program, Mail Stop TWB–05B32M.

9. Is there a fee associated with the NRC processing the fingerprints?

The current fee to process each fingerprint card is a $26.00 per card. Additional fees may be charged by the entity taking the fingerprints.

10. What method of payment does the NRC accept?

NRC's preferred method of payment is electronic payment through *http://www.pay.gov.* Please refer to the instructions (in Enclosure 3) included with the transmittal letter of the Order for details on how to pay electronically. NRC also accepts checks, cashier checks or money orders made out to the U.S. Nuclear Regulatory Commission along with the submission of fingerprint cards. Fingerprint cards along with checks, cashier checks or money orders should be sent to: Director, Division of Facilities and Security, U.S. NRC, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, Attn: Criminal History Program, Mail Stop TWB–05B32M.

11. When are licensees required to submit fingerprints to the NRC?

Licensees are required to fingerprint and review the criminal history results for all materials quantities of concern to the NRC within 90 days after the Order is issued.

12. Will guidance be provided on how to determine trustworthiness and reliability based on FBI identification and criminal history records checks?

Guidance is included with the Order documents; however, it will ultimately be the decision of the licensee's Reviewing Official to determine whether an individual should be granted unescorted access to the radioactive material, based on the results of the criminal records history check, and the other trustworthiness and reliability requirements of the Order.

13. My fingerprints have been returned several times as unclassifiable, can I get an extension to submit my fingerprints?

On a rare case that a licensee needs additional time to implement the fingerprinting requirements beyond the implementation time, the NRC will consider granting extensions only on a case by case basis. Licensees must take the appropriate actions to minimize any potential impacts in delays from receiving the criminal history results from the NRC. In a rare case that an extension is needed, the request must be date-stamped before the deadline to implement the requirements and must include the licensee's justification as to why additional time is needed beyond the implementation period and the appropriate compensatory actions that will be implemented until the fingerprints are processed.

14. What does unescorted access to the material mean?

Unescorted access to the material means that an individual can exert some physical control over the material or device while they are alone.

15. If I decide that based on a Federal criminal records history check one of my employees previously granted unescorted access should not have unescorted access to radioactive material what actions can I take?

The licensee is ultimately responsible to determine the best course of action.

16. Does the denial of unescorted access create legal liability for the licensee?

The NRC acknowledges that employer liability potentially exists through the process for determining trustworthiness and reliability, just as employer liability potentially exists throughout the hiring process. A finding that results in denying someone employment may be actionable on the part of the employee/employee candidate, and this is no different.

17. How far back do the criminal history record checks go? Can the NRC provide guidance on what types of information could be considered when granting unescorted access?

The criminal history records check provides information on all arrests since the individual's eighteenth birthday. Guidance on criminal offenses that could be considered is included in Enclosure 4 of the transmittal letter. However, the list of offenses is not inclusive. There may be additional offenses not listed in the guidance that the licensee wants to consider as part of unescorted access approval process. It is the licensee's ultimate business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

18. Is there a process to request an exemption from fingerprinting? Do employees that have been fingerprinted in the past need to be fingerprinted again?

Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61,

or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program [7]) within the last five (5) years, or any person who has an active Federal Security Clearance (provided in the latter two cases that they make available the appropriate documentation).

Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

19. Is fingerprinting meant to replace the trustworthiness and reliability determination?

No, fingerprinting is only one component of the trustworthiness and reliability determination. A trustworthiness and reliability determination should be based, at a minimum, by verifying employment history, education, personal references and a federal criminal history check. All four of these components need to be considered when making a trustworthiness and reliability determination.

20. How will compliance with the fingerprinting component be verified?

Compliance will be verified at the time the licensee's trustworthiness and reliability program is inspected by the NRC.

21. Is there financial aid or funding available to assist in the implementation of the fingerprinting requirements? Will the licensees be compensated in any way?

The NRC will not provide financial aid and there is no funding available to assist in the implementation of the fingerprinting requirements.

22. Will there be a reevaluation period?

At the moment there is no reevaluation period. The reevaluation of criminal history records will be addressed during the NRC's rulemaking process.

23. The Order requires that the licensee shall provide under oath or affirmation a certification that the Reviewing Official is deemed trustworthy and reliable. What does it mean to submit documents to the NRC ''under oath or affirmation''?

The requirement to submit documents to the NRC under oath or affirmation may be satisfied by using a notary public to authenticate oaths or affirmations and to certify that the information provided is correct and true. An alternate method for complying with the oath or affirmation requirement is presented in the United States Code, Title 28, Section 1746 (28 U.S.C. 1746). This method allows use of the following unsworn declaration to satisfy the oath or affirmation requirement:

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct.

Executed on [date] [Signature]

When applying this declaration, it must be used verbatim. Licensing documents accompanied by this unsworn declaration satisfy the requirement that such documents be submitted under oath or affirmation.

24. Can additional employees (e.g., new hires or existing employees changing positions within the company who did NOT have unescorted access prior to the date of the Order) be granted unescorted access to radioactive materials quantities of concern prior to the establishment of a fingerprinting program and certification that the Reviewing Official is deemed trustworthy and reliable?

No. Prior to being granted unescorted access to material, all additional employees the licensee identifies after the date of the Order as requiring unescorted access, must be determined to be trustworthy and reliable based upon the requirements of the Order and the review of their FBI identification and criminal history records. The Order also requires that within 180 days of the date of the Order that licensees establish a fingerprinting program and within 90 days of the date of the Order provide under oath or affirmation a certification that the Reviewing Official is deemed trustworthy and reliable by the licensee.

Only after the Reviewing Official has been certified to be trustworthy and reliable by the licensee and approved by the NRC, can the Reviewing Official make trustworthiness and reliability determinations for any employee who requires unescorted access after the date of the Order. For administrative purposes, each submittal of fingerprints to the NRC should be accompanied by the name and address of the Reviewing Official to whom the criminal history records should be returned.

25. Who can perform the task of fingerprinting for my employees?

Licensees must have their fingerprints taken by an authorized official, such as a representative from a local law enforcement agency. However, an authorized official, for the purposes of taking fingerprints, could be available through private entities, contractors, or an established on-site fingerprinting program. If a licensee has fingerprints taken at a facility other than that of a recognized Federal, State, or local law enforcement agency, the licensee should ensure that the prints are taken legibly and match the identity of the individual named on the fingerprint card.

In these cases, the individual taking fingerprints should at a minimum:

(1) Be trained to take fingerprints *(Training to take fingerprints is offered through the FBI, or may be available from local law enforcement agencies and some professional associations.);*

(2) Verify the identity of the individual being fingerprinted by checking a government-issued picture identification *(e.g., a passport or driver's license)* and that the name on the card matches the government issued identification.

(3) Sign the block on the fingerprint card labeled ''SIGNATURE OF OFFICIAL TAKING THE FINGERPRINTS.''

The licensee must ensure that complete and accurate information is provided in accordance with 10 CFR 30.9. available at: *http://www.nrc.gov/reading-rm/doc-collections/cfr/part030/part030–0009.html*

26. How is the initial trustworthiness and reliability (T&R) determination and certification made (based on fingerprints and a criminal history record check) if the individual to be designated as the Reviewing Official is also the license custodian, initiator, or applicant, and has unescorted access?

In most cases, there will be no one within an organization or company, above the custodian or initiator of a license (''licensee''), previously determined trustworthy and reliable for purposes of evaluating background check and criminal history information and making the initial determination as to whether a designated Reviewing Official is trustworthy and reliable.

Within the licensing process, there are a series of screening criteria used by the reviewer to assess information regarding the applicant. The purpose of the screening criteria is to provide reasonable assurance that radioactive material will be used as intended. The fact that a regulatory authority, using established processes, has authorized the individual applicant to provide services to devices containing radioactive material quantities of concern provides the basis for allowing the applicant to appoint Reviewing Officials.

Where the licensee or applicant requires unescorted access and intends to designate himself or herself as the Reviewing Official, the licensee or applicant should submit fingerprints to the NRC for approval. Once approved by the NRC, the licensee or applicant can then make T&R determinations for other employees who require unescorted access subject to the fingerprinting requirements.

27. When completing the fingerprint cards, NRC Licensees should use their NRC docket number in the field ''YOUR NO. *OCA.''* Since Agreement State Licensees do not have NRC docket numbers, what should they use to complete the field?

Agreement State Licensees should use their two letter State abbreviation followed by a dash and the Licensee's license number (e.g., CA–123456).

28. When making a payment to the NRC through Pay.gov for processing of

[7] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

fingerprints, Pay.gov requires a TCN. What is a TCN and what information should go in this field?

TCN stands for ''Transaction Control Number'' and it identifies payment for the processing of fingerprints for any given individual. The TCN is a tool for Licensees to track their submissions and may include any number of identifying information that would be useful for that purpose. For instance, Licensees can include the names of one or more individuals for whom payment is being made, Licensee's name and/or date of submittal.

29. Can I submit my fingerprints electronically to the NRC?

Yes. Some Licensees may choose to make arrangement with the NRC to submit fingerprints electronically to the NRC. However, for many Licensees this option may be prohibitive, due to the cost associated with the purchase of electronic fingerprinting equipment. To establish an electronic fingerprinting program with the NRC, please contact NRC's Facility Security Branch at 301–492–3531. Please note that electronic submission of fingerprints to the NRC must come directly from the Licensee.

30. What happens to the fingerprint cards after the NRC receives it from the Licensee?

The NRC scans the fingerprint cards to transmit to the FBI electronically. The cards are retained and secured for approximately a month after which time they are destroyed in accordance with Federal guidelines.

31. How should large companies that are licensed in multiple jurisdictions respond to the fingerprinting requirements?

The fingerprinting requirements are imposed based on the license, not the company. If a company holds multiple licenses subject to the fingerprinting requirements, it must respond for each license. For example, if a company holds two NRC licenses, it must respond for both licenses. If convenient, the company may submit a combined response covering both licenses, but the response must address each of the licenses (i.e., ''Joe Smith, RSO for both of our licenses, will serve as the Reviewing Official for both licenses XX–XXXXX–01 and XX–XXXXX–02.'').

32. The implementation deadline has passed and I have not completed the trustworthiness and reliability adjudication process for certain individuals because I have not received classifiable fingerprint/FBI criminal history check results. Should I submit a request for relief from the implementation deadline?

A request for relief from the implementation deadline is not necessary if the initial fingerprint submissions for individuals requiring unescorted access to radioactive materials in quantities of concern were submitted to the (NRC) by the implementation deadline. For these individuals, the trustworthiness and reliability adjudication process should be completed within a maximum of 35 days from the date of receipt of classifiable fingerprints and criminal history reports.

33. What are the next steps in the process if the FBI rejects a Form FD–258 (fingerprint card) because the fingerprints are not classifiable? What options are available to licensees if an individual's fingerprints cannot be classified based on conditions other than poor quality after multiple attempts?

The overwhelming majority of fingerprint cards are returned as classifiable (i.e., can be read by the FBI and used to identify the individual). If the initial fingerprint submission is returned by the FBI because the fingerprint impressions cannot be classified, the fingerprints may be retaken and resubmitted (i.e., new Form–258 or submission) for a second attempt. The licensee will not be charged for the resubmission if the licensee provides a copy of the FBI response indicating the fingerprints could not be classified.

If the FBI is unable to classify the second submission of fingerprints, the licensee can submit additional fingerprint impressions for the individual, as follows:

1. The third fingerprint card submission will require payment of an additional $26 processing fee.

2. If the third submission is also returned as unclassifiable, the licensee may submit a fourth set of fingerprints. An additional fee is not required because the fee for the third submission includes one resubmission. As with the second submission, the FBI response should be included, or the submission may be treated as a new request and an additional fee may be charged.

Please note that a licensee can opt to take and submit the third and fourth sets of fingerprints together to avoid a potential delay in the response. If the third set is returned as unclassifiable, NRC will automatically resubmit the fourth set.

