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

WHEN: Tuesday, February 12, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Memorandum of December 22, 2010

The Richard C. Holbrooke Award for Diplomacy

Memorandum for the Secretary of State

To honor the legacy of one of America's greatest diplomats and to reaffirm our commitment to diplomacy, I hereby direct you to establish the Richard C. Holbrooke Award for Diplomacy, to be awarded annually. You are authorized to take all necessary steps to establish an appropriate award program under the auspices of your department to recognize distinguished Americans who have made especially meritorious contributions to diplomacy.

Sixty days prior to presenting the award, you shall present to me a list of nominees, from which I will select up to five individuals or groups of individuals to receive this award. In preparing your list of nominees, you may consider the recommendations of appropriate individuals and groups, coordinate your nominations in consultation with other executive agencies as appropriate, and may include recommendations for posthumous awards.

You are authorized and directed to publish this memorandum in the **Federal Register.**

THE WHITE HOUSE,
Washington, December 22, 2010

[**Editorial Note:** This document was received by the Office of the Federal Register on December 19, 2012.]

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Rules and Regulations

Federal Register

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Friday, December 21, 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.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–12–0006]

RIN 0563–AC39

Common Crop Insurance Regulations; Florida Citrus Fruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Florida Citrus Fruit Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will apply for the 2014 and succeeding crop years.

DATES: This rule is effective January 22, 2013.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO, 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Florida Citrus Fruit Crop Insurance Provisions that were published by FCIC on July 16, 2012, as a notice of proposed rulemaking in the **Federal Register** at 77 FR 41709–41716. The public was afforded 30 days to submit comments after the regulation was published in the **Federal Register**.

A total of 80 comments were received from 6 commenters. The commenters were insurance providers, an insurance service organization, and a grower organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter asked that FCIC conduct at least one public forum meeting, with current citrus growers, insurance provider loss adjustment management, agents, and grower groups, before all the proposed changes are implemented and binding in regards to the 2014 Florida Citrus Fruit policy.

Response: FCIC representatives have been present at several meetings where Florida citrus fruit stakeholders, including loss adjusters and grower groups have been present. At these meetings some of the proposed changes to the Florida Citrus Fruit Crop Provisions (Crop Provisions) were discussed and the stakeholders provided valuable input. The information gathered at these meetings was considered when drafting the proposed rule. FCIC regrets if all interested parties were not in attendance at these meetings or if the topics covered did not encompass all of the proposed changes. Further, all interested parties have had an opportunity to comment on all the proposed changes. Therefore, FCIC does not intend to conduct any additional meetings to discuss the proposed changes prior to finalizing the Crop Provisions.

Comment: A few commenters stated FCIC's proposed system for reclassifying citrus fruit is more cumbersome than the one currently used by the agency. The commenters stated they can find no reason to change the system and doing so will only cause confusion. Growers are familiar with the current system as it has been in place for over 50 years. Changing such a widely accepted, time tested system simply for the purpose of standardization with other commodities makes no sense.

Response: FCIC understands the concerns of the commenters that the proposed changes to terminology and policy structure could initially create confusion for stakeholders. However, these changes are necessary in order to meet the objectives of the Acreage Crop Reporting Streamlining Initiative, which has a broader goal of simplifying reporting requirements for producers. Currently, different USDA programs have different reporting requirements and terminology. In order to streamline the reporting process, accommodations have been made within all the affected programs to standardize their reporting. In the long run, producers will benefit from this streamlined process. Stakeholders should become more comfortable with the changes to terminology and policy structure over time. No change has been made to the final rule.

Comment: A commenter stated the proposed changes within the policy for reclassifying citrus into commodities have their purpose and could be perceived as a move in the right direction. However, instead of renaming all Florida citrus and citrus fruit nationwide, the commenter suggested that FCIC align and broaden coverage. The commenter stated that claims should be separated at the variety level and not offset another variety. If unit structures and coverage were enhanced and broadened, then growers that only purchase catastrophic coverage would be inclined to analyze their risk and management thereof and purchase better protection.

Response: FCIC appreciates the commenter's suggestion that allowing units to be separated at the varietal level would be more desirable to producers and would result in producers selecting higher levels of coverage on the varieties with a higher perceived risk. While the proposed ''citrus fruit groups'' could be used to allow separate basic units and coverage levels by variety, no such changes were proposed and such changes would be significant, requiring the public to receive an opportunity to comment. In considering such changes in the future, more research would be necessary to determine the impact on premium rates and the producers' willingness to pay for any increased rates. No change has been made to the final rule.

Comment: A few commenters stated it would be helpful if FCIC would clarify and publish all intended unit structures, commodity types, intended uses and any other information that would be helpful to understanding or explaining the information that will be contained in the Special Provisions.

Response: As stated in the proposed rule, basic units will be determined by citrus fruit group. The optional unit structure has not changed. Although the commodity types and intended uses are subject to change based on price availability and rating needs, the anticipated commodity types, intended uses, and citrus fruit groups for the 2014 crop year are as follows:

Citrus fruit commodity	Commodity type	Intended use	Citrus fruit group
Oranges	Early-season	Juice	A
Oranges	Mid-season	Juice	A
Oranges	Late-season	Juice	B
Oranges	Late-season	Fresh	C
Oranges	Navel	Fresh	D
Grapefruit	No Commodity Type Specified	Juice	E
Grapefruit	No Commodity Type Specified	Fresh	F
Tangelos	No Commodity Type Specified	Fresh	G
Mandarins/Tangerines	No Commodity Type Specified	Fresh	H
Tangors	Murcotts	Fresh	I
Tangors	Temples	Fresh	I
Lemons	No Commodity Type Specified	Juice	J
Limes	No Commodity Type Specified	Juice	K

Comment: A commenter stated it would have been helpful if FCIC would have provided a sample Special Provisions or some other example to illustrate the distinctions between the terms, ''citrus fruit commodities'' and ''citrus fruit groups.'' According to the definitions and the background information in the proposed rule, it appears that a ''citrus fruit commodity'' may be subdivided into ''citrus fruit groups'' made up of various combinations of ''commodity types'' and ''intended uses'' (and perhaps also ''classes'' and ''subclasses''). At a guess, an example of ''commodity types'' might be early-season, mid-season and late-season oranges, and ''intended uses'' might be fresh and juice. The commenter stated that while the proposed definition of ''citrus fruit commodity'' includes all oranges together, various types of oranges were designated in the current Florida Citrus Fruit Crop Provisions as Citrus I (early and mid-season oranges), Citrus II (late oranges juice), Citrus VII (late oranges fresh), and Citrus VIII (navel oranges), with each of these being separate ''crops'' that the producer could choose to insure or not. It appears that the new subdivision of ''citrus fruit group'' provides for similar insurance choices within the ''commodity'' of oranges, so that a producer might choose to insure ''late-season oranges fresh'' but not ''late-season oranges juice'' (if these are separate ''groups'' of ''commodity types'' and ''intended uses''). The commenter asked if this correct.

Response: FCIC agrees with the commenter's interpretation of the proposed rule. Within each citrus fruit commodity, such as oranges, the producer can elect which citrus fruit groups to insure. However, once a producer elects to insure a citrus fruit group, all oranges qualifying for the citrus fruit group will be insured. The response to the previous comment provides more detail on the commodity types and intended uses FCIC plans to offer and how different combinations of the commodity types and intended uses will be used to form citrus fruit groups.

Comment: A commenter stated there are numerous references to changes being made due to the expansion of type and practice into four different new subcategories for each of these items. It would be extremely beneficial if RMA would provide a sample of a proposed Special Provision as a part of the proposed rule as this would assist those reviewing the proposed rule when developing comments. It is difficult to review and comment on various parts of this proposed rule without knowing what the Special Provisions will contain under this new format. The commenter requested that RMA consider publishing a sample Special Provision as a part of all future proposed rule changes to Crop Provisions.

Response: FCIC will consider posting a sample Special Provision onto *regulations.gov* along with future proposed rules.

Comment: A commenter stated they recognize that, as stated in the background information in the proposed rule, some of the proposed terminology changes are made ''to be consistent with the terms developed under the Acreage Crop Reporting Streamlining Initiative'' such as changing ''citrus fruit crop'' to ''citrus fruit commodity'' and ''citrus fruit type'' to ''commodity type.'' Also, the terms ''commodity type'' and ''intended use'' are part of the expanded types/practices that will be implemented. The commenter stated that these terms will become easier to deal with as stakeholders become more familiar with them. However, the commenter stated that some of the distinctions and coordination among the new definitions of ''citrus fruit commodities,'' ''citrus fruit groups,'' ''commodity types,'' and ''intended uses'' (replacing the current definitions of ''citrus fruit crop'' and ''citrus fruit type'') are not entirely clear and can result in some confusion as to what exactly is being proposed.

Response: FCIC agrees that the new terminology will become easier to understand over time. FCIC also agrees that not all commodity types, intended uses, and citrus fruit groups were included in the proposed rule. However, FCIC has listed all currently intended commodity types, intended uses, and citrus fruit groups in response to a previous comment.

Comment: A commenter stated changes in terminology will result in many additional inspections for the 2014 crop year and this is a concern.

Response: FCIC disagrees that changes in terminology will result in additional inspections. Inspections will not be required for carryover policyholders who have to fill out a new application solely as a result of the revised terminology in the Crop Provisions. Inspections may be required for carryover policyholders if: damage, production methods, or cultural practices will reduce the insured's crop production; trees have been removed or replaced with uninsurable trees; new land units are added; the insured transfers to a different insurance provider; or when spot checks are completed. However, inspection under these circumstances was previously required. FCIC approved procedures will provide additional information on required inspections.

Comment: A commenter recommended a series of changes to be made in order to maintain consistency with the already-established expanded types and practices. The commenter stated that this series of changes will be more effective than the proposed changes, while still meeting the apparent objectives of the proposed rule. First, the commenter suggests removing the term ''citrus fruit group'' from the proposed rule. Second, the commenter suggests that each of the citrus fruit commodities (oranges, grapefruit, etc.) should reflect the commodities upon which separate coverage levels and administrative fees are based. More specifically, the commenter states that each commodity should be a separate insurable commodity and a separate eligible crop insurance contract. Third, the commenter suggests the actuarial documents be issued with the commodity of oranges containing commodity types of early-season and late-season with intended uses of fresh and processing for each commodity type and the rest of the eight type practice fields indicating they are unspecified. Fourth, the commenter suggested coverage levels should be elected by commodity, and therefore, it is important that the Crop Provisions clearly state this in both section 3 (Insurance Guarantees, Coverage Levels and Prices for Determining Indemnity) and section 6 (Insured Crop).

Response: FCIC disagrees with the commenter that citrus fruit groups should be removed from the final rule and that administrative fees, basic units, and coverage levels should be based on the citrus fruit commodity. The reason the citrus fruit groups were proposed to be added was to keep the basis for administrative fees, basic units, and coverage levels as similar to the current structure as possible while still meeting the objectives of the Acreage Reporting and Streamlining Initiative. Basing administrative fees, basic units, and coverage levels on the new citrus fruit commodities would constitute a major shift in how administrate fees, basic units, and coverage levels are determined and restrict the choices available to producers. No change has been made to the final rule.

Section 1—Definitions

Comment: A few commenters recommended FCIC not change the term ''citrus fruit crop'' to ''citrus fruit commodity.'' The term ''commodity'' is infrequently used in the industry and would only confuse policyholders. The

commenters stated that presently, the only time that citrus crops are called commodities is on the futures market. The goal of any language change should be to make the policy more understandable to the policyholder who purchased it.

Response: FCIC proposed changing the term ''crop'' to ''commodity'' because of a USDA initiative known as the Acreage Crop Reporting and Streamlining Initiative. This initiative has an objective of standardizing terms and consolidating acreage reports across participating USDA agencies so that information can be shared across agencies, thereby reducing the number of times producers are required to report the same information to different agencies. As a result of the Acreage Crop Reporting and Streamlining Initiative, the term ''crop'' is being replaced by the more universally used term of ''commodity'' in RMA's Actuarial Information Browser and where applicable as Crop Provisions are revised. Because the term ''commodity'' is used in the Actuarial Information Browser, changing the term ''crop'' to ''commodity'' in the Florida Citrus Fruit Crop Provisions should help to eliminate confusion for producers accessing the Actuarial Information Browser. No change has been made to the final rule.

Comment: A commenter stated that replacing the existing citrus fruit crops (Citrus I, Citrus II, etc.) with oranges, grapefruit, etc. will allow for greater clarity as to what commodity is being covered. However, because there is not a one-to-one correlation between the old and new designations, it is appropriate to require producers to complete new applications. Even if the final rule does not include this requirement, it is important to include this requirement in any announcement that accompanies the publication of the final rule, so that insurance providers, agents and producers may prepare accordingly.

Response: FCIC agrees that the producer will be required to complete new applications for certain citrus fruit groups that do not have a one-to-one correlation with the old citrus fruit crop. Therefore, carryover policyholders with a policy for Citrus IV (Tangelos and Tangerines), Citrus VI (Lemons and Limes), or Citrus VII (Grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh) will be required to complete a new application. FCIC will include information on completing the new applications in an informational memorandum and in the Crop Insurance Handbook. As stated above, even though new applications may be required, this does not mean that new inspections must be performed.

Comment: A commenter stated the definition of ''citrus fruit group'' states that various ''commodity types and intended uses within a citrus fruit commodity * * * may be grouped together for the purposes of electing coverage levels, establishing basic units, and assessing administrative fees.'' According to the background information in the proposed rule, this change is intended ''to make the insurance coverage as similar to that which was previously provided while still being consistent with the Acreage Crop Reporting Streamlining Initiative.'' This suggests that, for example, early and mid-season oranges are likely to be a citrus fruit group [previously Citrus I] while late oranges for juice [Citrus II] and late oranges for fresh [Citrus VII, along with grapefruit adjusted on a fresh basis] will be separate citrus fruit groups, and producers would be able to choose whether or not to insure any or all of these groups, with separate basic units by ''group,'' and different coverage levels possible, instead of the choice of insurance (and level, etc.) being by ''citrus fruit commodity'' (so that all oranges would have to be insured). It appears that lemons and limes will no longer be grouped together [previously Citrus VI] since they are set up as separate ''citrus fruit commodities,'' so producers will be able to insure one and not the other, which was not possible before. This change for lemons and limes is indicated in the background information in the proposed rule, so the commenter assumes that perhaps this is the only significant difference between the previous ''citrus fruit crops'' and the proposed ''citrus fruit groups'' (as opposed to comparing to the proposed ''citrus fruit commodities'').

Response: FCIC agrees with the commenter's interpretation of the proposed rule. FCIC has tried to maintain the current insurance options and flexibility available to producers to the maximum extent possible. However, in addition to Citrus VI (lemons and limes), the citrus fruit crops Citrus IV (tangelos and tangerines) and Citrus VII (grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh) will also be split apart into separate citrus fruit commodities. This increases the insurance options available.