3. If the fourth submission is returned as unclassifiable, the licensee should submit six (6) additional fingerprint cards for the individual. All six cards will be forwarded to the FBI, who will take what they believe to be the best quality prints from each card to make a complete set of fingerprints. An additional $26 processing fee is required and covers the processing of all six fingerprint cards, but does not include an additional resubmission.

4. If the FBI is unable to obtain classifiable fingerprints from the six cards, based on conditions other than poor quality (e.g., medical conditions or physical anomalies that prevent the taking of readable prints), then the NRC will automatically request a check based on a name search for the individual, and will forward the results to the licensee.

5. No further submissions will be required, and the licensee can consider the results of the name search-FBI identification and criminal history records check as a component in determining trustworthiness and reliability in accordance with the Order.

The NRC will consider licensee requests for deviation from the above process for good cause (e.g., a demonstrated history of difficulty providing classifiable fingerprints during other fingerprinting programs or a documented medical condition or physical anomaly that can prevent the taking of readable prints). Licensees may submit a request for consideration of alternatives, and provide the basis for the need for an alternative process to NRC's Facilities Security Branch in the Division of Facilities and Security (requests may be made by phone at 301–492–3531, mailed to the mailing address in Enclosure 3 to the Order, by FAX to the attention of Doreen Turner at 301–492–3448 with a cover sheet attached, or emailed to *Doreen.turner@nrc.gov*). Please note that requests for an alternative to the above process will not affect a licensee's responsibility to fingerprint individuals for unescorted access or to comply with the trustworthiness and reliability requirements of the Order.

Licensees should be aware that Steps 3 and 4 do not occur often, and should take notice that Step 4 may *only* occur in instances where the FBI has determined that the fingerprints cannot be classified based on conditions other than poor quality. Failure to provide quality fingerprint impressions may result in the individual not able to be considered for unescorted access.

Fingerprints may be unclassifiable for a number of reasons, including:

1. Incomplete impressions (fingers not completely rolled from one side of the nail to the other).

2. Left and right hands reversed on the fingerprint card.

3. The same hand or finger printed twice on the card.

4. Fingerprints are not clear and distinct (smudged, uneven, too dark or light, etc.).

5. Fingers on the card are missing or partially missing without an explanation.

To avoid rejection of fingerprints by the FBI as ''unclassifiable,'' the person taking the prints should ensure they are of good quality and do not include any of these deficiencies, and follow the instructions on the back of the fingerprint card. Also, fingerprint cards with incomplete or missing information will be returned to the licensee to provide complete information, resulting in a delay in processing.

The FBI has provided guidance on the taking of fingerprints for submission to the FBI at *http://www.fbi.gov/hq/cjisd/takingfps.html*. This guidance also discusses special situations, such as fingerprinting an individual with abnormalities of the fingers, thumbs or hands, and the appropriate way to identify such situations on the fingerprint card. A checklist to verify that the fingerprint impressions meet the FBI's requirements is also included.

34. Will guidance be provided on what determines trustworthiness and reliability?

No, however, IC1(b) provides the minimum basis upon which a determination may be made. Alternative sources may be used depending on the information available to the licensee. It is the licensee's responsibility to make a trustworthiness and reliability determination for an employee granted unescorted access. This is a licensee's business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

The trustworthy and reliability determination is designed to identify past actions to help verify one's character and reputation which provide reasonable assurance of an individual's future reliability.

The following are some indicators that licensees may want to consider for what may be a trustworthiness and reliability concern:

1. Impaired performance attributable to psychological or other disorders.
2. Conduct that warrants referral for criminal investigation or results in arrest or conviction.
3. Indication of deceitful or delinquent behavior.
4. Attempted or threatened destruction of property or life.
5. Suicidal tendencies or attempted suicide.
6. Illegal drug use or the abuse of legal drugs.
7. Alcohol abuse disorders.
8. Recurring financial irresponsibility.
9. Irresponsibility performing assigned duties.
10. Inability to deal with stress, or having the appearance of being under unusual stress.
11. Failure to comply with work directives.
12. Hostility or aggression toward fellow workers or authority.
13. Uncontrolled anger, violation of safety or security procedures, or repeated absenteeism.
14. Significant behavioral changes, moodiness or depression.

These indicators are not meant to be all inclusive or intended to be disqualifying factors. Licensees can also consider extenuating or mitigating factors in their determinations.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees should:

1. Submit one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) for each individual seeking unescorted access to certain radioactive material to the Director, Division of Facilities and Security.
2. *Include a cover letter with the name and address of the NRC-approved Reviewing Official to whom the criminal history records should be returned.*
3. Mail applications to the following address (overnight mail is preferred): Director, Division of Facilities and Security, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852–2738, ATTN: CRIMINAL HISTORY PROGRAM, MAIL STOP TWB–05B32M.
4. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program [8]) within the last five (5) years, or any person who has an active Federal security clearance (provided in the latter two cases that they make available the appropriate documentation [9]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

Additional copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 492–3531, or by email to *forms@nrc.gov*. The Licensee should establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

Licensees must have their fingerprints taken by an official authorized to take fingerprints, such as a representative from a local law enforcement agency or a private entity qualified to take fingerprints, because the official must certify the identity of the person being fingerprinted.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections.

The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified (e.g., due to poor quality, incomplete impressions, or other errors in the taking of the fingerprints). The licensee will not be charged for the one re-submission if the licensee provides the FBI Transaction Control Number (TCN) or a copy of the FBI response indicating the fingerprints could not be classified. If additional re-submissions are necessary, they will be treated as initial submittals and will require an additional payment of the processing fee.

Fees for processing fingerprint checks are due upon application (**Note:** local law enforcement agencies or contractors taking the fingerprints may charge an additional fee for this service). Licensees should submit payments electronically via *http://www.pay.gov*. Payments through Pay.gov can be made directly from the Licensee's credit/debit card. Licensees will need to establish a password and user ID before they can access *Pay.gov*. To establish an account, Licensees should send a request for an account to *paygo@nrc.gov*. The request must include the Licensee's name, address, point of contact, email address, and contact phone number. The NRC will forward each request to Pay.gov and Pay.gov will contact the Licensee with all of the necessary account information. Licensees without a credit or debit card that can be linked to Pay.gov can pay the fees by check, cashier check or money order made out to the NRC and submitted with the fingerprint cards.

The payment of the fees for processing fingerprints must be made before or with the submission of applications to the NRC. Combined payment for multiple applications is acceptable. Licensees should include the Pay.gov payment receipt(s), or a check, cashier check, or money order for the fee(s) along with the application(s). For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 492–3531. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint applications. The Commission will directly notify Licensees subject to this requirement of any fee changes.

It is necessary for a Licensee to resubmit fingerprints only under two conditions:

1. The FBI has determined that the fingerprints cannot be classified due to poor quality in the mechanics of taking the initial impressions.
2. The initial submission has been lost.

If the FBI advises the fingerprints are unclassifiable based on conditions other than poor quality, the Licensee may submit a request to NRC for alternatives. The Commission will receive and forward to the submitting Licensee all data from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record(s). When the results are received from the FBI, no further fingerprint-related search is necessary.

Guidance for Evaluating FBI Identification and Criminal History Records Checks for Allowing Unescorted Access to Certain Radioactive Material

Each Licensee is responsible for determining whether to grant an individual unescorted access to certain radioactive materials. The Licensee shall allow only trustworthy and reliable individuals, approved in writing by the Licensee, to have unescorted access to radioactive material quantities of concern (listed in Attachment 2 of the Order) and devices containing that radioactive material. The trustworthiness and reliability determination, to grant an individual unescorted access to certain radioactive materials, is made by the Licensee's Reviewing Official, based on information gathered from all four elements of the background check and evaluated by the Reviewing Official. The minimum four background check elements are: (1)

[8] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[9] This documentation must allow the Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check, (2) verifying employment history, (3) verifying education, and 4) personal references. The purpose of this guidance is to address the fingerprinting component of the determination.

Unescorted access determinations require an evaluation of a person's trustworthiness and reliability. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working with risk-significant radioactive materials. The purpose of the trustworthiness and reliability determination requirement, for unescorted access, is to provide reasonable assurance that those individuals are trustworthy and reliable, and do not constitute an unreasonable risk to the public health and safety, including the potential to commit or aid theft and/or radiological sabotage. This is a Licensee's business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination. Some indicators that Licensees should consider for what may be a trustworthiness and reliability concern can be found in Increased Control guidance in Q and A #34 (Enclosure 2 to the transmittal letter of this Order).

In evaluating the relevance of an individual's conduct, the Reviewing Official should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) The circumstances surrounding the conduct, to include knowledgeable participation;

(3) The frequency and recency of the conduct;

(4) the individual's age and maturity at the time of the conduct;

(5) The extent to which participation is voluntary;

(6) the presence or absence of rehabilitation and other permanent behavioral changes;

(7) The motivation for the conduct;

(8) The potential for pressure, coercion, exploitation, or duress; and

(9) The likelihood of continuation or recurrence.

Each case must be judged on its own merits, and final determination remains the responsibility of the Licensee. In every case, the Reviewing Official should evaluate trustworthiness and reliability based on an accumulation of information which supports a positive finding, prior to granting unescorted access. Items to consider include:

1. The Reviewing Official should evaluate the information collected for consistency and adequacy.

2. True identity should be evaluated by comparing applicant provided identification and personal history data to pertinent information from the background check, and other data sources.

3. The Reviewing Official should determine whether inconsistencies determined through review or investigation, are intentional, innocent, or an oversight. Willful or intentional acts of omission or untruthfulness could be grounds for denial of unescorted access.

When a Licensee submits fingerprints to the NRC pursuant to an NRC Order, it will receive a FBI identification and criminal history record since the individual's eighteenth birthday. The Licensee will receive the information from the criminal history check of those individuals requiring unescorted access to radioactive materials, and the Licensee's Reviewing Official should evaluate that information using the guidance below.

The Licensee's Reviewing Official is required to evaluate all available information in making a T&R determination for unescorted access to radioactive materials, including the criminal history records information pertaining to the individual as required by the NRC Order. The FBI identification and criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have unescorted access to radioactive materials subject to this Order. Each determination of trustworthiness and reliability for unescorted access to radioactive materials, which includes a review of criminal history information, must be documented to include the basis for the decision made.

Licensees shall not make a final determination solely on the basis of criminal history checks information involving an arrest more than 1 year old for which there is not information on the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

All information collected is to be considered by the Licensee in making a trustworthiness or reliability determination for unescorted access. Potentially disqualifying information obtained from confidential/unnamed sources must be substantiated and documented, and should not be used as a sole basis to deny access authorization unless corroborated. Licensees should establish criteria in writing that would disqualify someone from being granted authorized access.

The FBI identification and criminal history records check is used to evaluate whether the individual has a record of criminal activity that may compromise his or her trustworthiness and reliability. Identification of a criminal history through the FBI criminal history records check does not automatically indicate unreliability or lack of trustworthiness of the employee. The licensee will have to judge the nature of the criminal activity, length of employment, and recency of the criminal activity. The licensee can authorize individuals with criminal records for unescorted access to radioactive materials, based on a documented evaluation of the basis for determining that the employee was reliable and trustworthy notwithstanding his or her criminal history. Each evaluation conducted in review of criminal history and other background checks information, should be documented to include the decision making basis.

At a minimum, the Licensee should consider the following elements when evaluating the results of the FBI Identification and Criminal History Records check:

1. Committed, attempted to commit, aided, or abetted another who committed or attempted to commit any act of sabotage, espionage, treason, sedition, or terrorism.

2. Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

3. Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionist, or with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, the Licensee should not consider chance or casual meetings or contacts limited to normal business or official relations.)

4. Joined or engaged in any activity knowingly in sympathy with or in support of any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State or any subdivisions thereof by unlawful means, or which advocate the use of force and violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, the Licensee should not consider chance or casual meetings or contacts limited to normal business or official relations.)

5. Deliberately misrepresented, falsified or omitted relevant and material facts from documentation provided to the Licensee.

6. Has been convicted of a crime(s) which, in the Reviewing Official's opinion, indicate poor judgment, unreliability, or untrustworthiness.

These indicators are not meant to be all inclusive nor intended to be disqualifying factors. Licensees can also consider how recent such indicators occurred and other extenuating or mitigating factors in their determinations. Section 149.c.(2)(B) of the AEA requires that the information obtained as a result of fingerprinting be used solely for the purposes of making a determination as to unescorted access suitability. Unescorted access suitability is not a hiring decision, and the NRC does not intend for licensees to use this guidance as such. Because a particular individual may not be suitable for unescorted access does not necessarily mean that he is not suitable for escorted access or some other position that does not involve NRC-regulated activities.

Process To Challenge NRC Denials or Revocations of Unescorted Access to Certain Radioactive Material

1. Policy.

This policy establishes a process for individuals whom NRC licensees nominate

as Reviewing Officials to challenge and appeal NRC denials or revocations of access to certain radioactive material. Any individual designated as a licensee Reviewing Official whom the NRC has determined may not have unescorted access to certain radioactive material shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to create a liberty or property interest of any kind in the unescorted access of any individual to certain radioactive material.

2. Applicability.

This policy applies solely to those employees of licensees who are designated as a Reviewing Official, and who are thus to be considered by the NRC for initial or continued unescorted access to certain radioactive material in that position.

3. Unescorted Access Determination Criteria.

Determinations for granting a designated Reviewing Official unescorted access to certain radioactive material will be made by the NRC staff. Unescorted access shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued unescorted access to certain radioactive material shall be resolved in favor of national security and result in denial or revocation of unescorted access.

4. Procedures to Challenge the Contents of Records Obtained from the FBI.

Prior to a determination by the NRC Facilities Security Branch Chief that an individual designated as a Reviewing Official is denied or revoked unescorted access to certain radioactive material, the individual shall:

a. Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 C.F.R. § 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency.

b. Be afforded 10 days to initiate an action challenging the results of an FBI criminal history records check (described in (a), above) after the record is made available for the individual's review. If such a challenge is initiated, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures to Provide Additional Information.

Prior to a determination by the NRC Facilities Security Branch Chief that an individual designated as a Reviewing Official is denied or revoked access to certain radioactive material, the individual shall be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of unescorted access to certain radioactive material only upon receipt of the additional information submitted by the individual, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedures to Notify an Individual of the NRC Facilities Security Branch Chief Determination to Deny or Revoke Access to Certain Radioactive Material.

Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a Reviewing Official is denied or revoked access to certain radioactive material, the individual shall be provided a written explanation of the basis for this determination.

7. Procedures to Appeal an NRC Determination to Deny or Revoke Access to Certain Radioactive Material.

Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to certain radioactive material, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within 20 days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within 60 days after receipt of the appeal.

8. Procedures to Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal.

A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to certain radioactive material is final and not subject to further administrative appeals.

[FR Doc. 2012–26299 Filed 10–24–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2013–6 and CP2013–6; Order No. 1506]

New Postal Product and Related Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 46 to the competitive product list, including a related contract. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 30, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 46 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 46 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–6.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–6.

Request. To support its Request, the Postal Service filed six attachments as follows:

[1] Request of the United States Postal Service to Add Priority Mail Contract 46 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 18, 2012 (Request).

• Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
• Attachment B—a redacted copy of the contract;
• Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
• Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
• Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
• Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the first business day after the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* at 3. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–6 and CP2013–6 to consider the Request pertaining to the proposed Priority Mail Contract 46 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 30, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–6 and CP2013–6 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than October 30, 2012.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–26251 Filed 10–24–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2013–7 and CP2013–7; Order No. 1507]

New Postal Product and Related Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 47 to the competitive product list, including a related contract. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 30, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 47 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 47 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–7.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–7.

Request. To support its Request, the Postal Service filed six attachments as follows:

• Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
• Attachment B—a redacted copy of the contract;
• Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
• Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
• Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
• Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase

[1] Request of the United States Postal Service to Add Priority Mail Contract 47 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 18, 2012 (Request).

contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day after the date that the Commission issues all regulatory approvals. *Id.* at 4. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–7 and CP2013–7 to consider the Request pertaining to the proposed Priority Mail Contract 47 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 30, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–7 and CP2013–7 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 30, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–26252 Filed 10–24–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form N–8A; OMB Control No. 3235–0175, File No. 270–135.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Investment Company Act of 1940, as amended (''1940 Act'') (15 U.S.C. 80a–1 *et seq.*), requires investment companies to register with the Commission before they conduct any business in interstate commerce. Section 8(a) of the 1940 Act provides that an investment company shall be deemed to be registered upon receipt by the Commission of a notification of registration in such form as the Commission prescribes. Form N–8A (17 CFR 274.10) is the form for notification of registration that the Commission has adopted under section 8(a). The purpose of such notification of registration provided on Form N–8A is to notify the Commission of the existence of investment companies required to be registered under the 1940 Act and to enable the Commission to administer the provisions of the 1940 Act with respect to those companies. After an investment company has filed its notification of registration under section 8(a), the company is then subject to the provisions of the 1940 Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state of organization, form of organization, classification, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing a registration statement as required by Section 8(b) of the 1940 Act concurrently with its notification of registration, Form N–8A requires only that the registrant file the cover page (giving its name, address and agent for service of process) and sign the form in order to effect registration.

Each year approximately 130 investment companies file a notification on Form N–8A, which is required to be filed only once by an investment company. The Commission estimates that preparing Form N–8A requires an investment company to spend approximately 1 hour so that the total burden of preparing Form N–8A for all affected investment companies is 130 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form N–8A is mandatory. The information provided on Form N–8A is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon,

6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–26254 Filed 10–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–3490; October 19, 2012]

Notice of Intention To Cancel Registrations of Certain Investment Advisers Pursuant to the Investment Advisers Act of 1940

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order or orders, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registrations of the investment advisers whose names appear in the attached Appendix, hereinafter referred to as the registrants.

Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') which, among other things, amended certain provisions of the Act.[1] These amendments included provisions that delegate generally to the states regulatory responsibility over certain mid-sized advisers—i.e., those that have between $25 million and $100 million of assets under management.[2] These provisions and related rule amendments required a significant number of advisers registered with the Commission to withdraw their registrations with the Commission and to switch to registration with one or more state securities authorities.[3]

To implement the division of regulatory responsibility mandated by the Dodd-Frank Act, the Commission adopted rule 203A–5 under the Act.[4] Rule 203A–5 required each investment adviser registered with the Commission to file an amended Form ADV in the first quarter of 2012 indicating whether it remained eligible for registration by the Commission. The rule also extended until June 28, 2012 the deadline for advisers no longer eligible for Commission registration to register with the states and withdraw registration with the Commission.[5] In conjunction with adopting rule 203A–5 and other rules to implement the Dodd-Frank Act, the Commission stated that it expected to cancel the registration of advisers no longer eligible to register with the Commission that failed to file an amendment or withdraw their registrations in accordance with rule 203A–5.[6]

Discussion

Section 203(h) of the Act provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.[7]

Commission staff, in coordination with state securities regulators, contacted SEC-registered investment advisers before and after the filing deadlines to remind them of their filing obligations under rule 203A–5 and to withdraw from Commission registration by filing Form ADV–W if no longer eligible. The registrants listed in the Appendix either have not filed a Form ADV amendment with the Commission in 2012, or have indicated on Form ADV that they are no longer eligible to remain registered with the Commission as investment advisers but have not filed Form ADV–W to withdraw their registration. Accordingly, the Commission believes that reasonable grounds exist for a finding that these registrants are no longer in existence, are not engaged in business as investment advisers, or are prohibited from registering as investment advisers under section 203A, and that their registrations should be cancelled pursuant to section 203(h) of the Act.

Any registrant listed in the Appendix that wishes to file a Form ADV amendment indicating that it is eligible for registration or a Form ADV–W to withdraw its registration with the Commission may do so by December 17, 2012. The registrations of registrants whose amended Form ADVs are received by the Commission by December 17, 2012 will not be cancelled, and the registrations of registrants that file Form ADV–W will be withdrawn and will not be cancelled by a Commission order or orders. For more information or for questions about the inclusion of a registrant on this list, contact: Jennifer Porter, Senior Counsel or Melissa Roverts, Branch Chief at (202) 551–6787 (Division of Investment Management, Office of Investment Adviser Regulation).

Notice is also given that any interested person may, by December 17, 2012, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation of a registrant, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

At any time after December 17, 2012, the Commission may issue an order or orders cancelling the registrations of any or all of the registrants listed in the Appendix, upon the basis of the information stated above, unless an order or orders for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

Elizabeth M. Murphy,

Secretary.

Appendix

801–68570 12 METER MANAGEMENT, LP
801–72955 3SISTERS SUSTAINABLE MANAGEMENT, LLC
801–71854 ACCESS GLOBAL ADVISORS
801–70973 ADVANCED FINANCIAL SOLUTIONS, INC.
801–71094 AFC ASSET MANAGEMENT SERVICES, INC.
801–67660 ALDUS CAPITAL, LLC
801–71247 ALDWYCH CAPITAL PARTNERS, LLC

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* section 410 of the Dodd-Frank Act; 15 U.S.C. 80b–3a.

[3] For example, section 410 of the Dodd-Frank Act required mid-sized advisers to register with the states: (i) if the adviser is required to be registered as an investment adviser with the securities commissioner of the state in which it maintains its principal office and place of business; and (ii) if registered with that state, the adviser would be subject to examination as an investment adviser by that securities commissioner. 15 U.S.C. 80b–3a(a)(2). The Commission also amended certain exemptions from the prohibition on Commission registration that were previously adopted under section 203A of the Act. *See* 17 CFR 275.203a–2.

[4] 17 CFR 275.203a–5.

[5] *See* 17 CFR 275.203a–5(b), (c).

[6] *Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Rel. No. 3221, at 15 (Jun. 22, 2012) [76 FR 42950, 42953–42954 (Jul. 19, 2011)].

[7] 15 U.S.C. 80b–3(h).