Comment: A commenter stated that based on the definitions of ''citrus fruit commodity'' and ''citrus fruit group,'' it appears the ''citrus fruit group'' is the basis of coverage (similar to the current ''citrus fruit crops'' of Citrus I through Citrus IX) while ''citrus fruit commodity'' is a more generic reference to the different kinds of citrus (oranges, grapefruit, etc.). The commenter questioned if there is much benefit in identifying ''oranges'' as the ''citrus fruit commodity'' if producers will continue to be able to choose to insure ''late oranges fresh'' while not insuring any other oranges (or insuring them at different coverage levels and prices).

Response: The benefit to changing to commodity names to be consistent with commodity names used by other USDA agencies is this will allow information to be shared with other USDA agencies. This change is intended to reduce the number of times a producer has to report the same information to different agencies. Although other USDA programs may not use all of the same terminology, some of the added terms are necessary to maintain the current flexibility allowed by the policy. Additionally, changing the commodity names to be consistent between the different regions FCIC insures these commodities will simplify the administration of the Federal crop insurance program.

Comment: A few commenters stated the proposed rule does not appear to align with the expanded type and practice attributes established by FCIC (commodity type, class, subclass, intended use, cropping practice, irrigated practice, organic practice and interval) for some crops with the 2013 reinsurance year. The proposed term ''citrus fruit group'' is defined as ''a designation in the actuarial documents used to identify commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels, establishing basic units and assessing administrative fees.'' There is no ''group'' attribute in the now established expanded types and practices. Adding a ninth attribute will require redesigning the actuarial data tables and a significant amount of programming changes. It seems as though the citrus fruit commodities listed in the proposed rule, should be the ''citrus fruit group'' used to elect coverage levels and assess administrative fees since this would be most similar to the groups established under the 2009 provisions.

Response: FCIC disagrees that the citrus fruit commodities should be the citrus fruit group. The purpose of the change is to allow for the streamlining of reporting while maintaining current flexibility. Eliminating the citrus fruit commodities defeats this purpose. However, the commenter is correct that adding a ninth attribute to the type/practice tab in the Actuarial Information

Browser will require significant programing changes. Therefore, FCIC will instead list the citrus fruit groups in a Special Provisions statement. FCIC has revised the definition of ''citrus fruit group'' by removing the phrase ''actuarial documents'' and adding the phrase ''Special Provisions'' in its place. Additionally, FCIC has revised the definition of ''citrus fruit group'' to clarify that different combinations of commodity types and intended uses may grouped together to form citrus fruit groups.

Comment: A few commenters stated if the definition of ''citrus fruit group'' is kept, it does not need to state that the group designation is used to establish basic units. If each group is considered a separate ''crop policy,'' there is no alternative except to allow for separate basic units if each group to be insured must be designated on the application form.

Response: FCIC agrees with the commenter that it is not necessary to state the citrus fruit group will be used to establish basic units. The commenter is correct that since each citrus fruit group would be considered a separate insured crop, the producer would be entitled to separate basic units by insured crop in accordance with the definition of ''basic unit'' in the Basic Provisions. Therefore, FCIC has revised the definition of ''citrus fruit group'' by removing references to basic units and administrative fees and adding a phrase that indicates the citrus fruit group will be used to identify the insured crop in its place. FCIC has also revised section 2 to state that basic units will be established in accordance with section 1 of the Basic Provisions.

Comment: A few commenters stated they agree with changing the definition of ''Excess Wind'' and expanding the number and location of weather recording stations.

Response: FCIC thanks the commenters for their review and support of this proposed change.

Comment: A commenter requested clarification on the intent of the definition of ''intended use.'' The interpretation could go many different ways when you get into claim situations. This would be another benefit of being able to see a sample Special Provision.

Response: FCIC agrees that the definition of ''intended use'' is ambiguous because there is no indication of what intended uses are available. FCIC has revised the provision to clarify that insurable intended uses are specified in the Special Provisions. Currently, the only intended uses FCIC plans to insure under the Florida Citrus Fruit Crop Provisions are fresh and juice. The intended use that is selected will be used to determine the dollar amount of insurance and the loss adjustment procedures for settling claims. Producers who choose an intended use of fresh will be required to provide management records upon request to verify good fresh citrus fruit production practices were followed from the beginning of bloom stage until harvest. In addition, unless otherwise provided in the Special Provisions acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or for fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided upon request.

Comment: A commenter stated according to subsection (a)(3) of the definition of ''potential production,'' it includes citrus fruit that ''Except as provided in (b), was missing, damaged or destroyed from either an insured or uninsured cause''; while subsection (b)(1) excludes citrus fruit that ''Was missing, damaged, or destroyed before insurance attached for any crop year.'' The commenter questioned whether this means that subsection (a)(3) applies only when these events occur after insurance attached. The commenter also questioned if subsection (a)(3) should specifically reference subsection (b)(1), or do subsections (b)(2) and (3) also factor into the equation. The commenter suggested changing the period at the end of the opening sentence to a colon. The commenter also suggested revising subsection (b)(3) by removing the phrase ''Any tangerines that'' and adding the phrase ''For tangerines,'' to better follow the lead-in.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider any potential changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, with respect to the question raised by the commenter, FCIC agrees subsection (b)(1) includes citrus fruit that was missing, damaged, or destroyed from either an insured or uninsured causes after insurance attached for the crop year. Additionally, potential production does not include citrus fruit that was missing, damaged or destroyed due to insured or uninsured causes that are damaged or destroyed due to normal dropping as described in subsection (b)(2) or that are tangerines that normally would not meet the 210 pack size as described in subsection (b)(3).

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A commenter stated as reworded, the first sentence of section 3(a) [''You may select only one coverage level for each citrus fruit group designated within a citrus fruit commodity in the actuarial documents that you elect to insure.''] might be interpreted either as being able to elect insurance by citrus fruit group or by citrus fruit commodity. This could be clarified by putting parentheses around the phrase ''designated within a citrus fruit commodity in the actuarial documents.''

Response: FCIC agrees that as proposed section 3(a) may be misinterpreted. Since the definition of ''citrus fruit group'' specifies that the citrus fruit group is within a citrus fruit commodity, it is not necessary to restate this everywhere the term ''citrus fruit group'' is used. Therefore, FCIC has revised section 3(a) by removing the phrase ''designated within a citrus fruit commodity in the actuarial documents.''

Comment: A few commenters requested clarification of the purpose of section 3(c)(1). The commenters stated it is unclear exactly what the provision is requiring producers to report. The provision states ''you must report any event or action that could reduce the yield per acre'' but it is unclear what the starting point is for assessing if a reduction has occurred. The commenters stated that if the purpose of section 3(c)(1) is to have the grower report any condition that will prevent the acreage from being capable of producing a crop that will have a value at least equal to the amount it is insured for, it should state it that way. The commenters stated that because this is a dollar plan of insurance and losses are determined by the percent of damage and not historical yields, reduction in productive capacity should be irrelevant. The commenters stated the same coverage should be provided for a unit regardless of the productive capacity. The commenters questioned how units with different productive capacities can be treated differently under this type of plan. The commenters questioned if the true intent is to notate and capture uninsured damage, tree removal, etc. The commenters also questioned how greening effects are reported and suggested that this might already be handled with the current 10% tolerance factors.

Response: The purpose of section 3(c)(1) is to collect information that can be used to establish the amount of insurance and insurable acreage. The Reference Maximum Dollar Amount used to establish the amount of insurance per acre is based on the productive capacity of a healthy, fully stocked citrus grove. When the productive capacity of trees in a grove is reduced, it is not appropriate to maintain the same amount of insurance because that would result in over-insuring the grove because situations could occur that would make it impossible to produce the amount of insurance even if no insurable loss has occurred. Therefore, in section 3(c), FCIC is capturing the information needed to evaluate the productive capacity of the grove so it can be compared with the Reference Maximum Dollar Amount. Further, section 3(d) specifies that if the productive capacity of the grove is reduced, the acreage or amount of insurance can be reduced. Procedures for reporting damage, disease, etc. and reducing acreage or the amount of insurance will be included in the Crop Insurance Handbook. No change has been made to the final rule.

Comment: A commenter stated the proposed provision in section 3(c) changes the deadline from sales closing date to acreage reporting date and would require reporting of the specified information each year rather than only the first year of interplanting and any time the interplanted acreage's planting pattern changes. The commenter stated the significance of this change is not clearly specified in the background information in the proposed rule. The commenter stated the current section 3(c) also requires the additional information listed when citrus trees were interplanted for the first time, and when the planting pattern of the interplanted acreage subsequently changed. The proposed language removes all but one reference to ''interplanted trees,'' making the reporting requirement applicable in all cases every year rather than only when there is interplanting and any subsequent change. The commenter stated that this change, along with the change in deadline to the acreage reporting date, seems to make this provision more applicable to a ''Report of Acreage'' section corresponding to section 6 of the Basic Provisions, rather than additional information required in certain circumstances. The commenter requested FCIC consider moving these provisions to a ''Report of Acreage'' section corresponding to section 6 of the Basic Provisions.

Response: FCIC disagrees with the commenter that the provisions in section 3(c) should be moved to a ''Report of Acreage'' section corresponding to section 6 of the Basic Provisions. While the deadline may have changed to the acreage reporting date, the purpose of the provisions is to establish the amount of insurance for the crop, which has been contained in section 3 in many of the other perennial crops and does not affect the purpose or the meaning of the provisions. FCIC agrees that certain reporting requirements in section 3(c) are annual. However, the Florida Citrus Fruit Crop Provisions does not currently contain a section for report of acreage and adding a new section would require redesignating other sections. Further, the possibility exists that cross references may be missed. The risk of this outweighs any benefit from creating a new section especially since it would not clarify or change the meaning of the proposed provisions. FCIC's proposal to revise section 3(c) by changing the deadline for reporting from the sales closing date to the acreage reporting date has no impact on stakeholders because these dates are the same. No change has been made to the final rule.

Comment: A commenter stated the reporting requirements in the background information in the proposed rule includes ''age of the trees, interplanted trees, planting pattern'' in addition to the new requirements in sections 3(c)(1) and (2). The commenter stated this is similar to the sequence in sections 3(c)(1) and (2) of the current Crop Provisions, but ''interplanted trees'' is not in the proposed section 3(c)(3). The only mention of ''interplanted trees'' is in the parenthetical list in section 3(c)(1) of events or actions that could reduce the yield. The commenter questioned whether interplanting of citrus trees will always be considered to be likely to result in a reduction of potential yield. The commenter stated to consider if section 3(c)(1) should be moved to section 3(c)(3) since there will not always be an ''event or action that could reduce the yield'' to report every year.

Response: FCIC agrees with the commenter that section 3(c)(1) is not the appropriate place to list interplanted trees since section 3(c)(1) lists circumstances that would result in a reduction in the guarantee per acre. Because interplanted trees would result in an acreage reduction instead of a reduction in the guarantee per acre, FCIC has removed the reference to interplanted trees from section 3(c)(1) and added a reference to interplanted trees to section 3(c)(2).

Comment: A commenter stated the proposed provision in section 3(d) references a reduction in the yield potential and expected yield. The commenter stated this reference is misplaced as this is a dollar plan of insurance and not based on an approved yield. If the potential yield drops below 100 boxes per acre such acreage would then be addressed by sections 6(c) and (d). Since yields normally do change from year to year, the commenter questioned what would constitute a yield reduction for purposes of this provision. The commenter stated it appears this provision could generate additional unnecessary inspections on the part of the insurance providers.

Response: FCIC agrees sections 6(c) and (d) address situations when the yield potential drops below 100 boxes. However, FCIC disagrees that the amount of insurance or insurable acreage should not be reduced when the yield potential is reduced by a quantifiable amount from the maximum potential, but remains greater than 100 boxes per acre. Even though this is a dollar plan of insurance, FCIC has an obligation to ensure that it is not over-insuring the crop. This means that while any given grove may have a unique maximum yield potential at any given time, FCIC does not consider it appropriate to maintain the same amount of insurance when the yield potential of a grove is reduced below a certain level due to damage to the trees, disease, reduction in stand density, or other causes. Reduction in yield potential will be identified by assessing the health and vigor of the trees, as well as damage. It may be necessary to review production records to determine if a reduction in productive capacity has occurred. Although yields may normally fluctuate from year to year, it should still be possible to determine if there has been a reduction in productive capacity due to damage to the trees, disease, reduction in stand density, or other causes. Additional guidance will be provided in the Crop Insurance Handbook for determining if a reduction in productive capacity has occurred. FCIC does not consider inspections needed to reduce the amount of insurance or acreage to the appropriate level unnecessary. No change has been made to the final rule.

Comment: A commenter stated that according to the background information in the proposed rule, ''FCIC proposed to revise section 3(d) by clarifying the reasons FCIC will reduce insurable acreage or the amount of insurance, or both. The reasons given for a reduction are consistent with the reporting requirements contained in the

proposed revision of section 3(c).'' However, the commenter stated the added details in section 3(d) of what might require a reduction do not seem to match what is listed in section 3(c)(1). Both section 3(c) and (d) mention ''interplanted trees'' and ''practices,'' although section 3(d) specifies ''cultural practices,'' ''damage,'' and ''disease.'' The commenter questioned if ''a decrease in plant stand'' is supposed to be similar to ''removal of trees.'' The commenter also questioned if a reference to ''plant stand'' is appropriate for tree crops, but stated perhaps it is, since it is used in the Special Provisions statement.

Response: FCIC considers the phrase ''decrease in plant stand'' appropriate for tree crops since trees are technically plants and this is a common phrase used in literature referring to trees. Removal of trees would be one reason for a decrease in plant stand, but other reasons could include natural attrition, blow-down, and mortality due to disease. Since section 3(c) includes any event or action that could reduce the yield per acre, FCIC did not include an all-encompassing list of what must be reported. However, FCIC agrees the reporting terms in section 3(c) should match as closely as possible the terms in section 3(d). Therefore, FCIC has revised section 3(c)(1) by adding the term ''cultural'' prior to the term ''practices'' to be consistent with section 3(d)(3). FCIC has also revised section 3(c)(1) by adding the term ''disease'' to be consistent with the terminology in section 3(d)(4).

Comment: A commenter stated the proposed language in section 3(e) refers to circumstances ''that may reduce the yield per acre from previous levels'' but no longer refers to the possibility that they might reduce the acreage as in the last sentence of current section 3(d). The commenter questioned if that change was intended.

Response: FCIC did not intend for the proposed language in section 3(e) to exclude circumstances that might reduce the acreage. FCIC has revised section 3(e) to include circumstances that may reduce the acreage.

Section 5—Cancellation and Termination Dates

Comment: A commenter questioned whether the date changes in sections 3(f) and 8(a)(1) should have any effect on the April 30 cancellation and termination dates that are unchanged in section 5.