801–71312 ALLIANCE CONSULTING, LLC
801–39288 ALPHA CAPITAL MANAGEMENT INC
801–69679 ALPHA VISTA ADVISORS LLC
801–63858 ALPINE CAPITAL MANAGEMENT, LLC
801–63029 AM INVESTMENT PARTNERS LLC
801–67985 AMERICAN PEGASUS LDG, LLC
801–66956 AMOEBA CAPITAL PARTNERS PTE. LTD.
801–58279 AMUSSEN, HUNSAKER & ASSOCIATES INCORPORATED
801–72517 ANCHOR INVESTMENT PARTNERS LLC
801–74690 ANVIL CAPITAL ADVISORS, LLC
801–69544 APELLES INVESTMENT MANAGEMENT, LP
801–72622 ARCHETYPE ADVISORS, LLC
801–70395 ARTIENCE CAPITAL MANAGEMENT, LLC
801–70301 ASSET MANAGEMENT STRATEGIES, LLC
801–69874 ASSOCIATED PROFESSIONAL INVESTMENTS, LLC
801–69463 ATHENA ASSET MANAGEMENT & RESEARCH, LLC
801–72293 BAG SECURITIES, LLC
801–72112 BAOCHUAN CAPITAL MANAGEMENT, LLC
801–62938 BARRINGTON ASSET MANAGEMENT, INC.
801–60288 BEACON CAPITAL MANAGEMENT LIMITED
801–61433 BERKSHIRE ADVISORS, INC.
801–72146 BETA CAPITAL MANAGEMENT LLC
801–71757 BEYOND CAPITAL FINANCIAL MANAGEMENT GROUP, INC.
801–69391 BILTMORE INVESTMENT MANAGEMENT, LLC
801–56997 BISCAYNE ADVISORS, INC.
801–67617 BLACK KNIGHT ASSET MANAGEMENT
801–71729 BOLI FUND MANAGEMENT, LLC
801–14429 BOWMAN FINANCIAL MANAGEMENT CO INC
801–72221 BOYD INVESTMENT MANAGEMENT, LLC
801–68519 BRADLEY WEALTH MANAGEMENT, LLC
801–63049 BRICOLEUR CAPITAL MANAGEMENT, LLC
801–69628 BRIGHTON WEALTH MANAGEMENT, INC.
801–65969 BROADSTREET CAPITAL PARTNERS, LP
801–63011 BROADWATER CAPITAL MANAGEMENT LLC
801–70514 BRYN MAWR FINANCIAL, LLC
801–67201 BURR & COMPANY, LLC
801–68809 C.S. ANDERSON FINANCIAL SERVICES, INC
801–65805 C2 ASSET MANAGEMENT L.L.C.
801–70179 CABAL CAPITAL MANAGEMENT, LLC
801–70320 CACHE EQUITY LLC
801–30978 CAMBRIDGE FINANCIAL SERVICES, LTD
801–55780 CAMERON, MURPHY & SPANGLER, INC.
801–51319 CANNON TINGEY INVESTMENT ADVISORS INC
801–69502 CAPITAL CITY INVESTMENT MANAGEMENT COMPANY, INC.
801–37116 CAPITAL MANAGEMENT CORP OF THE NORTHEAST
801–69804 CAPITAL STRATEGIES FINANCIAL CORPORATION
801–68390 CAPSTONE CAPITAL GROUP
801–69331 CARLTON WEALTH MANAGEMENT LLC
801–66142 CARMICHAEL STRATEGIES LLC
801–71599 CARRINGTON STRATEGIC ADVISORS, LLC
801–65962 CASTLESTONE MANAGEMENT LLC
801–67329 CENTURION INVESTMENT PARTNERS, LLC
801–72550 CENTURY CITY CAPITAL MANAGEMENT, LLC
801–69779 CHELSEA MORGAN ADVISORS LLC
801–68372 CHESTER CAPITAL MANAGEMENT, LLC
801–57162 CHEVY CHASE ASSET MANAGEMENT LLC
801–64167 CHRONIM INVESTMENTS INC.
801–68715 CLEARPATH WEALTH MANAGEMENT, LLC
801–70840 CLOSED-END FUND ADVISORS INC.
801–68833 COAST WEALTH MANAGEMENT, INC.
801–68548 CONCORD ATLANTIC, INC.
801–34934 CONSTITUTION RESEARCH & MANAGEMENT INC
801–61705 COPLEY SQUARE CAPITAL MANAGEMENT, LLC
801–41021 CORDILLERA ASSET MANAGEMENT
801–63182 CORNERSTONE CAPITAL MANAGEMENT
801–55989 CREDICORP SECURITIES INC
801–69969 CREMAC ASSET MANAGEMENT, LLC
801–63124 CURTIS WEALTH MANAGEMENT GROUP, LLC
801–70413 D LITTLE, L.L.C.
801–56278 DANIEL FRISHBERG FINANCIAL SERVICES, INC.
801–72077 DB2 INVESTMENT ADVISORY SERVICES INC.
801–42306 DILMUN INVESTMENTS, INC
801–67499 DISCOVERY FINANCIAL GROUP, LLC
801–56038 DIVELEY LIND & ASSOCIATES LLC
801–70505 DJM WEALTH STRATEGIES, LLC
801–60809 DKR CAPITAL PARTNERS L.P.
801–66443 DKR FUSION MANAGEMENT L.P.
801–72443 DODD, ANDREW JAMES
801–70325 DOUBLE ALPHA GROUP LLC
801–72304 DOWNEY CAPITAL MANAGEMENT, INC.
801–68820 DUNCAN-WILLIAMS, INC.
801–65704 DURHAM ASSET MANAGEMENT L.L.C.
801–57802 DYNAMIC WEALTH MANAGEMENT
801–68994 EAGLEEYE ASSET MANAGEMENT, LLC
801–62482 EFFICIENT PORTFOLIO CONSULTANTS, LLC
801–68115 EMPIRE INVESTING GROUP, LLC
801–57005 EMPIRE INVESTMENT ADVISORS INC
801–65038 ERISEY WEALTH MANAGEMENT LLC
801–63668 EVOLUTION CAPITAL STRATEGIES LLC
801–61152 EXECUTIVE ASSET MANAGEMENT, INC.
801–60991 FAIRSON MANAGEMENT LIMITED
801–64720 FIDUCIARY MANAGEMENT GROUP, LLC
801–71217 FILIPINOFUNDS INVESTMENT MANAGEMENT, LLC
801–68836 FINANCIAL LEGACY ASSOCIATES, LLC
801–24481 FIRST INVESTMENT CORPORATION
801–36095 FLAGSHIP CAPITAL MANAGEMENT INC
801–69662 FLATFEEADVISORS.COM, INC.
801–66649 FORESIGHT ASSET MANAGEMENT, LLC
801–69724 FORT CAPITAL MANAGEMENT, LLC
801–63002 FOSTER INVESTMENT CONSULTING LLC
801–56788 FOUNDING PARTNERS CAPITAL MANAGEMENT COMPANY
801–61582 FPC SERVICES, INCORPORATED
801–69648 FUTURE VALUE CONSULTANTS LIMITED
801–45317 GANUCHEAU CAPITAL MANAGEMENT, INC.
801–19290 GARLIKOV ADVISORS INC
801–65627 GDG ASSET MANAGEMENT LIMITED
801–66112 GELLER & LEHMANN, LLC
801–72754 GILDED ADVISORS LLC
801–69546 GLANZ, DANIEL
801–74448 GLOBAL EVOLUTION USA, LLC
801–69333 GLOBAL PLUS+ INVESTMENT MANAGEMENT, LLC
801–72227 GLOBAL PORTFOLIO MANAGEMENT, LTD.
801–60090 GOLD COAST SECURITIES, INC.
801–74628 GOLDENGROVE LLC
801–62648 GOODSTEIN & ASSOCIATES, LLC
801–72960 GOSLIN III, ALBERT ERNEST
801–71624 GRANT PARK CAPITAL PARTNERS, LLC
801–71579 GRAVITY CAPITAL PARTNERS, LLC
801–67236 GRAYBEARD CAPITAL, LLC
801–69383 GREENWICH CREEK CAPITAL MANAGEMENT, LLC
801–66346 GUALARIO & CO., LLC
801–66823 GUNDERSON CAPITAL MANAGEMENT INC.
801–47199 HANSEN, BRIAN BENNETT
801–69429 HATTINGH, DIEDERIK JOHANNES
801–53254 HAVELL CAPITAL MANAGEMENT LLC
801–69963 HELIOS INVESTMENTS INC
801–68598 HEPWORTH EQUITY PARTNERS, LLC
801–66435 HIGHVIEW POINT PARTNERS, LLC
801–72056 HILL CAPITAL MANAGEMENT LLC

801–69123 HILL-TOWNSEND CAPITAL, LLC
801–68714 HOLMAN INVESTMENTS AND PLANNING, LLC
801–67355 HOLTER, WILLIAM LATIMER
801–70767 HORIZON FUNDS MANAGEMENT, LLC
801–71677 HORIZONS WEST CAPITAL PARTNERS, LLC
801–67009 HRJ CAPITAL, L.L.C.
801–71614 INNOVATUM CAPITAL PARTNERS, LLC
801–70807 INSTITUTIONAL BULLION INVESTMENT ADVISORS, LLC
801–67273 INVESTMENT SECURITY GROUP, LLC
801–69098 IRVINGTON CAPITAL LLC
801–51879 J A GIBBONS LLC
801–64391 JADIS INVESTMENTS LLC
801–68063 JDM FINANCIAL GROUP LLC
801–66648 JENNINGS INVESTMENT ADVISORS, LLC
801–66895 JERMYN CAPITAL (SINGAPORE) PTE. LTD.
801–71822 JIM POE AND ASSOCIATES INC.
801–71814 JOBES SOLO INVESTMENT GROUP, LLC
801–66643 JOHN R. FIESTA, LLC
801–57979 JOHN SHAW NOTMAN
801–45453 JUMPER GROUP INC
801–66884 K.K. JERMYN CAPITAL
801–72005 KAJO INVESTMENTS, LLC
801–67024 KENNEDY WEALTH MANAGEMENT GROUP LTD.
801–69948 KLARAOS, LLC
801–42331 KOCH ASSET MANAGEMENT LLC
801–69365 KURTIN FINANCIAL ADVISERS, LLC
801–69343 L&P FINANCIAL TRUSTEES LTD
801–73035 LANCELOT CAPITAL LIMITED
801–63887 LANPHIER CAPITAL MANAGEMENT, INC.
801–68524 LEXINGTON INVESTMENT COUNSEL, LLC
801–70312 LIGHTHOUSE CAPITAL PARTNERS, LLC
801–56394 LITCHFIELD & NELSON, INC
801–56364 LITTLEFIELD ASSET MGMT. INC.
801–49599 LONGWOOD INVESTMENT ADVISORS INC
801–37592 M. D. FALK & COMPANY, INC.
801–66388 MACARTHURCOOK INVESTMENT MANAGERS LIMITED
801–74815 MADISONLEE PARTNERS, LLC
801–71939 MANAIA CAPITAL MANAGEMENT, INC.
801–45332 MAPLE LEAF INVESTMENT MANAGEMENT INC
801–71070 MARKS THERIOT WALSTON & COMPANY, INC.
801–55125 MARSDEN CAPITAL MANAGEMENT, LLC.
801–67908 MARTINELLI DISCENZA INVESTMENT COUNSEL, INC.
801–60658 MCW ADVISORS
801–63100 MEREDITH PORTFOLIO MANAGEMENT INC.
801–63422 MERIDIAN ASSET MANAGEMENT LLC
801–70666 MG SULLIVAN, LLC
801–69605 MICOUD INVESTMENTS LIMITED
801–66328 MIRAMAR ASSET MANAGEMENT, LLC
801–57042 MOHAWK ASSET MANAGEMENT INC
801–71711 MONTGOMERY ASSET MANAGEMENT, LLC
801–42907 NANCY ABRAMS & ASSOCIATES, INC.
801–69301 NEF ADVISORS, LLC
801–72732 NEMAN FINANCIAL, INC.
801–64824 NEXCORE FINANCIAL SERVICES, INCORPORATED
801–72628 NEXTGEN FAMILY OFFICE, LLC
801–65128 NIGHTWATCH CAPITAL ADVISORS, LLC
801–68540 NJR INVESTMENT ADVISORY, INC.
801–69484 NORTH POINT ADVISORS
801–50288 NORTHSTAR CAPITAL INC
801–65702 OLYMPIUS CAPITAL, L.P.
801–23421 OMICRON GROUP LTD
801–71953 ONYX INVESTMENT ADVISORS
801–67259 ORACLE FINANCIAL SERVICES, LLC
801–68545 OSAGE ENERGY PARTNERS, L.P.
801–71098 OUTSTANDING VALUE FINANCIAL MANAGEMENT, LLC
801–65021 PACIFIC FINANCIAL ADVISORS, INC.
801–65166 PARK PLACE CAPITAL LIMITED
801–60542 PATRICK LLOYD BECKER
801–34567 PCA REAL ESTATE ADVISORS, INC.
801–66276 PELION INVESTMENT ADVISORS, INC.
801–65099 PEMIGEWASSET CAPITAL LLC
801–66759 PENSION PERFORMANCE ADVISORS, INC.
801–63878 PERMANENT VALUE INC.
801–72260 PINACULO LLC
801–70132 PLACE, BRYAN, MCNEILL
801–68161 PRESIDIUM PARTNERS, LLC
801–14186 PROFESSIONAL INVESTMENT COUNSEL, INC
801–71591 PROSAPIA CAPITAL MANAGEMENT, LLC
801–62787 QUANTEL ASSOCIATES, INC.
801–63842 QUANTUM FAMILY OFFICE GROUP, LLC
801–68872 QUANTUM WEALTH MANAGEMENT LLC
801–70459 RANDY MEYER INVESTMENT MANAGEMENT, LLC
801–72606 RFG ADVISORY GROUP, LLC
801–44866 RICH INVESTMENTS INC
801–57081 RINCON PACIFIC MANAGEMENT INC
801–64933 RIOUX & COMPANY, LLC
801–68439 RIVERSEDGE CONVERTIBLE PORTFOLIO ADVISORS, LLC
801–70387 ROSE & SKY INVESTMENTS (CAYMAN) LTD
801–62387 RUBY CORPORATION
801–44751 RULAPAUGH STANLEY EUGENE
801–72770 RUTHERFORD, GARY LEE
801–60566 RYAN CAPITAL ADVISORS, LLC
801–72680 S BROWN AND ASSOCIATES, LLC
801–70230 SACHS INVESTMENT GROUP, LLC
801–69730 SANCTUARY WEALTH MANAGEMENT, LLC
801–26861 SANDER CAPITAL ADVISORS, INC.
801–51254 SCEPTRE INVESTMENT COUNSEL LIMITED
801–58027 SCHELLER FINANCIAL SERVICES INC.
801–70944 SEDGEFIELD CAPITAL MANAGEMENT, LLC
801–71779 SELECT ASSET MANAGEMENT, LLC
801–64724 SENTINEL WEALTH ADVISORS, LLC
801–63183 SFM, LLC
801–16175 SHEA JOHN A INVESTMENT ADVISOR
801–39915 SK GROUP, INC
801–33087 SMITH WILLIAM BRUCE
801–64817 SMITH, THURMAN LEONARD
801–70455 SOUTHPORT ASSET MANAGEMENT
801–61272 SOVEREIGN INTERNATIONAL ASSET MANAGEMENT, INC.
801–70589 SOVEREIGN PRIVATE WEALTH, INC.
801–67746 STATE CAPITAL WEALTH MANAGEMENT INC
801–25597 STEINE & GOOCH CO INC
801–66434 STEPHEN M. GROSS, INC.
801–47378 STEPHEN P. MOULTON & ASSOCIATES, LTD.
801–24483 STERLING JOHNSTON CAPITAL MANAGEMENT, L.P.
801–69491 STRANBERG CAPITAL LLC
801–36025 STRATEGIS FINANCIAL GROUP, INC
801–74213 TANDRAGEE GLOBAL ADVISORS, LLC
801–53568 TBIG FINANCIAL SERVICES INC
801–28191 THE CARMACK GROUP, INC.
801–68698 THE COLOMA GROUP, L.LC.
801–54184 THE DELANCEY CAPITAL GROUP, LP
801–64694 THE OXFORD PRIVATE CLIENT GROUP, LLC
801–36203 THE SPANGLER GROUP, INC.
801–71205 THE UNIVERSITY FUNDS, LLC
801–66115 THOMSON FINANCIAL ADVISORS LLC.
801–62975 THUNDERSTORM CAPITAL LLC
801–47405 TONG ROBERT WAI
801–65028 TRIBUTARY CAPITAL MANAGEMENT., LLC
801–72696 TRILLION CAPITAL, LLC
801–69905 TRIVELLONI ASSET MANAGEMENT, LLC
801–67142 TWEDDELL GOLDBERG LLC
801–61159 UNIVEST INVESTMENTS, INC.
801–64165 USF SERVICES, LLC
801–71511 VANTAGE POINT ADVISORS, LLC
801–42685 VARN INVESTMENT COUNSEL INC
801–39326 VIRGINIA CAPITAL MANAGEMENT GROUP INC
801–60397 W.WALL AND COMPANY, INC.
801–63137 WALRUS PARTNERS, LLC
801–67403 WASHINGTON CORNER CAPITAL MANAGEMENT, LP
801–62780 WATERS CAPITAL ADVISERS, LLC
801–63026 WATERVILLE INVESTMENTS, INC.