Response: As stated below in response to a comment regarding section 8(a)(1), the proposed date changes to sections 3(f) and 8(a)(1) have not been retained in the final rule. Therefore, there is no change needed to the April 30 cancellation and termination dates contained in section 5. No change has been made to the final rule.

Section 6—Insured Crop

Comment: A commenter suggested revising section 6(a) by adding parentheses around the phrase ''designated within a citrus fruit commodity in the actuarial documents'' to make it clear that it is the ''citrus fruit group'' (not the ''citrus fruit commodity'') that a producer may elect to insure.

Response: FCIC agrees that as proposed, section 6(a) may be misinterpreted. Because the definition of ''citrus fruit group'' specifies the citrus fruit group is within a citrus fruit commodity, it is not necessary to restate this everywhere the term ''citrus fruit group'' is used. Therefore, FCIC has revised section 6(a) by removing the phrase ''designated within a citrus fruit commodity in the actuarial documents.''

Comment: A commenter stated they are disappointed that the age of insurability in section 6(b)(2) was not lowered from five years to three years. Citrus has moved toward increased production at younger ages because of newer varieties and advanced production methods. Insurability should be at three years.

Response: FCIC did not propose to lower the minimum age of insurability for citrus trees because section 6(b)(2) already allows for trees that have not reached the fifth growing season after set out to be insured by written agreement or if allowed by the Special Provisions. Since the public was not given the opportunity to comment on this change and it does not address a conflict or vulnerability, FCIC cannot consider the recommended change. No change has been made to the final rule.

Comment: A commenter stated the insurability of younger trees (fruit) should be addressed. Presently, trees have to be in the fifth growing season (for their fruit) to be insured. The commenter stated in today's commercial citrus growing environment, trees that are three years old are producing fruit. Unless the fruit from the younger trees is appraised and excluded from production and losses, it is being counted as insured production and should be insured. The commenter stated this could be addressed by allowing up to 25 percent resets in a block/grove to be insured.

Response: FCIC disagrees the insurability of fruit from younger trees could be addressed by allowing up to 25 percent resets in a block/grove. FCIC provides guidance for commingled production and stand reduction in the Crop Insurance Handbook. Currently the Crop Insurance Handbook allows up to a 10 percent decrease in plant stand before adjustments are made to acreage. A stand reduction could include resets that have not reached the minimum age requirement. However, a stand reduction could also include trees that have been removed, but not replaced. Therefore, increasing the proportion of the stand that can be reduced before acreage is adjusted could result in over-insurance in situations where trees have been removed and not replaced or when the trees have been replaced and have not yet began producing. Furthermore, while the production from younger trees could potentially be considered under current procedures when determining the percent of damage, it is not likely to affect the overall percent of damage. As stated in response to the previous comment, FCIC did not propose to lower the minimum age of insurability for citrus trees because section 6(b)(2) already allows for trees that have not reached the fifth growing season after set out to be insured by written agreement or if allowed by the Special Provisions. Since the public was not given the opportunity to comment on this change and it does not address a conflict or vulnerability, FCIC cannot consider the recommended change. No change has been made to the final rule.

Comment: A few commenters stated that there is no reason to exclude Ambersweet oranges from insurability as proposed in section 6(b)(3). Ambersweet oranges exhibit typical characteristics of other insured varieties of oranges from a risk standpoint. Therefore, the commenters stated there is no more risk of loss as compared to other varieties. Furthermore, the commenters stated while not grown in large quantities, there are commercial blocks of Ambersweet oranges still in production. The commenters stated they are puzzled as to why Ambersweet oranges have been singled out. Additionally, the commenters would like any new varieties to be insurable within the appropriate class and type.

Response: FCIC agrees with the commenters that Ambersweet oranges should not be excluded from insurability in the Crop Provisions at this time due to lack of available information to substantiate excluding them from insurability. However, FCIC will continue to evaluate Ambersweet oranges to determine if it is appropriate to continue to offer insurance on this variety. New varieties that are commercially available will be

evaluated on a case by case basis for insurability. The Special Provisions will list the varieties that comprise each insurable commodity type. FCIC has revised section 6(b)(3) by removing Ambersweet oranges from the list of uninsurable citrus fruit.

Comment: The proposed section 6(f) states, unless otherwise provided in the Special Provisions, acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or for fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided upon request. A commenter questioned what are considered to be ''acceptable records'' for purposes of this provision and if the procedures will indicate what are considered to be acceptable records for this purpose.

Response: Acceptable fresh fruit sales records should indicate the citrus fruit commodity, commodity type, name of the insured, name of the buyer, date the production was sold, location, the amount of production sold, and the price. Acceptable fresh fruit sales records may include: Trip tickets, pack-out statements, year-end settlement sheets that indicate by citrus fruit commodity/commodity type the number of standard size boxes packed or the net weight of the packed fruit, daily sales records, and records from a State Marketing Program. FCIC will also provide guidance in the Crop Insurance Handbook as to what will be considered acceptable fresh fruit sales records.

Section 7—Insurable Acreage

Comment: A commenter stated to consider if the references to ''another commodity'' in sections 7(a)(1) and (2) should be changed to ''another agricultural commodity'' as defined in the Basic Provisions.

Response: FCIC agrees with the commenter and has changed the provisions accordingly. Additionally, FCIC has revised paragraph (a) by removing the phrase ''a crop planted with another crop'' and replacing it with the phrase ''interplanted acreage'' to be consistent with the phrasing in section 9 of the Basic Provisions.

Comment: A commenter stated to consider if the phrase ''the interplanted crop acreage'' in section 7(a)(3) should be revised to ''the interplanted commodity acreage'' to match other such revisions.

Response: FCIC agrees the term ''crop'' should be removed from section 7(a)(3). FCIC has revised the provision to state the combination of the citrus fruit acreage and the interplanted acreage cannot exceed the physical amount of acreage.

Comment: A commenter stated there is no premise in either the Crop Provisions or Special Provisions to establish the threshold for insurability for acreage that has been abandoned and subsequently undergone remediation as proposed in section 7(b). The commenter stated this is a dollar plan policy and is not based on actual production. If the market price for such citrus fruit is high then even a reduced amount of production and/or production that is of poor quality may still meet or exceed the Reference Maximum Dollar Amount.

Response: FCIC agrees with the commenter that FCIC does not currently provide a basis for determining the amount of production necessary to meet the Reference Maximum Dollar Amount. Therefore, FCIC has revised the proposed section 7(b) to simply state any acreage that has been abandoned is not insurable.

Section 8—Insurance Period

Comment: A few commenters stated they do not think moving the date insurance attaches from May 1 to April 16 in section 8(a)(1) is a good move. A vast majority of fruit that sets after bloom drops from the tree naturally by May 1. After that date, fruit drop is minimal and it is easy to determine what fruit has been damaged. Therefore, trying to accurately assess damage that may occur in April will prove difficult. The commenters stated that if the concern is to shrink the time between sales closing date and the policy inception date, a better approach would be to extend the sales closing date.

Response: FCIC agrees the date insurance attaches should not be moved from May 1 to April 16 because it will be more difficult to determine potential production during this period. Additionally, moving the sales closing date to April 16 eliminates the time needed to perform an inspection to determine insurability prior to insurance attaching. Therefore, FCIC has retained the original date of May 1 as the date insurance attaches in section 8(a)(1). Consequently, FCIC has also retained the original dates in the redesignated section 3(f).

Comment: A commenter stated they would like FCIC to address the issue of insuring young setting fruit that is damaged by an insured peril before the current date insurance attaches on May 1. The commenter questioned if there is anything that can be done to cover such damage while still affording a reasonable sales closing date.

Response: FCIC proposed changing the date insurance attaches from May 1 to April 16. This proposed change would have addressed insuring young setting fruit. However, as stated previously this change has not been retained in the final rule due to potential problems it could cause for determining potential production and determining insurability. FCIC has not proposed any other change to address this issue and the comment does not address a conflict or vulnerability. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule.

Comment: A commenter stated they presume the proposed date change from May 1 to April 16 in section 8(a)(1) has no effect on the unchanged calendar dates for the end of the insurance period in section 8(a)(2).

Response: FCIC agrees with the commenter that the proposed changes to section 8(a)(1) would have no effect on the provisions in section 8(a)(2). However, as stated previously the date changes to section 8(a)(1) have not been retained in the final rule.

Comment: A commenter stated they are pleased to see FCIC proposing to change the end of insurance period date for early oranges to February 28. The commenter stated this date is much more in line with current harvesting practices and will provide welcome peace of mind for those policyholders with early oranges still on the tree in February.

Response: FCIC thanks the commenters for their review and support of this proposed change.

Comment: A commenter stated they agree with the proposed shifting of the reference to a transfer of coverage and right to indemnity from (b)(2) [relinquishing a share on or before the acreage reporting date] to (b)(1) [acquiring acreage after the acreage reporting date]. However, the commenter questioned whether the removal of the phrase ''if after inspection we consider the acreage acceptable'' means it is not possible for the insurance provider to accept coverage following a favorable inspection. The commenter stated maybe this was never an option since, as stated in the background information in the proposed rule, ''none of the crops insurable under the Florida Citrus Fruit Crop Provisions have an acreage reporting date that occurs after the date insurance attaches for the crop year.''

Response: As stated in the proposed rule, the provision in section 8(b)(2) would never be applicable since none of

the crops insurable under the Florida Citrus Fruit Crop Provisions have an acreage reporting date that occurs after the date insurance attaches for the crop year. Therefore, section 8(b)(2) never gave the authority to accept coverage following a favorable inspection. However, section 8(a)(1)(i) contains language giving the insurance provider the authority to inspect acreage to determine if it meets the insurability requirements prior to insurance attaching.

Comment: A commenter recommend that in lieu of the proposed language in section 8(b)(1), language should be added to allow insurance providers the opportunity to inspect and insure any additional acreage that is acquired after the acreage reporting date if they wish to do so. The commenter stated insurance providers should have the opportunity to accept or deny coverage in these types of situations. This could be a substantial number of acres that may not have coverage for the crop year they were added if they were not insured by the previous owner. This would be similar to what is currently allowed for acreage not reported in accordance with section 6(f) of the Basic Provisions.

Response: This change was not proposed and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule.

Section 9—Causes of Loss

Comment: A commenter recommended the insured cause of loss in section 9(a)(1) be clarified as ''Fire, due to natural causes'' or ''Fire, if caused by lightning.''

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, with respect to the concerns expressed by the commenter, section 12 of the Basic Provisions already states all insured causes of loss must be due to a naturally occurring event. In addition, the Federal Crop Insurance Act is clear that only natural causes can be covered under the policy. These provisions apply to fire.

Comment: A commenter stated that feasibility should be considered and studied to offer coverage for disease and insect infestation. Citrus greening is the largest peril and loss to today's citrus grower. Excess rain/flooding should also be a covered peril. Perils of the tree and fruit policy should be aligned and duplicated because what affects the trees has a direct effect on the fruit production. Maybe adding ''adverse weather'' as an insurable cause of loss would standardize Florida's policy to be more in line with California and Texas.

Response: The Crop Provisions allow disease to be added as an insurable cause of loss through the Special Provisions. However, expanding coverage to include insects and disease would likely result in significant rate increases due to the prevalence of disease affecting citrus in Florida. Additional research would be necessary to determine producers' willingness to pay additional premium for coverage of disease. With the exception of disease, the suggested changes would require changes to the Crop Provisions that were not proposed and the comment does not address a conflict or vulnerability. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule. FCIC will consider the feasibility of expanding coverage to more perils the next time the Crop Provisions are revised.

Comment: A commenter stated the provision in section 9(a)(7) that allows ''disease'' as an insured cause of loss, if specified in the Special Provisions, continues to cause a great deal of concern from both the underwriting and loss adjustment standpoint. The commenter questioned how a loss would be worked on groves with a disease that causes a decline in condition of trees and yields. The commenter stated they believe it would be very difficult to underwrite and adjust losses for disease.

Response: Although the Crop Provisions allow disease to be added as an insurable cause of loss through the Special Provisions, the Special Provisions do not currently specify disease as an insurable cause of loss. Because disease is not currently considered an insurable cause of loss, any production damaged by disease is treated like any other production damaged by an uninsurable cause of loss. Additionally, since losses are adjusted on a percent of damage basis, decline in production may not directly affect the percent of damage. Because decline in the productive capacity of the trees due to disease may affect the expected yield, disease should be considered when establishing or adjusting the amount of insurance in accordance with section 3. FCIC intends to refine guidance for adjusting the amount of insurance due to the incidence of disease in insured groves in the Crop Insurance Handbook.

Section 10—Settlement of Claim

Comment: A commenter stated sections 10(b)(1), (2), (5), and (6) now reference the ''age of trees.'' The commenter questioned if the expectation is that the liability and amount of damage will be established separately for each tree in the unit. The commenter stated this would cause major problems with the adjustment process.

Response: The amount of insurance will continue to be established separately by the age class of trees, but the amount of insurance will not be established separately for each individual tree in the unit. FCIC has added a definition of ''age class'' to specify that the trees are grouped together by age and that each grouping has a separate Reference Maximum Dollar Amount. Guidance in the Crop Insurance Handbook explains how age classes will be determined if more than one age class exists within a unit. The proposed references to age of trees were intended to clarify the amount of insurance per acre is dependent on the age class of the trees. FCIC has revised section 10(b) as well as the definition of ''amount of insurance per acre'' by adding the term ''class'' following the term ''age'' to clarify the intent of the provisions.

Comment: A few commenters stated section 10(b)(1) describes a calculation requiring multiplying by the ''age of trees.'' The commenter recommended re-wording the provision because any form of this calculation multiplied by a tree's actual age does not yield a meaningful number. The same comment applies to the language in sections 10(b)(5) and (6).

Response: FCIC disagrees with the commenter that section 10(b)(1) describes a calculation requiring multiplying by the age of trees. The calculation described in section 10(b)(1) requires multiplying the number of acres by the respective amount of insurance per acre and totaling the results for all acreage in the unit. The amount of insurance per acre is determined by multiplying the Reference Maximum Dollar Amount shown in the actuarial documents for each applicable combination of commodity type, intended use, and age class of trees times the coverage level elected times the share. FCIC has revised section 10(b) as well as the definition of amount of insurance per acre by adding the phrase ''combination of'' prior to the phrase ''commodity

type, intended use, age class of trees'' to clarify the intent of these provisions.

Comment: A commenter requested clarification of the last part of the provision in section 10(b)(2). The commenter questioned what is meant by ''divided by the undamaged potential production'' prior to the cause of loss and how is this determined.

Response: The phrase ''undamaged potential production'' in section 10(b)(2) is referring to the total amount of production that would have been produced if damage had not occurred. Since potential production is defined as such in section 1 of the Crop Provisions, it is not appropriate to use the term ''undamaged'' in section 10(b)(2) because it could be misinterpreted to mean only the potential production that is not damaged. FCIC has revised section 10(b)(2) by removing the term ''undamaged.'' In accordance with section 6(e), potential production will be determined at the time of loss using FCIC approved procedures.

Comment: A few commenters stated the proposed section 10(c) should be reworded. The proposed policy language does not appear to match the explanation given in the background information in the proposed rule, which states ''the proposed section 10(c)(1) will contain the information from section 10(f), but will be revised to clarify individual fruit damaged due to an insurable cause that is on the ground and unmarketable is 100 percent damaged.'' This does not have the same meaning as the proposed language in 10(c)(1), which states the fruit ''is unmarketable because it is: (1) On the ground'' and therefore ''will be considered 100 percent damaged.'' The commenters stated the proposed revision to section 10(c) presumes the fruit is unmarketable. The commenters questioned if it is possible the new wording would encourage producers to leave fruit on the ground even if it could be collected and marketed. Simply declaring fruit on the ground as unmarketable and 100 percent damaged could lead to program vulnerability. The commenters also stated the background information in the proposed rule refers to an ''insurable'' cause of loss, while the proposed provision refers to an ''insured'' cause of loss. Furthermore, the commenters suggested trying to rearrange the proposed section 10(c) to eliminate the duplication of the phrase ''will be considered as 100 percent damaged.''

Response: FCIC agrees with the commenters that the proposed language in section 10(c) does not have the same meaning as stated in the background information in the proposed rule. FCIC also agrees the proposed language could lead to program vulnerability by considering production as unmarketable because it is on the ground. Therefore, FCIC has revised section 10(c) to be consistent with the explanation provided in the background of the proposed rule and the intent of the change and specify that individual citrus fruit will be considered 100 percent damaged if due to an insurable cause it is on the ground and unmarketable. Furthermore, FCIC has revised section 10(c) by changing the term ''insured'' to ''insurable'' and eliminating the duplication of the phrase ''will be considered as 100 percent damaged.''

Comment: A commenter stated the introductory paragraph of section 10(d) begins with the phrase ''In addition to section 10(c), any citrus fruit that can be processed into products for human consumption will be considered marketable.'' The commenter contends this phrase does not appear to correspond to redesignated section 10(c), which addresses citrus fruit that has been determined to be unmarketable.

Response: FCIC agrees with the commenters that the phrase ''In addition to section 10(c)'' is not necessary, although both the unmarketable and marketable fruit must be considered when determining the average percent of damage. Therefore, FCIC has revised section 10(d) by removing the phrase ''In addition to section 10(c).''

Comment: A commenter stated the proposed rewriting of section 10(d) is a significant improvement over the previous language and should help in addressing various questions. However, the commenter raised a question about the meaning of the word ''relating'' in section 10(d)(1) and whether there might be a clearer, more precise term. The commenter stated if ''relating'' means ''dividing,'' then perhaps the term ''dividing'' would be clearer.

Response: FCIC thanks the commenters for their review and support of this proposed change. The term ''relating'' was retained from the previous Crop Provisions and refers to a method used in the Florida Citrus Fruit Loss Adjustment Standards Handbook that is more complicated than simply dividing. FCIC has removed the term ''relating'' in the final rule and revised the provision to instead show the process the term ''relating'' references.

Comment: A commenter stated section 10(d)(1)(ii) as proposed, still uses a comparison for loss purposes to a set of standards for juice content in normal fruit. However, the standards have been proposed to be removed from the Crop Provisions and instead would be listed in the Special Provisions. The commenter stated this change can definitely provide some flexibility to the program by allowing FCIC to make changes that will keep the standards more current. However, the commenter stated it would be helpful to know what standards FCIC is planning to put in the Special Provisions for 2014, which would give stakeholders comfort this movement of terminology in not in fact adverse.

Response: As stated in the proposed rule FCIC intends to publish the default juice contents in the Special Provisions. The default juice contents to be listed in the 2014 Special Provisions are not expected to change from what was listed in the Crop Provisions for the 2013 crop year.

Comment: A commenter stated section 10(d)(2) does not flow from the lead-in of the introductory paragraph of section 10(d) and repeats much of the same phrasing. The commenter also suggested revising section 10(d)(1) by adding the phrase ''For citrus fruit insured as juice,'' to the beginning of the provision to clarify the provision only applies to fruit insured as juice.

Response: FCIC agrees section 10(d)(2) does not flow from the lead-in from section 10(d). Therefore, FCIC has revised section 10(d)(2) to make it flow with the lead-in from section10(d). FCIC disagrees that section 10(d)(1) should be revised by adding the phrase ''For citrus fruit insured as juice'' to the beginning of the provision because this provision applies to both citrus fruit insured as fresh and juice. However, the provision is not intended to apply to citrus fruit sold as fresh or damaged due to uninsured causes. Therefore, FCIC has added a parenthetical following the references to marketable fruit in section 10(d) to clarify the adjustments do not apply to fruit sold as fresh or damaged due to uninsured causes.

Comment: A few commenters stated section 10(d)(2) creates a new method for calculating fresh fruit losses when some salvage of fruit that cannot be sold as fresh exists. It is impossible to accurately judge the effectiveness of this proposed change without seeing the actual numbers to be used as Fresh Fruit Factors and working through some examples. Consequently, it would be helpful if FCIC would publish the Fresh Fruit Factor tables and some examples of claims calculations.

Response: FCIC disagrees it is not possible to judge the effect of the proposed changes without FCIC posting the Fresh Fruit Factors. FCIC described the method to be used for determining

the Fresh Fruit Factors in the proposed rule. FCIC considers the information contained in the proposed rule adequate for estimating the Fresh Fruit Factors and determining the effect they will have on indemnity calculations. FCIC will publish the Fresh Fruit Factors in the Special Provisions based on the method described in the proposed rule.

Comment: A commenter requested FCIC consider redesignating section 10(e) as section 10(d)(3) or an unnumbered paragraph following section 10(d)(2)(iii) since both sections addresses citrus fruit insured as fresh.

Response: FCIC disagrees section 10(e) should be redesignated as section 10(d)(3) or an unnumbered paragraph following section 10(d)(2)(iii). Although both sections 10(d) and 10(e) address citrus fruit insured as fresh, these sections describe different processes for determining the percent of damage. Therefore, FCIC considers it more appropriate to list these provisions separately. However, since these provisions are intended to work together in situations where fruit insured as fresh is sold for an alternative use, FCIC has added a phrase to section 10(e) to clarify that the percent of damage for any production sold for an alternative use will be adjusted in accordance with section 10(d). FCIC has also removed the phrase ''a default juice content or'' because all commodity types will have a default juice content provided in the Special Provisions.

In addition to the changes described above, FCIC has made minor editorial changes.

List of Subjects in 7 CFR Part 457

Crop insurance, Florida citrus fruit, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2014 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.107 as follows:
■ a. In the introductory text by removing ''2009'' and adding ''2014'' in its place;
■ b. In section 1:
■ i. By revising the definitions of ''amount of insurance (per acre),'' and ''excess wind'';
■ ii. By adding the definitions of ''age class,'' ''citrus fruit commodity,'' ''citrus fruit group,'' ''commodity type,'' ''intended use,'' and ''unmarketable'' in alphabetical order; and
■ iii. By removing the definitions of ''citrus fruit crop'' and ''citrus fruit type (fruit type)'';
■ c. By revising section 2(a);
■ d. In section 3:
■ i. By revising paragraph (a); and
■ ii. By revising paragraphs (c) through (f);
■ e. In section 6:
■ i. By revising paragraph (a);
■ ii. In paragraph (b)(1) by removing the term ''fruit type'' and adding the term ''commodity type'' in its place;
■ iii. In paragraph (b)(2) by removing the number ''30'' and adding the number ''15'' in its place;
■ iv. By revising paragraph (b)(3);
■ v. By revising paragraph (b)(6); and
■ vi. By adding a new paragraph (f).
■ f. In section 7:
■ i. By designating the undesignated introductory paragraph as paragraph (a);
■ ii. In the newly designated paragraph (a) by removing the phrase ''crop planted with another crop'' and adding the phrase ''interplanted acreage'' in its place;
■ iii. By redesignating paragraphs (a), (b), and (c) as (a)(1), (2), and (3) respectively;
■ iv. By revising the redesignated paragraph (a)(1);
■ v. By revising the redesignated paragraph (a)(2);
■ vi. In paragraph (a)(3) by removing the term ''crop''; and
■ vii. By adding a new section 7(b).
■ g. In section 8:
■ i. In paragraph (a)(1)(i) by removing the phrase ''for the fruit type'' and by removing the term ''grove'' and adding the term ''acreage'' in its place;
■ ii. In paragraph (a)(2)(i) by removing the phrase ''early and'';
■ iii. In paragraph (a)(2)(ii) by adding the phrase ''early-season oranges and'' after the phrase ''February 28 for'';
■ iv. In paragraph (a)(2)(iii) by removing the phrase ''and temple oranges'' and adding the phrase ''oranges and temples'' in its place;
■ v. In paragraph (a)(2)(iv) by removing the comma after the term ''lemons'' and adding the term ''and'' before the term ''limes'';
■ vi. In paragraph (a)(2)(v) by removing the phrase ''murcott honey oranges'' and adding the term ''murcotts'' in its place;
■ vii. In paragraph (a)(2)(vi) by removing the space between the terms ''late'' and ''season'' and adding a hyphen in its place; and
■ viii. By revising paragraphs (b)(1) and (2).
■ h. In section 9(a)(6) by removing the phrase '', but only if it causes the individual citrus fruit from Citrus IV, V, VII, and VIII to be unmarketable as fresh fruit'';
■ i. In section 10:
■ i. In paragraph (b)(1) by removing the phrase ''fruit type'' and adding the phrase ''applicable combination of commodity type, intended use, and age class of trees in the unit'' in its place;
■ ii. In paragraph (b)(2) by removing the term ''fruit type'' and adding the phrase ''combination of commodity type, intended use, and age class of trees'' in its place and by removing the term ''undamaged'';
■ iii. In paragraph (b)(3) by removing the parentheses around the number ''10'';
■ iv. In paragraph (b)(4) by removing the parentheses around the number ''10'';
■ v. In paragraph (b)(5) by removing the parentheses around the number ''10'' and by removing the term ''fruit type'' and adding the phrase ''combination of commodity type, intended use, and age class of trees'' in its place;
■ vi. By revising paragraph (b)(6);
■ vii. Amending the example in paragraph (b) by removing the opening parenthesis before the phrase ''For example'' and by removing the phrase ''citrus crop, fruit type, and age of trees'' and adding the phrase ''commodity type, intended use, and age class of trees'' in its place;
■ viii. By removing paragraphs (c) and (d);
■ ix. By adding a new paragraph (c);
■ x. By redesignating paragraph (e) as (d) and revising the newly redesignated paragraph (d);
■ xi. By removing paragraph (f) and (g); and
■ xii. By redesignating paragraph (h) as (e) and revising the newly redesignated paragraph (e).

The revisions and additions read as follows:

§ 457.107 Florida citrus fruit crop insurance provisions.

* * * * *

1. * * *

Age class. Trees in the unit are grouped by age, with each insurable age group of a particular citrus fruit commodity, commodity type, and intended use receiving a Reference Maximum Dollar Amount shown in the actuarial documents that is used to calculate the amount of insurance for the unit.

Amount of insurance (per acre). The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the actuarial documents for each applicable

combination of commodity type, intended use, and age class of trees, within a citrus fruit commodity, times the coverage level percent that you elect, times your share.

* * * * *

Citrus fruit commodity. Citrus fruit as follows:

(1) Oranges;

(2) Grapefruit;

(3) Tangelos;

(4) Mandarins/Tangerines;

(5) Tangors;

(6) Lemons;

(7) Limes; and

(8) Any other citrus fruit commodity designated in the actuarial documents.

Citrus fruit group. A designation in the Special Provisions used to identify combinations of commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels and identifying the insured crop.

Commodity type. A specific subgroup of a commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same commodity.

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour (50 knots) recorded at the U.S. National Weather Service (NWS) reporting station (reported as MAX SUST (KT)), the Florida Automated Weather Network (FAWN) reporting station (reported as 10m Wind (mph)), or any other weather reporting station identified in the Special Provisions operating nearest to the insured acreage at the time of damage.

* * * * *

Intended use. The producer's expected end use or disposition of the commodity at the time the commodity is reported. Insurable intended uses will be specified in the Special Provisions.

* * * * *

Unmarketable. Citrus fruit that cannot be processed into products for human consumption.

2. * * *

(a) Basic units will be established in accordance with section 1 of the Basic Provisions.

* * * * *

3. * * *

* * * * *

(a) You may select only one coverage level for each citrus fruit group that you elect to insure. If different amounts of insurance are available for commodity types within a citrus fruit group, you must select the same coverage level for each commodity type. For example, if you choose the 75 percent coverage level for one commodity type, you must also choose the 75 percent coverage level for all other commodity types within that citrus fruit group.

* * * * *

(c) You must report, by the acreage reporting date designated in the actuarial documents:

(1) Any event or action that could reduce the yield per acre of the insured citrus fruit commodity (including but not limited to removal of trees, any damage, disease, change in cultural practices, or any other circumstance that may reduce the productive capacity of the trees) and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage, including interplanted trees;

(3) The age of the trees and the planting pattern; and

(4) Any other information we request in order to establish your amount of insurance.

(d) We will reduce insurable acreage or the amount of insurance or both, as necessary:

(1) Based on our estimate of the effect of the interplanted trees on the insured commodity type;

(2) Following a decrease in plant stand;

(3) If cultural practices are performed that may reduce the productive capacity of the trees;

(4) If disease or damage occurs to the trees that may reduce the productive capacity of the trees; or

(5) Any other circumstance that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels.

(e) If you fail to notify us of any circumstance that may reduce the acreage, the productive capacity of the trees, or the yield per acre from previous levels, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.

(f) For carryover policies:

(1) Any changes to your coverage must be requested on or before the sales closing date;

(2) Requested changes will take effect on May 1, the first day of the crop year, unless we reject the requested increase based on our inspection, or because a loss occurs on or before April 30 (Rejection can occur at any time we discover loss has occurred on or before April 30); and

(3) If the increase is rejected, coverage will remain at the same level as the previous crop year.

* * * * *

6. * * *

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be all acreage of each citrus fruit group that you elect to insure, in which you have a share, that is grown in the county shown on the application, and for which a premium rate is quoted in the actuarial documents.

(b) * * *

* * * * *

(3) Of ''Meyer Lemons,'' ''Sour Oranges,'' or ''Clementines'';

* * * * *

(6) Of any commodity type not specified as insurable in the Special Provisions.

* * * * *

(f) For citrus fruit for which fresh fruit coverage is available as designated in the actuarial documents:

(1) Management records must be available upon request to verify good fresh citrus fruit production practices were followed from the beginning of bloom stage until harvest; and

(2) Unless otherwise provided in the Special Provisions:

(i) Acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or

(ii) For fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided to us upon request.