801–74505 WEALTH FOCUS RESOURCES, LLC
801–69539 WEALTH LTD
801–54769 WEALTH MANAGEMENT LLC
801–62294 WELLS, CANNING & ASSOCIATES INC.
801–48199 WENDEL ANDREW MARTIN
801–40981 WEST ELLIS INVESTMENT MANAGEMENT INC
801–71961 WEST RIDGE REALTY ADVISORS LLC
801–19899 WESTRIDGE CAPITAL MANAGEMENT INC
801–64673 WFP SECURITIES CORPORATION
801–37177 WHB WOLVERINE ASSET MANAGEMENT INC
801–72403 WICKER PARK ADVISORS, LLC
801–16393 WILLIAMSON & SNEED INCORPORATED
801–67795 WILSHIRE–PENNINGTON GROUP, INC.
801–12695 WITTER WILLIAM D INC
801–69064 WORLDWIDE ASSET MANAGEMENT GROUP, LLC
801–70899 WYNNCORR CAPITAL MANAGEMENT, LLC

[FR Doc. 2012–26234 Filed 10–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [77 FR 64836, October 23, 2012]

STATUS: Closed Meeting.

PLACE: 100 F Street NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, October 23, 2012 at 3:00 p.m.

CHANGE IN THE MEETING: Date and Time Change.

The Closed Meeting scheduled for Tuesday, October 23, 2012 at 3:00 p.m., has been changed to Thursday, October 25, 2012 at 10:00 a.m.

Commissioner Walter, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 23, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–26402 Filed 10–23–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68073; File No. SR–NASDAQ–2012–098]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the WisdomTree Global Corporate Bond Fund of the WisdomTree Trust

October 19, 2012.

I. Introduction

On August 15, 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 list and trade the shares (''Shares'') of the WisdomTree Global Corporate Bond Fund (''Fund'') of the WisdomTree Trust (''Trust'') under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on September 5, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Fund is registered with the Commission as an investment company and has filed a registration statement on Form N–1A with the Commission.[4] WisdomTree Asset Management, Inc. is the investment adviser (''Adviser'') to the Fund,[5] and Western Asset Management Company serves as sub-adviser for the Fund (''Sub-Adviser'').[6] The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust, and ALPS Distributors, Inc. serves as the distributor for the Trust.[7] The Exchange represents that neither the Adviser nor the Sub-Adviser are affiliated with any broker-dealer.[8]

WisdomTree Global Corporate Bond Fund

The Fund seeks to provide a high level of total return consisting of both income and capital appreciation. To achieve its objective, the Fund will invest in debt securities of corporations that are domiciled or economically tied to countries throughout the world.

Global Corporate Debt

Specifically, the Fund intends to achieve its investment objectives through direct and indirect investments in Global Corporate Debt. With respect to this proposal, Global Corporate Debt includes fixed-income securities, such as bonds, notes, or other debt obligations, including loan participation notes (''LPNs''),[9] as well as other debt instruments denominated in U.S. dollars or local currencies. Global Corporate Debt also includes fixed income securities or debt obligations that are issued by companies or agencies that may receive financial support or backing from local government. Fixed income securities include Money Market Securities as defined below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67750 (August 29, 2012), 77 FR 54640 (''Notice'').

[4] *See* Post-Effective Amendment No. 56 to Registration Statement on Form N–1A for the Trust, dated July 1, 2011 (File Nos. 333–132380 and 811–21864) (''Registration Statement'').

[5] WisdomTree Investments, Inc. is the parent company of the Adviser.

[6] The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

[7] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812–13458). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

[8] *See* Nasdaq Rule 5735(g). The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio. In addition, Adviser and/or Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

[9] The Fund may invest in LPNs with a minimum outstanding principal amount of $200 million that the Adviser or Sub-Adviser deems to be liquid.

Fixed income securities do not include derivatives.

Under normal circumstances,[10] the Fund will invest at least 80% of its net assets in Global Corporate Debt that are fixed income securities. The Fund intends to provide exposure across geographic regions and countries worldwide, including: North America, South America, Asia, Australia and New Zealand, Latin America, Europe, Africa, and the Middle East. The Fund intends to invest primarily in countries with developed markets in corporate debt. The Fund intends to invest up to 25% of its assets in emerging market countries, though this may change from time to time in response to economic events and changes to the credit ratings of the Global Corporate Debt of such countries.[11] The Fund's credit exposures are consistently monitored from a risk perspective, and may be modified, reduced, or eliminated. The Fund's exposure to any single issuer generally will be limited to 10% of the Fund's assets. The percentage of the Fund's assets in a specific region, country, or issuer will change from time to time. The Fund's exposure to any one country (other than the United States) generally will be limited to 30% of the Fund's assets, though this percentage may change from time to time in response to economic events and changes to the credit ratings of the Global Corporate Debt of such countries.

The universe of Global Corporate Debt currently includes securities that are rated ''investment grade'' as well as ''non-investment grade.'' [12] The Fund intends to provide a broad exposure to Global Corporate Debt and therefore will invest in both investment grade and non-investment grade securities. The Fund intends to have 55% or more of its assets invested in investment grade securities, though this percentage may change in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 15% of its assets in securities rated B or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of ''comparable quality,'' the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. The Fund will only buy performing debt securities and not distressed debt. Generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than $200 million par amount outstanding if (1) The Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (for example, broker-dealer quotations or trading history of the security or other securities issued by the issuer), (2) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund, and (3) such investment is deemed consistent with the Fund's goal of providing exposure to a broad range of countries and issuers.

The Fund may invest in Global Corporate Debt with effective or final maturities of any length but will seek to keep the average effective duration of its portfolio between two and ten years under normal market conditions. Effective duration is an indication of an investment's interest rate risk or how sensitive an investment or a fund is to changes in interest rates. Generally, a fund or instrument with a longer effective duration is more sensitive to interest rate fluctuations, and, therefore, more volatile, than a fund with a shorter effective duration. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to invest in Global Corporate Debt of at least 13 non-affiliated issuers and will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or their respective agencies and instrumentalities or government-sponsored enterprises).

Money Market Securities

The Fund intends to invest in Money Market Securities in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. Under normal circumstances,[13] the Fund may invest up to 25% of its net assets in Money Market Securities, although it may exceed this amount where the Adviser or Sub-Adviser deems such investment to be necessary or advisable, due to market conditions. For these purposes, ''Money Market Securities'' include: short-term, high quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by U.S. government and non-U.S. government securities; money market mutual funds; and deposit and other obligations of U.S.

[10] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[11] According to the Adviser, while there is no universally accepted definition of what constitutes an ''emerging market,'' in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Adviser and Sub-Adviser look at a variety of commonly-used factors when determining whether a country is an ''emerging'' market. In general, the Adviser and Sub-Adviser consider a country to be an emerging market if: (1) it is either (a) classified by the World Bank in the lower middle or upper middle income designation for one of the past 5 years (*i.e.,* per capita gross national product of less than U.S. $9,385), (b) has not been a member of OECD for the past five years or (c) classified by the World Bank as high income and a member in OECD in each of the last five years, but with a currency that has been primarily traded on a non-delivered basis by offshore investors (*e.g.,* Korea and Taiwan); and (2) the country's debt market is considered relatively accessible by foreign investors in terms of capital flow and settlement considerations. This definition could be expanded or exceptions made depending on the evolution of market and economic conditions.

[12] The Exchange states that the Adviser will interpret ''investment grade'' for purposes of this proposal to mean securities rated in the Baa/BBB categories or above by one or more nationally recognized securities rating organizations (''NRSROs''). If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.

[13] *See* note 10, *supra.*

and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade,[14] except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to money market securities rated investment grade.

The Fund Reserves the right to invest in U.S. government securities, money market instruments, and cash, without limitation, as determined by the Adviser or Sub-Adviser in response to adverse market, economic, political, or other conditions. The Fund may also ''hedge'' or minimize its exposure to one or more foreign currencies in response to such conditions. In the event the Fund engages in these temporary defensive strategies that are inconsistent with its investment strategies, the Fund's ability to achieve its investment objectives may be limited.

Derivative Instruments and Other Investments

The Fund may use derivative instruments that are fully-collateralized as part of its investment strategy. Examples of derivative instruments include forward currency contracts, interest rate swaps, total return swaps, credit linked notes, and combinations of investments that provide similar exposure to local currency debt, such as investment in U.S. dollar denominated bonds combined with forward currency positions or swaps.[15] Forward currency contracts and swap positions can be incorporated with bonds denominated in non-U.S. currencies to hedge bond exposures back into U.S. dollars. Conversely, forward currency contracts and swap positions can be implemented in combination with U.S. dollar denominated bonds to create local currency bond exposures. Additionally, the Fund's use of forward contracts and swaps will be combined with investments in short-term, high quality U.S. money market instruments in a manner designed to provide exposure to similar investments in local currency deposits.[16]

The Fund expects that no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. For example, the Fund may engage in swap transactions that provide exposure to corporate debt or interest rates. The Fund also may buy or sell listed currency futures contracts.[17]

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures and forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will ''set aside'' liquid assets, or engage in other measures to ''cover'' open positions with respect to such transactions.

The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits, and certificates of deposit denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to ''lock in'' the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.[18]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including (1) Rule 144A securities and (2) loan interests (such as loan participations and assignments, but not including LPNs). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will not invest in any non-U.S. equity securities. In addition, the Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, availability of Fund values and other information, and distributions and taxes, among other things, can be found in the Notice and/or Registration Statement, as applicable.[19]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[20] and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the

[14] The term ''investment grade,'' for purposes of Money Market Securities only, means securities rated A1 or A2 by one or more NRSROs.

[15] To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house. The Fund may also invest in Money Market Securities that may serve as collateral for the futures contracts and swap agreements.

[16] The Adviser or Sub-Adviser will also attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty. The Adviser or Sub-Adviser will take various steps to limit counterparty credit risk which will be described in the Registration Statement. The Fund will enter into swap agreements only with financial institutions that meet certain credit quality standards and monitoring policies. The Fund may also use various techniques to minimize credit risk, including early termination or reset and payment, using different counterparties, and limiting the net amount due from any individual counterparty. The Fund generally will collateralize swap agreements with cash and/or certain securities. Such collateral will generally be held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund. In the event of a default by the counterparty, and the Fund is owed money in the swap transaction, the Fund will seek withdrawal of the collateral from the segregated account and may incur certain costs exercising its right with respect to the collateral.

[17] The exchange-listed futures contracts in which the Fund may invest will be listed on exchanges in the U.S., London, Hong Kong, or Singapore. Each of the United Kingdom's primary financial markets regulator, the Financial Services Authority, Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions (''IOSCO'') Multilateral Memorandum of Understanding (''MMOU''), which is a multi-party information sharing arrangement among financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

[18] The Fund will invest only in currencies, and instruments that provide exposure to such currencies, which have significant foreign exchange turnover and are included in the Bank for International Settlements Triennial Central Bank Survey, December 2010 (''BIS Survey''). The Fund may invest in currencies, and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

[19] *See supra* notes 3 and 4, and accompanying text, respectively.

[20] 15 U.S.C. 78f.

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Act,[22] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[23] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services. On each business day, before commencement of trading in Shares in the Regular Market Session [24] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day.[25] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time.[26] Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[27] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session. During hours when the markets for local debt in the Fund's portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day, executable price quotations on Global Corporate Debt, as well as derivative instruments, will be available from major broker-dealer firms. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, the Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange will consider the suspension of trading in or removal from listing of the Shares if the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[28] The Exchange represents that neither the Advisor nor the Sub-Adviser is affiliated with any broker-dealer.[29] The Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[30] The Exchange states that trading of the Shares through Nasdaq will be subject to FINRA's surveillance procedures for derivative products, including Managed Fund Shares.[31] The Exchange may obtain information via the Intermarket

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[24] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7:00 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m.).

[25] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of fixed income securities and other assets held by the Fund and the characteristics of such assets.

[26] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[27] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and ETFs. GIDS provides investment professionals with the daily and historical information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[28] *See* Nasdaq Rule 5735(d)(2)(C)(ii).

[29] *See* Nasdaq Rule 5735(g), *supra* note 8 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[30] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[31] The Exchange states that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Further, the Exchange states that it prohibits the distribution of material, non-public information by its employees.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[32]

(6) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including: (a) Rule 144A securities and (b) loan interests (such as loan participations and assignments, but not including LPNs). The Fund may invest in LPNs with a minimum outstanding principal amount of $200 million that the Adviser or Sub-Adviser deems to be liquid.

(7) The Fund will not invest in any non-U.S. registered equity securities.

(8) The Fund expects that no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house. In addition, the Adviser or Sub-Adviser will also attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty.

(9) Under normal circumstances, the Fund may invest up to 25% of its net assets in Money Market Securities, although it may exceed this amount where the Adviser or Sub-Adviser deems such investment to be necessary or advisable, due to market conditions.

(10) The Fund intends to have 55% or more of its assets invested in investment grade securities, though this percentage may change from time to time in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 15% of its assets in securities rated B or below by Moody's, or equivalently rated by S&P or Fitch.

(11) The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. The Fund will only buy performing debt securities and not distressed debt. Generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment.

(12) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[33] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NASDAQ–2012–098) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–26253 Filed 10–24–12; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* 17 CFR 240.10A–3.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68074; File No. SR–CBOE–2012–092]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Weekly Program

October 19, 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 October 10, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to modify its Short Term Option Series Program (''Weekly options'') to allow CBOE to initiate strike prices in more granular intervals for Weekly options in the same manner as two other option exchanges.[5] CBOE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Weekly options are series in an options class that are approved for listing and trading on the

Continued

also proposes to permit, during the expiration week of a non-Weekly option, a non-Weekly option on a class that is selected to participate in the Weekly Program to have the same strike price interval setting parameters as Weekly options. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is amend CBOE's Rules 5.5 and 24.9 to amend the strike price interval setting parameters for Short Term Option Series (''Weekly options'') and to permit, during the expiration week of a non-Weekly option, a non-Weekly option on a class that is selected to participate in the Weekly Program to have the same strike price interval setting parameters as Weekly options.

This is a competitive filing that is based on two recently approved filings submitted by the International Securities Exchange, LLC (''ISE'') and NASDAQ OMX PHLX, LLC (''Phlx'').[6] The ISE and Phlx filings both made changes to the strike price interval setting parameter rules for their respective Weekly Programs. Weekly options are not listed to expire during the same week as non-Weekly options. As a result, both ISE and Phlx amended their rules to permit non-Weekly options on classes that participate in the Weeklys Program to have the same strike price interval setting parameters as Weekly options during the week that non-Weekly options expire.

ISE and Phlx also both amended the strike price interval setting parameters for their Weekly Programs, but the revisions to their respective rules differ. Specifically, ISE permits $0.50 strike price intervals for Weekly options for option classes that trade in one dollar increments and are in the Weekly Program.[7] Phlx permits $0.50 strike price intervals when the strike price is below $75, and $1 strike price intervals when the strike price is between $75 and $150. Phlx also provides that related non-Weekly option series may be opened during the week prior to expiration week pursuant to the same strike price interval parameters that exist for Weekly options. Thus a related non-Weekly option may be opened in Weekly option strike price intervals on a Thursday or a Friday that is a business day before the non-Weekly option expiration week.[8] If the Exchange is not open for business on the respective Thursday or Friday, however, the non-Weekly option may be opened in Weekly option intervals on the first business day immediately prior to that respective Thursday or Friday.[9]

CBOE highlighted the differences between the two filings during the notice and comment period and submitted a comment letter on that subject.[10] CBOE is proposing to adopt both of the strike price interval setting parameters that are currently in effect for both ISE and Phlx in order to remain competitive. CBOE notes that while it believes that there is substantial overlap between the two strike price interval setting parameters, the Exchange believes there are gaps that would enable Phlx to initiate a series that ISE would not be able to initiate and vice versa.[11] Since uniformity is not required for the Weekly Programs that have been adopted by the various options exchanges, CBOE proposes to revise its strike price intervals setting parameters so that it has the ability to initiate strike prices in the same manner (*i.e.,* intervals) as both ISE and Phlx. Accordingly, CBOE proposes to adopt both the ISE rule text language and the Phlx rule text language that the SEC recently approved.

In support of this proposal, CBOE states that the principal reason for the proposed expansion is in response to market and customer demand to list actively traded products in more granular strike price intervals and to provide CBOE Trading Permit Holders (''TPHs'') and their customers increased trading opportunities in the Weekly Program. There are substantial benefits to market participants in the ability to trade eligible option classes at more granular strike price intervals. Furthermore, CBOE supports the objective of responding to customer demand for harmonized listing between Weekly and non-Weekly options and the availability of more granular strike price intervals.

The Exchange notes that the Weekly Program has been well-received by market participants, in particular by retail investors. The Exchange believes that the current proposed revisions to the Weekly Program will permit the

Exchange in which the series are opened for trading on any Thursday or Friday that is a business day and that expire on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. *See* CBOE Rules 5.5(d) and 24.9(a)(2)(A).

[6] *See* Securities Exchange Act Release Nos. 67754 (August 29, 2012), 77 FR 54629 (September 5, 20120) (order approving SR–ISE–2012–33) (''ISE filing'') and 67753 (August 29, 2012) 77 FR 54635 (September 5, 2012) (order approving SR–Phlx–2012–78) (''Phlx filing'').

[7] The permissible $0.50 strike price intervals may only be opened on the Weekly option Opening Date that expire on the Weekly option Expiration date and no additional series, including additional series of the related non-Weekly option, may be opened during expiration week in classes that are listed pursuant to the newly amended ISE rules.

[8] This opening timing is consistent with the principle that CBOE may add new series of options until five business days prior to expiration. *See* CBOE Rules 5.5.04 and 24.9.01(c).

[9] The Weekly option opening process is set forth in CBOE Rules 5.5(d) and 24.9(a)(2)(A): After an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire on the Friday of the following business week that is a business day (''Short Term Option Expiration Date''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

[10] A copy of CBOE's comment letter may be accessed at: *http://sec.gov/comments/sr-phlx-2012-78/phlx201278-1.pdf.* For example, in the comment letter CBOE noted its belief that the Phlx strike price interval setting parameters were broader since they applied to all classes that participate in the Weekly Program where the ISE proposal provided increased granularity only to those classes in which $1 strike price intervals are currently permitted.

[11] The Exchange is making a distinction between initiating series and cloning series. The Exchange and the majority, if not all, of the other options exchanges that have adopted a Weekly Program have a similar rule that permits the listing of series that are opened by other exchanges. *See* Rule 5.5(d)(1) and 24.9(A)(2)(A)(i). This filing is concerned with the ability to initiate series.

For example, if a class is selected to participate in the Weekly Program and non-Weekly options on that class do *not* trade in dollar increments, CBOE believes that Phlx would be permitted to initiate $0.50 strikes on that class and ISE would not. Similarly, the strike price interval for exchange-traded fund (''ETF'') options is generally $1 or greater where the strike price is $200 or less. If, an ETF class is selected to participate in the Weekly Program, CBOE believes that ISE would be permitted to initiate $0.50 strike price intervals where the strike price is between $151 and $200, but Phlx would not be.