7. * * *

(a) * * *

(1) Citrus fruit from trees interplanted with another commodity type or another agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

(2) If the citrus fruit is from trees interplanted with another commodity type or another agricultural commodity, acreage will be prorated according to the percentage of the acres occupied by each of the interplanted commodity types or agricultural commodities. For example, if grapefruit have been interplanted with oranges on 100 acres and the grapefruit trees are on 50 percent of the acreage, grapefruit will be considered planted on 50 acres and oranges will be considered planted on 50 acres.

* * * * *

(b) In addition to section 9 of the Basic Provisions, any acreage of citrus fruit that has been abandoned is not insurable.

8. * * *

* * * * *

(b) * * *

(1) Acreage acquired after the acreage reporting date for the crop year is not insurable unless a transfer of coverage and right to indemnity is executed in

accordance with section 28 of the Basic Provisions.

(2) If you relinquish your insurable share on any insurable acreage of citrus fruit on or before the acreage reporting date of the crop year, insurance will not attach, no premium will be due, and no indemnity payable, for such acreage for that crop year.

* * * * *

10. * * *

* * * * *

(b) * * *

* * * * *

(6) Totaling all such results of section 10(b)(5) for all applicable combinations of commodity types, intended uses, and age classes of trees in the unit and subtracting any indemnities paid for the current crop year to determine the amount payable for the unit.

(c) Any individual citrus fruit will be considered 100 percent damaged, if due to an insurable cause of loss it is:

(1) On the ground and unmarketable; or

(2) Unmarketable because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption.

(d) Any citrus fruit that can be processed into products for human consumption will be considered marketable. The percent of damage for the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) will be determined by:

(1) Subtracting the juice content of the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) from:

(i) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(ii) The default juice content provided in the Special Provisions, if at least three years of acceptable juice records are not furnished or the citrus fruit is insured as fresh;

(2) Subtracting the juice content of the marketable citrus fruit (excluding citrus fruit sold as fresh or damaged due to uninsured causes) from the official weight per box for the applicable commodity type provided in the Special Provisions;

(3) Dividing the result of section 10(d)(1) by the result of 10(b)(2);

(4) Dividing the official weight per box for the applicable commodity type provided in the Special Provisions by:

(i) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(ii) The default juice content provided in the Special Provisions, if at least three years of acceptable juice records are not furnished or the citrus fruit is insured as fresh; and

(5) Multiplying the result of section 10(b)(3) by the result of 10(b)(4); and

(6) For citrus fruit insured as fresh that has a Fresh Fruit Factor listed in the Special Provisions, making an additional adjustment to the percent of damage by:

(i) Subtracting the result of section 10(d)(5) from 100;

(ii) Multiplying the result of section 10(d)(6)(i) by the applicable Fresh Fruit Factor located in the Special Provisions; and

(iii) Adding the result of section 10(d)(6)(ii) to the result of section 10(d)(5).

(e) Notwithstanding section 10(d), for citrus fruit insured as fresh that do not have a Fresh Fruit Factor provided in the Special Provisions, any individual citrus fruit not meeting the applicable United States Standards for packing as fresh fruit due to an insured cause of loss will be considered 100 percent damaged, except that the percent of damage for any production sold for an alternative use will be adjusted in accordance with section 10(d).

* * * * *

Signed in Washington, DC, on December 18, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–30842 Filed 12–20–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2012–0015]

RIN 1557–AD60

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1454]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD90

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

DATES: Effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 649–6350; or Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Catherine M. J. Gates, Senior Project Manager, (202) 452–2099; or Nikita Pastor, Counsel, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Pamela A. Freeman, Senior Examination Specialist, Division of Depositor and Consumer Protection, Compliance & CRA Examinations Branch, (202) 898–3656; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small banks and savings associations by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This adjustment formula

was first adopted for CRA purposes by the OCC, Board, and FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). As explained in the **SUPPLEMENTARY INFORMATION** section of these agencies' proposed rule, this particular index is used in other federal lending regulations such as the Home Mortgage Disclosure Act (HMDA). 70 FR 12148 (Mar. 11, 2005). *See* 12 U.S.C. 2808; 12 CFR 203.2(e)(1). On March 22, 2007, and effective July 1, 2007, the Office of Thrift Supervision (OTS), the agency responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule set forth at 12 CFR part 563e. 72 FR 13429 (Mar. 22, 2007). Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] and effective July 21, 2011, rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR part 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervision authority.[3]

The threshold for small banks and small savings associations was revised most recently effective January 1, 2012 (76 FR 79529 (Dec. 22, 2011)). The CRA regulations, effective January 1, 2012, provided that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.160 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $290 million as of December 31 of both of the prior two calendar years and less than $1.160 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2012, the CPIW increased by 2.23 percent. As a result, the agencies are revising 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2013, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.186 billion are small banks or small savings associations. Small banks or small savings associations with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. The agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/*.

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the respective CRA regulations that the agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

Accordingly, since the agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, the agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2013. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the agencies have determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

12 CFR Part 345

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons discussed in the preamble, 12 CFR parts 25 and 195 are amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

■ 2. Revise § 25.12(u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.186 billion. *Intermediate small bank* means a small bank with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 billion as of December 31 of either of the prior two calendar years.

* * * * *

PART 195—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 4. Revise § 195.12(u)(1) to read as follows:

§ 195.12 Definitions.

* * * * *

(u) *Small savings association*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.186 billion. *Intermediate small savings association* means a small savings association with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 5. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 6. Revise § 228.12(u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.186 billion. *Intermediate small bank* means a small bank with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 7. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 8. Revise § 345.12(u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.186 billion. *Intermediate small bank* means a small bank with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 13, 2012.

Daniel P. Stipano,

Acting Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 17, 2012.

Robert deV. Frierson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of December, 2012.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2012–30775 Filed 12–20–12; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AD53

Adaptation of Regulations To Incorporate Swaps—Records of Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''DFA'') established a comprehensive new statutory framework for swaps and security-based swaps. The Dodd-Frank Act repeals some sections of the Commodity Exchange Act (''CEA'' or ''Act''), amends others, and adds a number of new provisions. The DFA also requires the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') to promulgate a number of rules to implement the new framework. The Commission has proposed and finalized numerous rules to satisfy its obligations under the DFA. This final rulemaking makes certain conforming amendments to recordkeeping provisions of regulations 1.31 and 1.35(a) to integrate these regulations more fully with the new framework created by the Dodd-Frank Act.[1] This final rulemaking requires futures commission merchants (''FCMs''), certain introducing brokers (''IBs''), retail foreign exchange dealers (''RFEDs'') and certain other registrants

[1] All Commission regulations are in Chapter I of Title 17 of the CFR.

that are members of designated contract markets (''DCMs'') or swap execution facilities (''SEFs'') to record all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a transaction in a commodity interest, whether communicated by telephone, voicemail, mobile device, or other digital or electronic media, and to keep those records for one year. This final rule also requires FCMs, IBs, RFEDs, and all members of a DCM or SEF to record and keep all written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a transaction in a commodity interest or related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media, and to keep those written records for five years.

DATES: *Effective date:* This final rule will become effective on February 19, 2013. *Compliance date:* Each affected entity must comply with the oral communications recordkeeping requirement in regulation 1.35(a)(1) (17 CFR 1.35(a)(1)) no later than December 21, 2013.

FOR FURTHER INFORMATION CONTACT: Katherine Driscoll, Associate Director, 202–418–5544, *kdriscoll@cftc.gov,* Elizabeth Miller, Attorney-Advisor, 202–418–5450, *emiller@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; Peter A. Kals, Special Counsel, 202–418–5466, *pkals@cftc.gov,* Division of Clearing and Risk; David E. Aron, Counsel, 202–418–6621, *daron@cftc.gov,* Office of General Counsel; Alexis Hall-Bugg, Attorney-Advisor, 202–418–6711, *ahallbugg@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.[2] Title VII of the Dodd-Frank Act[3] (''Title VII'') amended the CEA[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted, among other reasons, to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers (''SDs''), security-based swap dealers, major swap participants (''MSPs''), and major security-based swap participants; (2) imposing clearing and trade execution requirements on swaps and security-based swaps, subject to certain exceptions; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the rulemaking and enforcement authorities of the Commission with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

B. Proposed Changes to Regulation 1.35(a)—Records of Transactions

On June 7, 2011, the Commission published in the **Federal Register** a notice of proposed rulemaking (the ''Proposal'') to apply its regulations, regarding the activities of intermediaries and other DCM members to the swaps activities of those persons, in conformance with the Dodd-Frank Act.[5] The Proposal provided for a 60-day public comment period, which ended on August 8, 2011. The Proposal proposed to conform the existing recordkeeping requirements of regulation 1.35(a) to the recordkeeping requirements for SDs and MSPs, under what was then proposed regulation 23.202(a)(1) and (b)(1),[6] so that FCMs, IBs, RFEDs, and DCM and SEF members would be required to record all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of transactions in a commodity interest[7] or cash commodity, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. To be consistent with what was then proposed regulation 23.202(a) and (b), the Proposal would have amended regulation 1.35(a) by requiring that each record be maintained in a separate electronic file identifiable by transaction and counterparty. On November 2, 2012, the Commission published in the **Federal Register** the Final Adaptation Rule.[8] The Final Adaptation Rule promulgated the vast majority of the amendments that the Proposal had introduced. In the Final Adaptation Rule, the Commission stated that it would address in a separate release certain of the proposed changes to regulation 1.35 (*i.e.,* those enumerated above) and related amendments to regulation 1.31.[9]

In response to the amendments to regulation 1.35(a) in the Proposal, the Commission received 35 comment letters from a variety of institutions, including DCMs, agricultural trade associations, and agricultural cooperatives.[10] The Commission has

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[4] 7 U.S.C. 1 *et seq.* (2006).

[5] Adaptation of Regulations to Incorporate Swaps, 76 FR 33066 (June 7, 2011) (''the Proposal'').

[6] *See* the Proposal, 76 FR at 33067; Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 76 FR 76666, 76675 (Dec. 9, 2010) (Proposed regulation 23.202(a)(1) would have required ''[e]ach swap dealer and major swap participant [to] make and keep pre-execution trade information, including, at a minimum, records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media'').

[7] The term ''commodity interest'' means: (1) any contract for the purchase or sale of a commodity for future delivery; (2) any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act; (3) any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act; and (4) any swap as defined in the Act, by the Commission, or jointly by the Commission and the Securities and Exchange Commission. *See* Adaptation of Regulations to Incorporate Swaps, 77 FR 66288, 66319 (Nov. 2, 2012) (''Final Adaptation Rule'') (to be codified at 17 CFR 1.3(yy)).

[8] Final Adaptation Rule, 77 FR 66288.

[9] *See id.,* 77 FR at 66288, 66296 n. 59, 66297 n. 63, and 66299 n. 72.

[10] Commenters included: Agribusiness Council of Indiana; American Cotton Shippers Association (''ACSA''); Amcot; American Feed Industry Association (''AFIA''); American Gas Association; American Petroleum Institute; Barclays Capital (''Barclays''); Mr. Chris Barnard; Commodity Markets Council (''CMC''); Compliant Phones (''Compliant''); Electric Power Supply Association (''EPSA''); Electric Utility Trade Associations (National Rural Electric Cooperative Association, American Public Power Association, Large Public Power Council, and Edison Electric Institute) (''ETA''); Encana; Falmouth Farm Supply; The Fertilizer Institute; Futures Industry Association(''FIA''); Grain and Feed Association of Illinois; Kansas City Board of Trade (''KCBT''); CME Group (''CME''); Henderson & Lyman; IntercontinentalExchange, Inc. (''ICE''); Land O'Lakes, Inc.; Minneapolis Grain Exchange (''MGEX''); Minnesota Grain and Feed Association; National Grain and Feed Association (''NGFA''); National Introducing Brokers Association (''NIBA''); National Council of Farmer Cooperatives (''NCFC''); National Futures Association (''NFA''); Natural Gas Supply Association; Ohio Agribusiness Association; Oklahoma Grain and Feed Association; Rocky Mountain Agribusiness Association (''RMAA''); South Dakota Grain & Feed Association; and Working Group of Commercial Energy Firms

determined to adopt the Proposal's amendments to regulation 1.35(a), with certain modifications, discussed below, which address the comments the Commission received. In addition, as part of this final rulemaking, the Commission is making certain related modifications to the record retention periods set forth in regulation 1.31. Finally, the final amendments to regulations 1.31 and 1.35(a) are consistent with the Commission's final rules concerning recordkeeping requirements for SDs and MSPs (regulations 23.202(a) and (b) and 23.203(b)(2)).[11]

II. Oral Communications and Other Recordkeeping Changes in the Proposal; Comments Received

Under the Proposal, FCMs, IBs, RFEDs, and DCM and SEF members[12] would be required to record all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest or cash commodity, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. Comments to these proposed amendments to regulation 1.35(a) primarily focused on: oral recordkeeping generally; the portion of the proposed provisions that would have required all DCM and SEF members, including commercial end-users and non-intermediaries, to keep records of their cash commodity transactions; and the proposed requirement that each record be maintained in a separately identifiable electronic file identifiable by transaction and counterparty (''tagging'').

A. Proposed Requirements To Record Oral Communications and Keep Them in Separate Electronic Files Identifiable by Transaction and Counterparty

1. Comments on Oral Recordkeeping Generally

Commenters asserted that the proposed requirement for FCMs, IBs, RFEDs, and DCM and SEF members to record oral communications that lead to the execution of a commodity interest or cash commodity transaction was too costly, impossible to satisfy, overly broad, and/or unnecessary. ACSA, AFIA, Amcot, EPSA, ICE, and Land O'Lakes commented that these proposed amendments were broad and ambiguous.[13] AFIA, CME, EPSA, MGEX, and the Commercial Energy Working Group argued that the phrases ''concerning quotes, solicitations, bids'' and ''lead to the execution of'' were vague and could encompass a great number of communications. Amcot asserted that the overbreadth of the proposed amendment would be burdensome for agricultural DCM members given that there are a variety of settings, including grower meetings and on-site visits, where a DCM member could have a discussion with an agricultural producer that leads to a cash commodity or commodity interest transaction. Land O'Lakes was unsure whether face-to-face conversations would have to be recorded under the proposed requirement. ICE inquired as to whether a general conversation about markets would be subject to the proposed recording requirement if a transaction occurred later in the day. AFIA stated that the risk of an incorrect interpretation would fall on local grain producers.

Regarding application of the proposed requirement to telephone conversations, Land O'Lakes and MGEX each argued that a DCM member might not know in advance of a telephone call whether that call would lead to a transaction. MGEX believed that this fact would require a DCM member to record all conversations, which they argued would be impossible. Land O'Lakes asserted that complying with the proposed requirement could involve massive amounts of recording, thereby deterring open communication between a DCM member and one of its agricultural producers. The Commercial Energy Working Group commented that proposed regulation 1.35(a) was too broad in that it could require DCM members to record communications of attorneys and other ''middle office'' personnel, and not just the communications of traders who are directly involved in executing a transaction. CMC argued that the Commission has substantially underestimated the considerable costs and limited benefits associated with the recordkeeping requirements for DCM and SEF members. CME does not believe firms can comply with the proposed oral recordkeeping requirements with respect to mobile telephones because, they stated, mobile telephone recording technology is not well developed in the United States.

Regarding whether an oral communications recordkeeping requirement is necessary, NCFC stated that the proposed requirement to record oral communications is not necessary to achieve the Commission's stated goal of protecting customers from abusive sales practices. CMC asserted that current regulation 1.35(a)'s requirement to maintain written records of commodity interest and cash commodity transactions suffices to prevent market abuses. Amcot stated that the Commission failed to demonstrate the inadequacy of its existing regulations. Henderson & Lyman, NFA, and NIBA stated that the oral recordkeeping requirement is unnecessary because NFA already requires certain FCMs and IBs with a history of sales practice abuses to record calls made by their associated persons. Henderson & Lyman stated that the NFA rule and NFA's related guidance concerning communications are sufficient and cost-effective.

NIBA commented that all IBs, or at the very least small IBs, should be exempt from the proposed amendments to regulation 1.35(a) because the burden on such small entities would be too great. Henderson & Lyman similarly commented that the proposed regulation would favor large IBs over small IBs. Neither NIBA nor Henderson & Lyman, however, offered a definition of ''small IB'' or provided any quantitative or qualitative thresholds. Henderson & Lyman stated that it is unnecessary to have an oral recording requirement for IBs because most IBs solicit customers electronically rather than over the telephone. Henderson & Lyman also stated that the focus on IBs was misplaced since misleading communications come from marketing firms rather than from IBs. NIBA further stated that the proposed amendment would be ineffective in compelling IBs to record their calls since those who refuse to do so will find a way to circumvent the regulation.

Falmouth Farm Supply had several concerns with the proposed

(''Commercial Energy Working Group''). Comments are available in the comment file on *www.cftc.gov*. In the Final Adaptation Rule, the Commission addressed those comments unrelated to the proposed changes to regulation 1.35(a) concerning records of oral and written communications. *See* Final Adaptation Rule, 77 FR 66288.

[11] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012) (''SD and MSP Recordkeeping Final Rule'') (adopting for SDs and MSPs reporting and recordkeeping standards now found in 17 CFR 23.201–23.203).

[12] A ''member'' is an individual, association, partnership, corporation, or trust—(i) owning or holding membership in, or admitted to membership representation on, a registered entity; or (ii) having trading privileges on a registered entity. *See* Final Adaptation Rule, 77 FR at 66316 (to be codified at 17 CFR 1.3(q)).

[13] FIA made a similar argument regarding the application of the amendment to FCMs.

amendment, asserting that a grain business-DCM member recording its telephone conversations with a farmer-supplier would amount to an invasion of privacy and that grain producers do not need the Commission's protection. CMC and ICE stated that it would be redundant for a DCM or SEF member to comply with proposed regulation 1.35(a) because the DCM or SEF member will have to engage an FCM clearing agent for each transaction, and the FCM would have to comply with the regulation.

2. Comments on the Proposed ''Tagging'' Requirement

CME, Barclays, Henderson & Lyman, NGFA, and NIBA stated that it would be burdensome to comply with the proposed requirement to maintain records as separate electronic files identifiable by counterparty and transaction.[14] FIA commented that the ''separate electronic file requirement'' is open-ended and, on its face, impossible to achieve.[15] CME stated that potentially relevant conversations could span several days and that it would be difficult to link conversations to transactions. Therefore, CME commented, FCMs and IBs should only be required to record and identify conversations immediately preceding an order. FIA stated that a customer may decide to enter an order with an FCM at any time, even if that was not the original purpose of the call. According to FIA, this aspect of the futures business means that an FCM would have to record all of its telephone calls to comply with proposed regulation 1.35(a) and this would be difficult if not impossible. Moreover, FIA stated that compliance would be impossible because one could argue that any conversation pertains to a particular transaction. Like CME, Barclays stated that the tagging requirement is vague, potentially requiring an FCM to tag every communication that could ever lead to a transaction. Barclays stated that it would be particularly challenging to tag a telephone call when the firm is telephoned by a counterparty; when parties discuss a transaction that the firm did not originally anticipate; or when multiple transactions are discussed during a particular call. According to Barclays, there is no technology to automatically tag communications, so the firm would have to manually tag over 2.4 billion electronic communications it sends and receives every year. Barclays also stated that it is not aware of any commercially available technology that would allow entities to tag their telephone recordings by transactions and counterparty. Other commenters expressed similar concern regarding the reliability and availability of technological solutions for the proposed tagging requirement. The Commercial Energy Working Group stated that, in lieu of an accurate and commercially available software solution, manual identification and retrieval of oral records would require as many as three to five analysts and one to two additional technical support personnel to support transactions for a small or modest-sized end-user commodity business and that the total cost to a commodity business is likely to be in excess of $1 million annually.

According to Barclays, an FCM should be permitted to maintain records in any manner so long as it is able to respond to Commission inquiries in a timely and comprehensive fashion. The Commercial Energy Working Group commented that a firm should only have to identify communications as pertaining to a particular transaction if the Commission requests that information. Moreover, the Commercial Energy Working Group stated that it is unlikely that the Commission will request such information, so DCM members should not have a general obligation to tag conversations.[16] The Commercial Energy Working Group urged the Commission to allow market participants to make their records searchable by transaction at the time the Commission requests the records rather than require that all records be maintained on a transaction-by-transaction basis in real-time.

MGEX sought clarification as to whether the requirement in proposed regulation 1.35(a) to maintain ''each transaction record in a separate electronic file identifiable by transaction and counterparty'' requires a file to be kept for each counterparty and for each transaction or whether it suffices to keep one transaction file that is indexed by counterparty and transaction. MGEX also stated that it would be duplicative for a firm to keep records of both written and oral communications if they contained substantially the same content.

3. Commenters' Suggested Revisions to the Oral Communications Requirement

Commenters made suggestions about how the Commission should revise the Proposal to limit the burden. NGFA suggested that if the Commission adopts the proposed oral recordkeeping requirement, it should give FCMs and IBs a generous compliance timetable and flexible implementation options, particularly for smaller firms. CME, FIA, and MGEX asserted that firms should only be required ''reasonably'' to comply with oral recordkeeping requirements. MGEX suggested that a DCM member should only be required reasonably to link a conversation to an executed transaction. Barclays highlighted that the United Kingdom Financial Services Authority (''FSA'') adopted a reasonableness standard for compliance with its mobile telephone conversation recording requirement.[17] CME stated that a reasonableness standard is necessary because of limited technology, particularly a lack of reliable search mechanisms. According to CME, one way a firm should be able to comply would be by having a policy prohibiting the use of mobile telephones to solicit or accept orders. CME commented that the Commission fails to provide evidence that the Proposal would be less effective with such a ''reasonableness'' standard than without it. CME stated that only firm-provided landline and mobile telephones should be covered by the rule as that would make the proposal consistent with foreign regulatory regimes. ETA stated that the Commission fails to justify aligning its recordkeeping requirements with those of other countries. CMC commented that the Proposal's reference to the fact that 80% of large U.K. financial services firms were already recording their traders' telephone calls prior to the FSA's enactment of its voice recordkeeping requirement is irrelevant to the burden that the Proposal would impose on agricultural enterprises who are DCM members trading for their own accounts and not on behalf of customers. FIA sought confirmation that an FCM, IB, or other DCM or SEF member can satisfy the recordkeeping requirements under regulation 1.35(a) by relying on record retention performed by a DCM or SEF.

[14] NGFA's letter was supported by the other Grain and Feed Associations, the Agribusiness Associations, Land O' Lakes, and NCFC.

[15] ACSA generally supported FIA's comment letter.

[16] API generally supported the Commercial Energy Working Group's comment letter.

[17] In November 2011, the FSA rule requiring taping of mobile telephones became effective. Under the rule, a firm is required, ''to take reasonable steps to record relevant conversations, and keep a copy of relevant electronic communications, made with, sent from or received on equipment: (1) Provided by the firm to an employee or contractor; or (2) the use of which by an employee or contractor has been sanctioned or permitted by the firm.'' *See* Financial Services Authority, Conduct of Business Sourcebook, Section 11.8 Recording telephone conversations and electronic communications (June 2012, Release 126, 11.8.2).

NFA recognized that audio recordings have been very useful to the Commission in enforcement proceedings and stated that only those firms that choose to record calls should have to maintain their recordings. Acknowledging that some FCMs currently record their telephone calls, FIA commented that, to the extent they do, recording is limited to dedicated order desks and only required to be stored for no more than a few days or weeks. FIA and MGEX asserted that the technology available to comply with the Proposal was ''uncertain at best'' and, therefore, the Proposal should be considered further in the context of available technology and then re-proposed in a separate release.

EPSA suggested that a separate rulemaking should be published to address changes to regulation 1.35(a) to give affected parties reasonable notice. Amcot, Henderson & Lyman, and ICE asserted that the Commission has not considered existing state and federal wiretapping law and privacy laws in proposing these new requirements.

B. Proposed Requirement for All Members of a DCM or SEF To Record Oral and Written Communications Leading to the Execution of Cash Commodity Transactions

Three DCMs joined various agricultural and energy sector trade organizations in opposing the Commission's proposed requirement to keep oral communications, and existing requirement to keep written communications, regarding cash market transactions on members of a DCM or SEF who are non-financial entities and commercial end-users, and who do not have customers.[18] These commenters pointed out that including a DCM member's cash transactions would require compliance by hundreds, if not thousands, of agricultural and energy firms, including many who do not have customers and do not themselves enter into futures or swaps.[19] EPSA and the Commercial Energy Working Group stated that many of the affected entities in the energy sector would be small entities that likely are unaware of the Proposal. Commenters asserted that the requirement amounted to unauthorized regulation of the cash market, which they asserted has always been carved out of the Commission's jurisdiction.[20] Commenters also stated that the Dodd-Frank Act did not intend for the Commission to subject cash commodity transactions to new recordkeeping requirements.[21]

The Grain and Feed Association of Illinois, the Oklahoma Grain and Feed Association, NCFC, and NGFA opposed the proposed revisions on the grounds that the employees of a grain elevator that is a DCM member would have to record calls and preserve emails with farmer producers from whom they buy grain for cash and, thus, hundreds of employees of grain storage and processing facilities would be significantly burdened. As a result, these commenters stated, a grain elevator that is a DCM member would be disadvantaged as compared to a grain elevator that is not a DCM member as the non-member would not be burdened by the compliance costs associated with proposed regulation 1.35(a). KCBT asserted that this creates a discriminatory regulatory structure. According to ICE, this outcome would deter firms from hedging commercial risk on a DCM or SEF, thereby defeating the Dodd-Frank Act's transparency objectives. NGFA and its affiliates argued that burdening facilities owned by companies that are DCM members with the new rules would create a bifurcation of the cash grain marketplace into facilities required to comply with new recordkeeping requirements and facilities owned and operated by companies who are not DCM members and, therefore, not required to comply. KCBT stated that their rules (and the rules of other DCMs) require that operators of registered delivery warehouses be members, further stating that the regulatory disincentives created by the application of proposed regulation 1.35(a) to all DCM member cash transactions could affect not only DCM expertise, but deliverable supplies and convergence. According to KCBT, should DCM commercial members operating delivery warehouses decide to withdraw from membership because of proposed regulation 1.35(a), deliverable supplies would be negatively impacted and there would be fewer deliverable supplies to foster convergence at delivery.

Amcot stated that neither it nor its members should be subject to the proposed amendments because they do not transact with the public. Similarly, the Commercial Energy Working Group commented that end-users (*i.e.,* DCM or SEF members trading for themselves) should not have to comply with proposed regulation 1.35(a) because they do not trade for customers and, therefore, pose minimal systemic risk. EPSA stated that regulation 1.35(a) was never intended to burden end-users.

Several commenters objected to the Commission's regulation of records of cash commodity transactions. KCBT stated that it did not believe the Commission ever intended for regulation 1.35(a) to apply to cash and cash forward transactions outside of those directly relating to a regulated futures or swaps transaction. KCBT further stated that it has always interpreted regulation 1.35(a) to cover only those transactions for which a DCM member is acting as an agent for a customer. Thus, according to KCBT, the only DCM members (who were not otherwise FCMs or IBs) who would be required to comply would be floor brokers (''FBs''); DCM members who trade for themselves would not be covered. KCBT stated that it has also understood the ''related cash transactions'' referenced by regulation 1.35(a) to refer only to those transactions involving an exchange of a futures transaction for a physical commodity.

The Commercial Energy Working Group asserted that, under the proposed amendments to regulation 1.35(a), many of the entities that transact on ICE, for example, would now be required to maintain records pursuant to Commission rules without consideration of whether the market users handle customer orders, which would be a departure from the past for members of contract markets that are not FCMs, IBs, or present on a trading floor. As a general matter, FIA argued that these proposed amendments to regulation 1.35(a) are not necessary to implement the Dodd-Frank Act and, therefore, they run counter to the guiding principles set out in President Obama's January 2011 Executive Order 13563, Improving Rulemaking and Regulatory Review.

ACSA, CMC, FIA, Henderson & Lyman, ICE, NFA, and NIBA stated that the proposed amendments were inconsistent with the Commission's proposed recordkeeping requirements for SDs and MSPs because they would require FCMs, RFEDs, IBs, and members

[18] Commenters included ACSA, the Agribusiness Associations, Amcot, CMC, Falmouth Farm Supply, the Grain and Feed Associations, Land O'Lakes, NCFC, AGA, API, EPSA, ETA, the Commercial Energy Working Group, ICE, KCBT, TFI, and MGEX.

[19] In related commentary, the Commercial Energy Working Group asked the Commission to clarify that the definition of ''member'' in the final rule covers only those people holding equity interests in a DCM that permit such holder to submit orders directly on the DCM's floor (or an electronic equivalent).

[20] Commenters included Agribusiness Council of Indiana; Agribusiness Association of Ohio; EPSA; Grain and Feed Association of Illinois; KCBT; Land 'O Lakes; Minnesota Grain and Feed Association; NCFC; NGFA; Oklahoma Grain and Feed Association; RMAA; and the Commercial Energy Working Group.

[21] Commenters included Amcot; CME; EPSA; FIA; and NCFC.

of a DCM or SEF to record voice communications regardless of any other recordkeeping requirement that captures the same information.