Exchange to meet increased customer demand for more granular strike prices and the harmonization between of strike prices between Weekly and non-Weekly options on the same classes.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the Weekly Program. The Exchange believes that its TPHs will not a capacity issue as a result of this proposal. CBOE represents that it will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[12] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that giving the Exchange the ability to initiate strike prices in $0.50 and $1 intervals (as provided for in the proposed rule text) for Weekly options is reasonable because it will benefit investors by providing them with the flexibility to more closely tailor their investment and hedging decisions. The Exchange also believes that it is reasonable to harmonize strike prices between Weekly options and non-Weekly options during expiration week for non-Weekly options because doing so will ensure conformity between Weekly and non-Weekly options that are on the same class. While the proposed rule change may generate additional quote traffic, the Exchange does not believe that any increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. The Exchange also believes that the proposed rule change will ensure competition because CBOE will be put in a position to initiate series in the same strike intervals as ISE and Phlx are currently able to do.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to recently approved ISE and Phlx filings. CBOE believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange asked the Commission to waive the 30-day operative delay period for non-controversial proposed rule changes to allow the proposed rule change to be operative upon filing.[16]

The Commission believes it is consistent with the public interest to waive the 30-day operative delay. Waiver of the operative delay will allow CBOE to initiate strikes prices in more granular intervals for Weekly options in the same manner as ISE and Phlx, and permit, during the expiration week of a non-Weekly option, a non-Weekly option on a class that is selected to participate in the Weekly Program to have the strike price interval setting parameters as Weekly options. In sum, the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission grants such waiver and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–092. 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–092 and should be submitted on or before November 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–26279 Filed 10–24–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Fearless International, Inc., Glassmaster Company, Global Entertainment Holdings/Equities, Inc., Global Realty Development Corp., Global Roaming Distribution, Inc., and Gottaplay Interactive, Inc.; Order of Suspension of Trading

October 23, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fearless International, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Glassmaster Company because it has not filed any periodic reports since the period ended December 3, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Entertainment Holdings/Equities, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Realty Development Corp. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Roaming Distribution, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gottaplay Interactive, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 23, 2012, through 11:59 p.m. EST on November 5, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–26357 Filed 10–23–12; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8072]

60-Day Notice of Proposed Information Collection: Smart Traveler Enrollment Program

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 24, 2012.

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: mailto:Ask-OCS–L-Public-Inquiries@state.gov*.
- *Mail:* (paper, disk, or CD–ROM submissions): U.S. Department of State, CA/OCS/L, SA–29, 4th Floor, Washington, DC 20037–3202
- *Fax:* 202–736–9111
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCSL 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037–3202.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20037–3202, who may be reached at *mailto: Ask-OCS–L-Public-Inquiries@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Smart Traveler Enrollment Program (STEP)
- *OMB Control Number:* 1405–0152
- *Type of Request:* Extension
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS)
- *Form Number:* DS–4024, DS–4024e
- *Respondents:* United States Citizens and Nationals
- *Estimated Number of Respondents:* 988,292
- *Estimated Number of Responses:* 988,292
- *Average Hours per Response:* 20 minutes
- *Total Estimated Burden:* 329,430 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Voluntary

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this 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 information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The STEP makes it possible for U.S. nationals to register on-line from anywhere in the world. In the event of a family emergency, natural disaster or international crisis, U.S. embassies and consulates rely on this registration information to provide critical information and assistance to them. Statute 22 U.S.C. 2715 is one of the main legal authorities that deem the usage of this form necessary.

Methodology: 99% of responses are received via electronic submission on the Internet. The service is available on the Department of State, Bureau of Consular Affairs Web site *http://travel.state.gov* at *https://step.state.gov/step/*. The paper version of the collection permits respondents who do not have Internet access to provide the information to the U.S. embassy or consulate by fax, mail or in person.

Dated: October 2, 2012.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. 2012–26306 Filed 10–24–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8069]

Culturally Significant Objects Imported for Exhibition Determinations: ''Late Roman and Early Byzantine Treasures From The British Museum''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Late Roman and Early Byzantine Treasures From The British Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the The Art Institute of Chicago in Chicago, Illinois from on or about November 11, 2012, until on or about August 25, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 18, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–26312 Filed 10–24–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8068]

Culturally Significant Objects Imported for Exhibition Determinations: ''Portrait of Spain: Masterpieces From the Prado''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Portrait of Spain: Masterpieces from the Prado,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston, Houston, Texas, from on or about December 12, 2012, until on or about March 31, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 17, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–26309 Filed 10–24–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8070]

Privacy Act; System of Records: Visa Records, State–39

SUMMARY: Notice is hereby given that the Department of State proposes to amend an existing system of records, Visa Records, State–39, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I.

DATES: This system of records will be effective on December 4, 2012, unless we receive comments that will result in a contrary determination.

ADDRESSES: Any persons interested in commenting on the amended system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001.

FOR FURTHER INFORMATION CONTACT: Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001.

SUPPLEMENTARY INFORMATION: The Department of State proposes that the current system retain the name ''Visa Records'' (60 FR 39469). The Visa Records system will maintain

information used to assist the Bureau of Consular Affairs and consular officers in the Department and overseas to adjudicate visas. The system is also utilized for dealing with problems of a legal, enforcement, technical, or procedural nature that may arise in connection with a U.S. visa. This update to the Visa Records System of Records includes revisions to the following sections: Security Classification, System Location, Categories of Individuals, Categories of Records, Routine Uses, Safeguards, Retrievability, Records Access Procedures, and administrative updates. The following section has been added to the system of records, Visa Records, State–39, to ensure Privacy Act of 1974 compliance: Purpose.

The Department's report was filed with the Office of Management and Budget. The amended system description, ''Visa Records, State–39,'' will read as set forth below.

Joyce A. Barr,

Assistant Secretary for Administration, U.S. Department of State.

STATE–39

SYSTEM NAME:

Visa Records.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Visa Office, Department of State, Annex 1, 2401 E Street NW., Washington, DC 20522–0113; Department of State, 2201 C Street NW., Washington, DC 20520–4818; National Visa Center, 32 Rochester Avenue, Portsmouth, NH 03801; Kentucky Consular Center, 3505 N. US Hwy 25 W, Williamsburg, KY 40769; U.S. embassies, consulates general, and consulates (henceforth referred to as the Department of State).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Visa Records may include the following individuals when required by a visa application: U.S. petitioners; and U.S. persons applying for returning residence travel documentation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa Records maintains visa applications and related forms; biometric information; photographs; birth, marriage, death and divorce certificates; documents of identity; interview worksheets; biographic information sheets; affidavits of relationship; medical examinations and immunization reports; police records; educational and employment records; petitions for immigrant status and nonimmigrant status; bank statements; communications between the Visa Office, the National Visa Center, the Kentucky Consular Center, U.S. embassies, U.S. consulates general and U.S. consulates, other U.S. government agencies, international organizations, members of Congress, legal and other representatives of visa applicants, relatives of visa applicants, and other interested parties where such communications are, or may be, relevant to visa adjudication; and internal Department of State correspondence and notes relating to visa adjudication. Visa Records may also contain information collected regarding applicant's or petitioner's U.S. family members; U.S. employers; other U.S. persons referenced by the applicant or petitioner.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1101–1503 (Immigration and Nationality Act of 1952, as amended).

PURPOSE:

The Visa Records system maintains information used to assist the Bureau of Consular Affairs and consular officers in the Department and abroad in adjudicating visas. It is also used in dealing with problems of a legal, enforcement, technical, or procedural nature that may arise in connection with a U.S. visa.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The principal users of this information outside the Department of State may include, when consistent with Section 222(f) of the Immigration and Nationality Act:

A. The Department of Homeland Security for uses within its statutory mission, including to process, approve or deny visa petitions and waivers, as well as for law enforcement, counterterrorism, transportation and border security, administration of immigrant benefits, critical infrastructure protection, fraud prevention, or employment verification purposes;

B. Public or private employers seeking to confirm the authenticity of the visa when it is presented as evidence of identity and/or authorization to work in the United States;

C. The Department of Justice, including the Federal Bureau of Investigation (and its National Crime Information Center), the Terrorist Screening Center, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. National Central Bureau (Interpol) and the Drug Enforcement Administration, for purposes of law enforcement, criminal prosecution, representation of the U.S. government in civil litigation, fraud prevention, counterterrorism, or border security;

D. The Department of the Treasury for uses within its statutory mission, including the enforcement of U.S. tax laws, economic sanctions, and counterterrorism;

E. The National Counterterrorism Center, the Office of the Director of National Intelligence and other U.S. intelligence community (IC) agencies, for uses within their statutory missions, including intelligence, counterintelligence, counterterrorism and other national security interests;

F. The Department of Defense, for uses within its statutory mission including for purposes of border security, homeland defense, force protection, law enforcement and counterterrorism;

G. The Department of Labor for uses within its statutory mission including the administration and enforcement of U.S. labor laws;

H. Congress, for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States;

I. State, local, and tribal government officials for law enforcement, counter-terrorism, or border security purposes;

J. Interested persons (such as the visa applicant, the applicant's legal representative or other designated representative) inquiring as to the status of a particular visa case (limited unclassified information may be released when appropriate);

K. Courts provided the Secretary of State has determined that release is appropriate, and the court has certified it needs such information in the interest of the ends of justice in a case pending before the court;

L. Foreign governments for purposes relating to the administration or enforcement of the immigration, nationality, and other laws of the United States, or in the Secretary's discretion and on the basis of reciprocity, for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States or, pursuant to an agreement with a foreign government, to enable such government to consider whether the record indicates a person would be inadmissible to the United States when it determines whether to deny a visa, grant entry, authorize an immigration benefit, or order removal of such person.

The Department of State periodically publishes in the **Federal Register** its

standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to Visa Records, State–39.

STORAGE:

Electronic media and hard copy.

RETRIEVABILITY:

Records may be retrieved through individual data fields including but not limited to: Applicant personal data; biometrics and namecheck data; case data; and visa data.

SAFEGUARDS:

All U.S. Government employees and contractors with authorized access have undergone a thorough background security investigation.

All Department users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff (LES) who handle PII are required to take the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Visa Records a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is authorized only through a Department-approved access program. Remote access to the network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements, which include but are not limited to two-factor authentication and time out function.

Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system maintains audit trails of access and activity for each user within each function, thereby permitting regular and ad hoc monitoring of computer usage by systems and consular managers.

When it is determined that a user no longer needs access, the user's account is disabled.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be destroyed or retired in accordance with published record disposition schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of Information Programs and Services; A/GIS/IPS; SA–2; Department of State; 515 22nd Street NW., Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary for Visa Services, Room 6811, Department of State, 2201 C Street, NW., Washington, DC 20520–4818; Director, National Visa Center, 32 Rochester Avenue, Portsmouth, NH 63801; Director, Kentucky Consular Center, 3505 N. US Hwy 25 W, Williamsburg, KY 40769. At specific locations abroad the on-site manager is the consular officer responsible for visa processing.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that the Department of State might have visa records pertaining to them may write to the Director; Office of Information Programs and Services; A/GIS/IPS; SA–2; Department of State; 515 22nd Street NW.; Washington, DC 20522–8100. The individual must specify that he or she wishes Visa Records for his/her application or petition to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates), which give the individual cause to believe that the Department of State has records pertaining to him or her.

RECORD ACCESS PROCEDURES

Individuals who wish to gain access to or amend records pertaining to themselves may write to the Director, Office of Information Programs and Services (address above). However, in general, visa records are confidential and may not be released under section 222(f) of the Immigration and Nationality Act, except that, the Department of State may consider requests for records that originated with, or were sent to, a requesting visa applicant or someone acting on such applicant's behalf to be releasable thereto.

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

These records contain information that is primarily obtained from the individual who is the subject of the records; attorneys/agents representing these individuals; relatives; sponsors; petitioners; members of Congress; U.S. Government agencies; foreign government agencies, international organizations; local sources at posts; and anyone else with information that is, or may be, relevant to a U.S. visa application.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(3), records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the **Federal Register**, under 22 CFR 171.36.

[FR Doc. 2012–26307 Filed 10–24–12; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request to reissue U.S. Savings Bonds to a personal trust.

DATES: Written comments should be received on or before December 26, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Request to reissue U.S. Savings Bonds to a Personal Trust.

OMB Number: 1535–0009.

Form Number: PD F 1851.

Abstract: The information is necessary to support a request for reissue of savings bonds in the name of the trustee of a personal trust estate.

Current Actions: None.

Type of Review: Revision.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 18,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 4,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 22, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–26258 Filed 10–24–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application By Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

DATES: Written comments should be received on or before December 26, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Application By Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

OMB Number: 1535–0104.

Form Number: PD F 2066.