C. Relationship Between Regulations 1.31 and 1.35(a)

Amcot stated that it would be burdensome for its farmer-owned cotton marketing cooperative members to retain recordings of telephone calls for five years as the Commission proposed. CME commented that conversations should only be retained for six months after the execution of a transaction. FIA commented that the Commission failed to provide a justification for requiring that a swap record be maintained for the life of the swap plus five years. In contrast to other commenters, Mr. Chris Barnard asserted that all records should be kept indefinitely and scanned after two years, arguing that there is no technological or practical reason to limit the record retention period. Mr. Barnard specifically commented that records of voice communications also should be kept indefinitely. To support the asserted usefulness of such records, Mr. Barnard cited a 2009 IOSCO report stating that telephone records could benefit enforcement investigations.[22]

III. Final Rules

The markets subject to the jurisdiction of the Commission have undergone a significant transformation over the last few decades, and particularly in the last few years. Technological advances have contributed to a tremendous growth in trading volume as well as the number and type of market participants, including significant numbers of retail customers that invest in the commodity markets through a variety of means. Markets are also more interconnected than ever before, with order flow distributed across multiple trading centers. These changes require the Commission to adapt, and these final rules are part of that adaptation.

The overarching purpose of the Commission's final rules is to promote market integrity and protect customers. Requiring the recording and retention of oral communications will serve as a disincentive for covered entities to make fraudulent or misleading communications to their customers over the telephone and could serve as a meaningful deterrent against violations such as trading ahead of customer orders by providing a record of the time that a customer's telephone order is received. When the perspectives of the commenters are combined with the Commission's own experiences regulating the markets subject to its jurisdiction, a common theme emerges: The collection of and access to searchable records, both oral and written, are indispensable tools the Commission needs to ensure market integrity and protect customers. Currently, many of the market participants that will be subject to the final rules have such records by way of their business needs or other regulatory requirements. Some commenters have urged the Commission to rely on currently available information and not require more. While existing information aids the Commission in discharging its regulatory responsibility, the Commission believes current recordkeeping, particularly in the area of oral recordkeeping, is limited, to varying degrees, in availability, scope and effectiveness.

The final rules will significantly advance the Commission's efforts to detect and deter abusive, disruptive, fraudulent and manipulative acts and practices that seriously harm market integrity and customers. In addition, the information that will be required as a result of this rulemaking will benefit the Commission in its market analysis efforts, such as investigating and preparing market reconstructions and understanding causes of unusual market activity. Further, the requirement that records be kept current and readily available facilitates the timely pursuit of potential violations, which can be important in seeking to freeze and recover any profits received from illegal activity.

Notwithstanding the important policy and practical reasons for the final rules, the Commission shares many of the commenters' concerns regarding costs and the availability of relevant technology. Therefore, as discussed below, the Commission is adopting alternatives to the Proposal where doing so would achieve the Commission's objectives and the benefits of promoting market integrity and protecting customers albeit at lower cost. The Commission is also significantly extending the amount of time entities have to come into compliance with the final rule requiring the recording of oral communications. In so doing, the entities subject to this rulemaking are afforded the same amount of time as SDs and MSPs to come into compliance with analogous requirements in regulations 23.202(a)(1) and (b)(1).

Regarding oral communications, in response to commenters' concerns that the scope of the new requirement was too broad, the new requirement to record oral communications will be limited to those oral communications that lead to a transaction in a commodity interest. As proposed, the oral communications recordkeeping requirement would have applied to commodity interest and cash commodity transactions. In response to comments asserting that the cost of implementing and maintaining an oral communication recording system would be overly burdensome for small entities and the commercial end-user, non-intermediary members of a DCM or SEF, the Commission has determined to exclude from the new requirement to record oral communications: Small IBs[23]; the oral communications of an FB who is a member of a DCM or SEF that do not lead to the purchase or sale for any person other than the FB of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Act; and certain members of a DCM or SEF, including floor traders (''FTs''),[24] commodity pool operators

[22] *http://www.iosco.org/news/pdf/IOSCONEWS137.pdf.*

[23] Final regulation 1.35(a) excludes from the oral communications recordkeeping requirement any IB that has generated, over the preceding three years, $5 million or less in aggregate gross revenues from its activities as an IB (''Small IB''). All other IBs with aggregate gross revenue exceeding $5 million will be referred to as ''non-Small IBs.'' The Commission has previously determined this to be an appropriate definition of a small IB. In connection with regulation 1.71 (Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers), the Commission provided a separate regulatory standard for small IBs, based on this definition, to lessen the compliance burden imposed by the conflicts of interest requirements on such firms. *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20148. In that rule, the Commission found that ''Section 4d(c) of the Act mandates the establishment of 'appropriate informational partitions' within FCMs and IBs, and all such firms are bound by that statutory requirement,'' and. It concluded that ''the size of an IB plays a significant role in determining the appropriateness of such partitions.'' *Id.* at 70149. Applying this new standard for IBs to the instant final rulemaking, the Commission estimates that with respect to IBs, limiting the scope of final regulation 1.35(a) to IBs that are not small excludes more than 95% of IBs from the regulation 1.35 oral communications recordkeeping requirement adopted in this release. Thus, at present, the Commission expects that no more than approximately 75 IBs will be subject to the final oral recordkeeping requirements of regulation 1.35.

[24] The Commission notes that certain FTs, although excluded from the oral communications requirement in regulation 1.35(a), will be required to record their oral communications concerning swap transactions and their related cash and forward transactions, pursuant to regulation 23.202(a)(1) and (b)(1). Pursuant to regulation 23.200(i), a related cash or forward transaction means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a swap where the swap and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another. *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20202. The recently finalized definition of SD (regulation 1.3(ggg)(iv)(H)) requires certain FTs who deal in swaps to comply with regulation 23.202, as well as

(''CPOs''), SDs, MSPs,[25] and members that are not registered or required to be registered with the Commission in any capacity. As proposed, the oral communications recording requirement would have applied to FCMs, RFEDs, all IBs and all members of a DCM or SEF. These exclusions are based on the Commission's experience that such entities are either unlikely to or prohibited from having a customer interface or an effect on market integrity. For example, while a Small IB takes customer orders, they generally do not execute those orders, meaning that they lack a direct market interface that could affect market integrity. Further, as defined herein, a Small IB is unlikely to generate the volume of market activity that the Commission would expect could affect the integrity of the markets. Conversely, where an FT could affect market integrity, they are prohibited from accepting customer funds and are therefore excluded by the limiting principle of customer protection.

While seeking to mitigate the costs of compliance for smaller entities without compromising the Commission's objectives, the Commission is not exempting Small IBs and other excluded participants from the requirement to keep written records of covered information, for example, given or received by telephone. For example, if a Small IB receives a customer's order over the telephone, then the Small IB would not be required to record the telephone call under the new provision in regulation 1.35(a), but the Small IB would be required to keep a written record of the order under both the existing requirement in regulation 1.35(a) to keep and maintain records of ''all orders (filled, unfilled, or cancelled)'' and the new requirement in regulation 1.35(a) to keep records of ''instructions'' to place orders. Therefore, although this rulemaking's definition of Small IB will exclude most IBs from the requirement to record oral communications, the Commission believes it can continue to promote market integrity and protect customers because the same IBs will continue to be required to keep written records under regulation 1.35(a). In addition, because many of an IB's oral communications leading to a commodity interest transaction are conducted with FCMs, those oral communications would be recorded by the FCM.

The Commission has also considered whether FBs should be treated similarly to IBs in drawing a distinction between large and small entities.[26] The Commission does not believe any similar distinction is warranted. As Congress recognized by creating separate categories of registrants, FBs and IBs perform different functions. While both receive orders, an FB executes orders,[27] and an IB transmits orders for execution.[28] Because FBs execute orders and can direct the manner of the same without an intermediary, they can have a significant impact on the integrity of the market.[29] When an IB solicits or receives order information from a customer through an oral communication, it then will often communicate that information either to an FCM or FB. Under the regulation as adopted, the FCM or FB would have to record the oral communication with the IB. By contrast, an FB may have covered communications with a customer who is not itself subject to a recording requirement. The need for recording oral communications with FBs has been independently recognized by several DCMs.[30] DCM rules requiring FBs to record oral communications do not make distinctions based on an FB's size.

To address commenter concerns that the proposed rule would capture the oral communications of certain members of DCMs who currently are registered as FBs, but are solely trading for their own accounts, *i.e.,* acting as FTs.,[31] the Commission has determined to limit an FB's obligation to record its oral communications under regulation 1.35(a) to those oral communications that lead to the purchase or sale for any person other than the FB of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the CEA. In this way, a registered FB operating as an FT (*i.e.,* not handling customer orders) will be treated the same as an FT under the final rules.[32]

In determining the applicability of the final rules to another group of market participants that are DCM members, commodity trading advisors (''CTAs''), the Commission has considered measures to again tailor the oral communications recordkeeping requirements for CTAs to mitigate the costs of compliance while achieving the twin objectives of promoting market integrity and protecting customers. The Commission has reduced the impact on CTAs by: Limiting the oral communications recordkeeping requirement to commodity interest transactions (*i.e.,* not adopting the

certain other regulations in part 23, notwithstanding the fact that such FTs are not required to register as SDs. *See* 17 CFR 1.3(ggg)(iv)(H), as finalized by the Commission in Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

[25] As noted above, SDs and MSPs are subject to the oral communications recording requirement in Part 23. *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20148 (to be codified at 17 CFR 23.202(a)(1) and (b)(1)). SDs and MSPs that are also registered in a capacity covered by the oral communications recording requirement in regulation 1.35(a) would be subject to the recording requirements in both rules.

[26] Regarding FBs, KCBT stated that, ''it has always understood 1.35(a) to apply to members of DCMs * * * in order to capture and monitor the activities of DCM members * * * dealing with customers as agent for such transactions, namely registered FBs.''

[27] An FB generally is defined in section 1a(22)(A) of the CEA, 7 U.S.C. 1a(22)(A), as: Any person—(—(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—(I) any commodity for future delivery, security futures product, or swap; or (II) any commodity option authorized under section 4c of the CEA; or (ii) who is registered with the Commission as an FB.

[28] An IB generally is defined in section 1a(31)(A) of the CEA, 7 U.S.C. 1a(31)(A), as: Any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) (i) who—(I) is engaged in soliciting or in accepting orders for—(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap; (bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (cc) any commodity option authorized under section 4c; or (dd) any leverage transaction authorized under section 19; and (II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or (ii) who is registered with the Commission as an IB. *See* 7 U.S.C. 1a(31)(B).

[29] *See, e.g., In re DiPlacido,* [2007–2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,970 at 62,484 (CFTC Nov. 5, 2008), *summary affirmance,* 364 Fed. Appx. 657 (2d Cir. 2009), *cert. denied,* 130 S.Ct. 1883 (2010) (records of FB's oral communications with customer admitted as evidence in case concerning manipulation of price of NYMEX electricity futures contracts).

[30] For instance, CME Rule 536.G, Telephone Recordings, states:

Unless specifically exempted by the Market Regulation Department or designated Exchange staff, all headset communications must be voice recorded by the member or member firm authorized to use the headset and all such recordings must be maintained for a minimum of 10 business days following the day on which the recording is made. Members and member firms are permitted to utilize their own recording devices, provided that the devices meet reasonable standards with respect to quality and reliability. Alternatively, members and member firms may utilize an Exchange administered voice recording system for a fee.

CME Rulebook, Chapter 5 Trading Qualifications and Practices, Rule 536 Recordkeeping Requirements for Pit, Globex, and Negotiated Trades.

[31] An FT generally is defined in section 1a(23)(A) of the CEA, 7 U.S.C. 1a(23)(A), as: Any person—(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account—(I) any commodity for future delivery, security futures product, or swap; or (II) any commodity option authorized under section 4c of the CEA; or (ii) who is registered with the Commission as an FT.

[32] *See* 17 CFR 3.4(a).

proposal to include cash commodity transactions); reducing the record retention period for all records of oral communications from 5 years to 1 year; permitting covered persons to contract with other Commission registrants to retain the required records (provided that the records retained by the contractor registrant are the same records, thus allowing covered persons to avoid retaining the same records as other Commission registrants); and removing the tagging requirement.[33]

The Commission understands that currently available technology for recording oral communications may not be immediately accessible or may involve a material cost outlay for an affected entity. However, the Commission also anticipates that as the availability of this technology increases over time, the costs to use such technology will decline accordingly. Accordingly, to further conform regulation 1.35(a) with the final recordkeeping rule for SDs and MSPs,[34] and in response to commenter request for a flexible compliance timetable, the Commission is adopting a [November 28, 2013] compliance date and regulation 1.35(a)(4)(i) pursuant to which the Commission may, in its discretion, establish an alternative compliance schedule for the requirement to record oral communications under regulation 1.35(a)(1). Under new regulation 1.35(a)(4)(i), compliance with the requirement to record oral communications must be found to be technologically or economically impracticable for an affected entity that seeks, in good faith, to comply with the requirement. Pursuant to new regulation 1.35(a)(4)(iii), the Commission delegates to the Director of the Division of Swap Dealer and Intermediary Oversight the authority to exercise the Commission's discretion under regulation 1.35(a)(4)(i). The purpose of new regulation 1.35(a)(4) is to facilitate the ability of the Commission to provide a technologically practicable compliance schedule for an affected entity that seeks to comply in good faith with the oral communications recordkeeping requirements of regulation 1.35(a)(1). In order to obtain relief under new regulation 1.35(a)(4), an affected entity must submit a request to the Commission. An affected entity submitting a request for relief must specify the basis in fact supporting its claim that compliance with the oral communications recordkeeping requirement under regulation 1.35(a)(1) would be technologically or economically impracticable. Such a request may include a recitation of the specific costs and technical obstacles particular to the entity seeking relief and the efforts the entity intends to make in order to ensure compliance according to an alternative compliance schedule. Relief granted under regulation 1.35(a)(4) shall not cause an affected entity to be out of compliance or deemed in violation of any recordkeeping requirements. Such requests for an alternative compliance schedule shall be acted upon within 30 days from the time such a request is received. If not acted upon within the 30-day period, such request will be deemed approved.

Regarding comments that the proposed amendments to regulation 1.35(a) were inconsistent with the Commission's proposed recordkeeping requirements for SDs and MSPs because they would require FCMs, RFEDs, IBs, and members of a DCM or SEF to record voice communications regardless of any other recordkeeping requirement that captures the same information, the Commission addressed these comments in the final recordkeeping rules for SDs and MSPs, clarifying that, to the extent pre-execution trade information does not include information communicated by telephone, an SD or MSP is under no obligation to create recordings of its telephone conversations. If, however, any of this pre-execution trade information is communicated by telephone, the SD or MSP must record such communications.[35] This clarification is consistent with the requirements under the revision to regulation 1.35 requiring that all oral communications be recorded regardless of whether an audit trail can be established with other types of records. In response to commenter inquiry about whether face-to-face communications would have to be recorded under the final rule, the Commission does not intend for the final rule to require the recording of face-to-face conversations that do not occur over electronic, digital or other media.