Abstract: The information is requested to support payment of an Armed Forces Leave Bond or check issued under Section 6 of the Armed Forces Leave Act of 1946, as amended, where the owner died without assigning the bond to the Administrator of Veterans Affairs prior to payment, or without presenting the check for payment.

Current Actions: None.

Type of Review: Revision.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 22, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–26259 Filed 10–24–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Senior Executive Service; Public Debt Performance Review Board

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Public Debt Performance Review Board (PRB) for the Bureau of the Public Debt (BPD). The PRB reviews the performance appraisals of career senior executives who are below the level of Assistant Commissioner/Executive Director and who are not assigned to the Office of the Commissioner in BPD. The PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: Effective on October 25, 2012.

FOR FURTHER INFORMATION CONTACT: Angela Jones, Bureau of the Public Debt, (304) 480–8949.

SUPPLEMENTARY INFORMATION: This Notice announces the appointment of the following primary and alternate members to the Bureau of the Public Debt (BPD) PRB:

Primary Members

Anita D. Shandor, Deputy Commissioner, Office of the Commissioner, BPD;

Kimberly A. McCoy, Assistant Commissioner, Office of Information Technology, BPD;

Cynthia Z. Springer, Assistant Commissioner, Office of Administrative Services, BPD;

Paul V. Crowe, Assistant Commissioner, Office of Retail Securities, BPD.

Alternate Members

Dara Seaman, Assistant Commissioner, Office of Financing, BPD.

Authority: 5 U.S.C. 4314(c)(4)

Anita D. Shandor,

Deputy Commissioner.

[FR Doc. 2012–26291 Filed 10–24–12; 8:45 am]

BILLING CODE 4810–39–P

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Federal Register

Vol. 77, No. 207

Thursday, October 25, 2012

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Presidential Documents	
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Public Laws Update Service (numbers, dates, etc.)	**741–6043**
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FEDERAL REGISTER PAGES AND DATE, OCTOBER

59709–60028 1
60029–60276 2
60277–60602 3
60603–60882 4
60883–61228 5
61229–61506 9
61507–61720 10
61721–62132 11
62133–62416 12
62417–63200 15
63201–63710 16
63711–64022 17
64023–64220 18
64221–64408 19
64409–64692 22
64693–64888 23
64889–65096 24
65097–65250 25

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8871 60277
8872 60279
8873 60603
8874 60605
8875 60607
8876 60609
8877 60611
8878 60613
8879 60615
8880 60617
8881 62133
8882 62135
8883 62137
8884 62413
8885 63201
8886 63203
8887 63709
8888 64021
8889 64218
8890 64407
8891 65093
8892 65095

Executive Orders:
13627 60029
13622 (amended by 13628) 62139
13628 62139

Administrative Orders:
Memorandums:
Memorandum of September 27, 2012 60035
Notices:
Notice of September 11, 2012 (corrected) 60037
Notice of October 17, 2012 64221
Order of September 28, 2012 60281
Presidential Determinations:
No. 2012–17 of September 28, 2012 61507
No. 2012–18 of September 28, 2012 61509

5 CFR

532 63205
1200 62350
1201 62350
1203 62350
1208 62350
1209 62350
1631 ..... 60039, 61229

7 CFR

301 59709
331 61056

8 CFR

217 64409

9 CFR

121 61056

10 CFR

50 60039
429 ..... 59712, 59719
430 ..... 59712, 59719

Proposed Rules:
51 65137
72 63254
110 64435

12 CFR

9 61229
46 61238
219 65098
252 ..... 62378, 62396
325 62417
380 63205
Ch. VI 65097
611 60582
612 60582
619 60582
620 60582
630 60582

Proposed Rules:
45 60057
48 62177
237 60057
324 ..... 60057, 63763
624 60057
701 65139
702 65141
741 ..... 65139, 65141
791 65141
1070 64241
1221 60057
1238 60948

14 CFR

1 62147
25 ..... 64023, 64025, 64029
29 60883
39 ..... 59726, 59728, 59732, 60285, 60288, 60296, 60887, 60889, 60891, 61511, 63215, 63711, 63712, 63714, 63716, 64693, 64695, 64696, 64699, 64701, 64704, 64706, 64709, 64711
61 61721
71 ..... 61248, 64714, 64889
97 ..... 59735, 59738, 62427, 62429
121 63217
400 61513
440 63221
1204 ..... 60619, 65099

1212 60620
Proposed Rules:
39 ....59873, 60060, 60062, 60064, 60073, 60075, 60323, 60325, 60331, 60651, 60653, 60655, 60658, 61303, 61539, 61542, 61548, 61550, 61731, 62182, 62466, 63260, 63262, 63264, 63266, 63268, 63270, 63272, 63275, 63281, 63282, 63285, 64053, 64242, 64437, 64439, 64442, 64763, 64765, 64767, 65142, 65144, 65146, 65148
71 ....60660, 61304, 61306, 62468, 64444, 64919

15 CFR
744 61249
902 63719

16 CFR
2 65099
4 65099
260 62122
1101 61513
Proposed Rules:
1112 64055
1218 64055

17 CFR
143 65100
232 62431
Proposed Rules:
275 62185

18 CFR
35 ....61896, 64890
357 59739
375 59745
Proposed Rules:
40 ....64920, 64935

19 CFR
10 64031
12 64032
24 64031
162 64031
163 64031
178 64031
Proposed Rules:
210 60952

20 CFR
655 60040

21 CFR
510 ....60301, 60622, 64715
520 60622
522 ....60301, 64715
524 ....60301, 64715
529 64715
558 ....60301, 60622, 64715
1308 64032
Proposed Rules:
73 65150
1308 63766

23 CFR
Proposed Rules:
771 59875
1200 60956

25 CFR
36 60041
542 60625
543 60625

26 CFR
301 64033
Proposed Rules:
1 ....59878, 60959, 63287, 64768
20 60960
25 60960

27 CFR
9 64033

28 CFR
16 61275

29 CFR
1910 62433
1915 62433
1926 62433
4022 62433

31 CFR
29 64223
560 64664
1010 59747

32 CFR
706 63224
Proposed Rules:
300 62469
1285 62469

33 CFR
100 ....59749, 60302, 63720, 63722
104 62434
117 ....60896, 63725, 63727, 64036, 64411
162 62435
165 ....59749, 60042, 60044, 60897, 60899, 60901, 60904, 62437, 62440, 62442, 62444, 63729, 63732, 63734, 64411, 64718, 64720, 64722, 64904, 64906
334 ....61721, 61723
Proposed Rules:
110 60081
161 64076
165 ....60960, 62473, 64943

34 CFR
36 60047

36 CFR
7 60050
230 65103
Proposed Rules:
7 62476
1195 62479

37 CFR
Proposed Rules:
1 ....61735, 64190
2 64190
7 64190
10 64190
11 64190
41 64190
201 60333

38 CFR
3 63225
9 60304

39 CFR
20 ....64724, 64725
966 65103
Proposed Rules:
20 64768
111 ....60334, 62446, 63771, 64775
3001 61307

40 CFR
9 61118
51 65107
52 ....59751, 59755, 60053, 60307, 60626, 60627, 60904, 60907, 60910, 60914, 60915, 61276, 61279, 61478, 61513, 61724, 62147, 62150, 62159, 62449, 62452, 62454, 63228, 63234, 63736, 63743, 64036, 64039, 64237, 64414, 64422, 64425, 64427, 64734, 64737, 64908, 65107, 65119, 65125, 65133
63 65135
80 61281
85 62624
86 62624
180 ....60311, 60917, 61515, 63745, 64911
271 60919
272 59758
300 64748
600 62624
721 61118
Proposed Rules:
2 60902
52 ....59879, 60085, 60087, 60089, 60094, 60339, 60661, 62191, 62200, 62479, 63781, 64445, 64787, 65151
55 61308
58 64244
63 60341
80 61313
81 65151
98 63538
180 63782
271 ....60963, 61326
272 59879
300 64790

41 CFR
300-3 64430
301-2 64430
301-10 64430
301-11 64430
301-52 64430
301-70 64430
301-71 64430
Proposed Rules:
301-11 64791
301-74 64791

42 CFR
73 61084
88 62167
412 ....60315, 63751, 64755
413 ....60315, 64755
424 60315
476 60315
495 64755
Proposed Rules:
73 63783

44 CFR
64 ....59762, 59764, 61518, 63753
65 59767
Proposed Rules:
67 ....59880, 61559

45 CFR
162 60629
2510 60922
2522 60922
2540 60922
2551 60922
2552 60922

46 CFR
1 59768
2 59768
6 59768
8 59768
10 ....59768, 62434
11 ....59768, 62434
12 ....59768, 62434
15 ....59768, 62434
16 59768
24 59768
25 59768
26 59768
27 59768
28 59768
30 59768
31 59768
32 59768
34 59768
35 59768
39 59768
42 59768
46 59768
50 59768
52 59768
53 59768
54 59768
56 59768
57 59768
58 59768
59 59768
61 59768
62 59768
63 59768
64 59768
67 59768
70 59768
71 59768
76 59768
77 59768
78 59768
90 59768
91 59768
92 59768
95 59768
96 59768
97 59768
98 59768
105 59768
107 59768
108 59768
109 59768
110 59768
111 59768
114 59768
117 59768
125 59768
126 59768
127 59768
128 59768
130 59768

131 59768
133 59768
134 59768
147 59768
148 59768
150 59768
151 59768
153 59768
154 59768
159 59768
160 59768
161 59768
162 59768
164 59768
167 59768
169 59768
170 59768
171 59768
172 59768
174 59768
175 59768
179 59768
180 59768
188 59768
189 59768
193 59768
194 59768
195 59768
197 59768
199 59768
401 59768
502 ....61519, 64758

Proposed Rules:

7 59881
8 60096

47 CFR

0 ....60934, 62461
4 63757
27 62461
64 ....60630, 63240
73 64758
90 ....61535, 62461

Proposed Rules:

1 60666
2 62480
15 64446
20 61330
64 60343
73 ....59882, 64792, 64946
74 64446
76 61351
90 64446
97 64947

48 CFR

504 59790
552 59790

Proposed Rules:

53 60343
1552 60667

49 CFR

33 59793
40 60318
107 60935
171 60935
172 60935
173 ....60056, 60935
175 60935
178 60935
179 60935
Ch. III 59818, 59840
303 59818
325 59818
350 59818
355 59818
356 59818
360 59818
365 ....59818, 64050
366 59818
367 59818
368 59818
369 59818
370 59818
371 ....59818, 64050
372 59818
373 59818
374 59818
375 ....59818, 64050
376 59818
377 59818
378 59818
379 59818
380 59818
381 59818
382 59818
383 59818
384 59818
385 ....59818, 64759
386 59818
387 59818
388 59818
389 59818
390 59818
391 59818
392 59818
393 59818
395 59818
396 59818
397 59818
398 59818
399 59818
450 59768
451 59768
452 59768
453 59768
523 62624
531 62624
533 62624
536 ....62624, 64051
537 62624
593 59829
821 ....63242, 63245
826 63245
1022 64431

Proposed Rules:

26 65164
107 64450
172 64450
173 64450
175 64450
178 64450
213 64249
234 64077
395 64093
622 59875

50 CFR

17 ....60750, 61664, 63604
229 60319
300 60631
600 59842
622 ....60945, 60946, 61295, 62463, 64237
635 ....59842, 60632, 61727
648 ....61299, 64239, 64915, 65136
660 ....61728, 63758
665 60637
679 ....59852, 60321, 60649, 61300, 62464, 63719, 64240, 64762, 64917, 64918

Proposed Rules:

17 ....60180, 60208, 60238, 60510, 60778, 60804, 61375, 61836, 61938, 63440, 63928, 64272
223 61559
224 61559
622 ....62209, 64300
635 61562
648 ....59883, 64303, 64305
679 62482

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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S. 3624/P.L. 112–196

Military Commercial Driver's License Act of 2012 (Oct. 19, 2012; 126 Stat. 1459)

Last List October 11, 2012

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