2. Written Communications

Regarding written communications, the Commission has decided to adopt the proposed amendment to regulation 1.35(a) to clarify that the existing requirement to keep written records applies to electronic written communications such as emails and instant messages, as proposed. The Commission considered comments asserting that: The requirement to keep ''electronic communications'' should not extend to members of a DCM or SEF that do not handle customer orders; regulation 1.35(a) has never required DCM members to keep records of their electronic communications relating to their cash commodity transactions; and storing records of electronic communications would be overly burdensome for these members. In response, the Commission notes that the record retention requirements of existing regulation 1.35, as confirmed by the Commission's Division of Market Oversight in 2009, include all electronic forms of communication (emails, instant messages, and any other form of communication created or transmitted electronically).[36] Thus, contrary to commenter assertions, the recordkeeping obligations of regulation 1.35 currently require that all DCM members keep electronic

[33] The Commission considered drawing a revenues-based threshold for CTAs. However, given that CTAs do not have a capital requirement it is not possible for the Commission to readily determine the sizes of all registered CTAs and, therefore, the Commission would not be able measure the impact that such a threshold would have on CTAs. The Commission also considered, as an alternative, limiting the types of oral communications that a CTA must record in a similar manner to the way in which it has limited the types of oral communications that an FB must record to brokering communications. However, the Commission has determined that such a limitation is a not a reasonable alternative to having all CTAs who are members of a DCM or SEF record all oral communications that lead to the execution of a commodity interest transaction. Indeed, the limitation for FBs is appropriate for FBs, and not for other registration categories, given the current regulatory regime for FBs and FTs discussed above.

[34] *See* 17 CFR 23.206, as adopted by the Commission in SD and MSP Recordkeeping Final Rule.

[35] *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20130.

[36] *See* U.S. Commodity Futures Trading Commission, Division of Market Oversight, Advisory for Futures Commission Merchants, Introducing Brokers, and Members of a Contract Market over Compliance with Recordkeeping Requirements, Feb. 5, 2009, (*http://www.cftc.gov/ucm/groups/public/@industryoversight/documents/file/recordkeepingdmoadvisory0209.pdf*) (footnotes omitted):

The Division of Market Oversight (''Division'') has become aware that there is an industry misunderstanding of the record retention requirements of Regulations 1.35 and 1.31 as it relates to electronically conveyed records. The Division is issuing this Advisory to address any industry misunderstanding of the Commission's recordkeeping requirements applicable to futures commission merchants (''FCMs''), introducing brokers (''IBs''), and members of a designated contract market (''members''). With the increased reliance in the futures industry on electronic media and the use of personal electronic devices and communications technology to facilitate the execution of transactions for both open outcry and electronic trading, the Division is issuing this Advisory to correct any misunderstandings and to make certain that the individuals and entities subject to the Commission's recordkeeping requirements maintain all electronic forms of communications, including email, instant messages, and any other form of communication created or transmitted electronically for all trading.

communications. Therefore, the relevant portion of the proposed new language (now being adopted by the Commission) ''all * * * written communications * * * whether communicated by * * * instant messaging, chat rooms, electronic email, mobile device, or other digital or electronic media'' does not impose any new requirements on DCM members. Instead, the new language clarifies the existing requirement for DCM members to maintain electronic communications by enumerating the forms of communications that the Commission intends to be covered by the rule. In addition, as explained above, the final language relating to written communications is consistent with the final recordkeeping rule for SDs and MSPs.[37]

The Commission also has decided to change the proposed language in regulation 1.35(a) which would have required an entity to keep records of ''all transactions related to its business of dealing in commodity interests and cash commodities'' to ''all transactions related to its business of dealing in commodity interests[38] and related cash and forward transactions.'' This is different than existing regulation 1.35, which states ''commodity futures, retail forex transactions, commodity options and cash commodities (including currencies).''[39] The final rule defines ''related cash or forward transaction'' as a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a commodity interest where the commodity interest transaction and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.[40] Because a forward is a type of cash transaction already covered by existing regulation 1.35, amending regulation 1.35 to apply to related forward transactions does not constitute an expansion of the scope of existing regulation 1.35.[41]

To reflect these changes, the Commission also is changing the proposed revision to the title of regulation 1.35 from ''Records of Commodity Interest and Cash Commodity Transactions'' to ''Records of Commodity Interest and Related Cash or Forward Transactions.''

In response to comments that the requirement to keep transaction records in separate files identifiable by transaction and counterparty is overbroad, overly burdensome, costly, and/or impossible to achieve, the Commission is modifying the Proposal to remove the requirement that each transaction be maintained as a separate electronic file. Instead, the final rule will require that such records be kept in a form and manner identifiable and searchable by transaction. This should be less burdensome than the Proposal because it will allow those required to comply to maintain searchable databases of the required records without the added cost and time needed to compile the required records into individual electronic files. It also is consistent with the final recordkeeping rule for SDs and MSPs under regulation 23.202.[42] As the Commission noted in the final release for that rulemaking, regulation 23.202 does not require the raw data to be tagged with transaction and counterparty identifiers so long as the recordkeeper can readily access and identify records pertaining to a transaction or counterparty by running a search of the raw data.[43] Covered entities will be able to comply with this obligation by using any of a number of different solutions available, including commercially available products capable of conducting speech analytics on recordings from both landlines and mobile calls.

FIA requested guidance on whether an FCM, IB, or other DCM or SEF member can satisfy the recordkeeping requirements under regulation 1.35(a) by relying on record retention performed by a DCM or SEF,[44] and other commenters similarly requested guidance on whether a covered participant can rely on another Commission registrant's records to satisfy its recordkeeping obligations. While complying with the final rule is the responsibility of the covered participant and the covered participant will be liable for failure to comply, depending on the type of record and arrangements made for access, covered persons may reasonably rely on a DCM, SEF or other Commission registrant to maintain certain records on their behalf. For example, a member of a DCM or SEF can rely on electronic order routing or order execution systems of FCMs, DCMs, or SEFs to record the audit trail information it enters into the system in accordance with Commission requirements, if the covered person arranges to get access to such records in order to satisfy requirements under the regulation. Reliance on another person, however, will not relieve a covered person of responsibility for compliance with the regulation. Reliance on a third party is only appropriate where the records maintained by the third party duplicate the information required to be kept by the regulation. For example, if an FCM records its telephone calls with a covered IB, the IB need not separately record the same calls if the IB and FCM agree that the FCM will maintain the record and provide access to the IB. By contrast, if a covered IB receives a customer order by telephone and then calls it into the FCM, the covered IB must record its telephone call with the customer, while the FCM records the call between the IB and FCM. For other types of records, like instant messages and emails, it is unlikely that covered persons will be able to rely on recordkeeping by a third party because the third party recipient will not have a complete record of the distribution of the message by the sender.

The Commission has considered commenter requests to adopt best efforts approach to compliance, and require only the recording of conversations on firm-provided mobile telephones, not personal devices. The Commission declines these requests and reiterates that any conversation the content of

[37] *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20202–03 (17 CFR 23.202(a)(1) and (b)(1)).

[38] ''Commodity interest'' includes commodity futures, retail forex, commodity options, and swaps. *See* Final Adaptation Rule, 77 FR at 66319 (to be codified at 17 CFR 1.3(yy)).

[39] 17 CFR 1.35(a). Regulation 1.35(a) has included transactions in ''cash commodities'' since as early as 1964:

Each futures commission merchant and each member of a contract market shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to his business of dealing in commodity futures and cash commodities * * *

17 CFR 1.35(a) (1964).

[40] This definition of ''related cash or forward transaction'' mirrors the definition of the same term as it applies to swap transactions for purposes of certain of an SD's or MSP's recordkeeping obligations under Part 23 of the Commission's regulations. *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20202.

[41] The Commission's glossary includes this definition of ''forward contract'':

A cash transaction common in many industries, including commodity merchandising, in which a commercial buyer and seller agree upon delivery of a specified quality and quantity of goods at a specified future date. Terms may be more ''personalized'' than is the case with standardized futures contracts (i.e., delivery time and amount are as determined between seller and buyer). A price may be agreed upon in advance, or there may be agreement that the price will be determined at the time of delivery.

See CFTC Glossary, A Guide to the Language of the Futures Industry, at *http://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/glossary_f.html.*

[42] *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20130.

[43] *Id.*

[44] FIA stated:

We interpret the Commission's statement to mean that, to the extent a DCM or SEF records the relevant conversations of orders transmitted for execution by telephone, a Commission registrant that transmits such orders may rely on the DCM or SEF and is not required to record such conversations and maintain such records separately.

which is described under the regulation must be recorded, regardless of whether it occurs on a firm-provided or personal phone.[45] It would be contrary to the objectives of ensuring market integrity and customer protection to allow circumvention of the rule simply by communicating on a personal device lacking recording capability. To be clear, covered persons must ensure that covered communications do not occur on personal phones that lack recording capability. And while the Commission is not adopting any explicit safe harbors, as a matter of course, the Commission considers good faith compliance with policies and procedures reasonably designed to comply with the oral communications recording rule as a mitigating factor when exercising its discretion in enforcement actions for violation of the rule.

Regarding comments about the existing NFA requirement that NFA member firms with more than a certain percentage of disciplined associated persons must record all conversations that they have with existing and potential customers for two years, the Commission believes that the NFA rule has been effective at protecting the markets and the public. However, as discussed throughout, the Commission does not view its final recording requirement solely as a customer protection rule. The amendments adopted by this release are also a means to protect the integrity of the markets by aiding the Commission in detecting and deterring market abuse, including manipulation and false reporting.[46]

The Commission disagrees with commenters who stated that compliance with the new recording requirement would be illegal in certain jurisdictions.[47] Federal law does not prohibit a person from recording a telephone call where the person recording the call is a party to the call or one of the parties to the call has given prior consent to being recorded.[48] While state laws differ regarding the ability to record customer telephone conversations, the difference exists in the type of consent required to be given before recording can occur. For example, some states require the consent of one party to the call and others require the consent of all parties to the call.[49] Consent can be explicit or implied. A customer will have provided consent if, after being notified that the call is being recorded, he or she continues with the call.[50] Therefore, a covered participant will in all circumstances be able to comply with this final recording rule without violating any other state or federal laws by informing the other parties to the call that the call is being recorded.[51]

Commenters also focused on the relationship between the proposed changes to regulation 1.35(a) and the existing record retention obligations of regulation 1.31 (Books and records; keeping and inspection). Under regulation 1.31, all books and records required to be kept under the Act or by the Commission's regulations must be kept for five years from the date thereof and be readily accessible during the first two years of the five-year period. Given the proposed amendment to regulation 1.35(a) to include a requirement to record all oral communications leading to the execution of a commodity interest or cash commodity transaction and that all such recordings be retained pursuant to regulation 1.31, records of oral communications kept pursuant to proposed regulation 1.35(a) would have had to be kept for five years.[52] Concerning the relationship between regulations 1.31 and 1.35(a), the Commission has determined to adopt a retention period of one year for all records of oral communications that lead to the execution of a transaction in a commodity interest. This modification responds to comments stating that the proposed retention period of five years for records of oral communications was too long. This also is consistent with the final provision for SD and MSP oral communications under new regulation 23.203(b)(2).[53] In addition, the Commission believes that the one-year retention period for records of oral communications will enable it to adequately execute its enforcement responsibilities under the Act and these regulations, while minimizing the storage costs imposed on affected entities.

In specific response to Amcot's concern that the five-year retention period for oral communications would have been too burdensome to its farming cooperative members, the Commission notes that, due to the adopted revisions to regulation 1.35(a), discussed above, the requirement to record oral communications likely will not apply to a significant portion, if any, of Amcot's members.[54] With respect to Encana's request for clarification concerning the applicability of regulation 1.31 to

[45] Significant technological advancements in recent years, particularly with respect to the cost of capturing and retaining copies of electronic material, including telephone communications, have made the prospect of establishing recordkeeping requirements for digital and electronic communications more economically feasible and systemically prudent. Evidence of these trends was examined in March 2008 by the FSA, which studied the issue of mandating the recording and retention of voice conversations and electronic communications. The FSA issued a Policy Statement detailing its findings and ultimately implemented rules relating to the recording and retention of such communications, including a recent determination that all financial service firms will be required to record any relevant communication by employees on their work cell phones. Similar rules that mandate recording of certain voice and/or telephone conversations have been promulgated by the Hong Kong Securities and Futures Commission and by the Autorité des Marchés Financiers in France and have been recommended by the International Organization of Securities Commissions (IOSCO). FSA, ''Policy Statement: Telephone Recording: recording of voice conversations and electronic communications'' (March 2008).

[46] Recorded telephone conversations have been used in a number of the Commission's enforcement cases as evidence of market abuse. *See, e.g., DiPlacido* v. *CFTC,* 364 Fed.Appx. 657 (2d Cir. 2009); *In re Barclays PLC,* CFTC Docket No. 12–25 (June 27, 2012); *CFTC* v. *Optiver US LLC,* 2012 WL 1632613 (S.D.N.Y. Apr. 19, 2012).

[47] Commenters included Henderson & Lyman; Amcot; and ICE.

[48] *See* 18 U.S.C. 2511(2)(d) (Interception and disclosure of wire, oral, or electronic communications prohibited) (''It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.'')

[49] For example, under New York state law, only one of the parties to the conversation must consent. *See* NY CLS Penal § 250.00. Under California and Illinois state laws, all parties to the conversation must consent to the recording. *See* Cal. Pen. Code § 632; 720 ILCS 5/14–1.

[50] *See, e.g., Griggs-Ryan* v. *Smith,* 904 F.2d 112,118 (1st Cir. 1990) (call recipient, previously warned that all incoming calls were being recorded, impliedly consented to interception); *Kearney* v. *Salomon Smith Barney, Inc.,* 45 Cal.Rptr.3d 730, 749 (Cal. 2006) (business that adequately advises all parties to a telephone call, at the outset of the conversation, of its intent to record the call would not violate the statute prohibiting the recording of telephone conversations without the consent of all parties).

[51] Moreover, if a state law were to conflict with the recording requirement in regulation 1.35(a), such a law would be preempted by regulation 1.35(a).

[52] *See* 17 CFR 1.31

[53] *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20204 (Apr. 3, 2012) (''Provided, however, that records of oral communications communicated by telephone, voicemail, mobile device, or other digital or electronic media pursuant to § 23.202(a)(1) and (b)(1) shall be kept for a period of one year.'').

[54] The obligation to record oral communications under final regulation 1.35(a)(1) will not apply to (i) oral communications that lead solely to the execution of a related cash or forward transaction; (ii) oral communications by an FB that do not lead to the purchase or sale for any other person of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Commodity Exchange Act; (iii) an IB that has generated over the preceding three years $5 million or less in aggregate gross revenues from its activities as an IB; (iv) an FT; (v) a CPO; (vi) an SD; (vii) an MSP; or (viii) a DCM or SEF member that is not registered or required to be registered with the Commission in any capacity.

commercial end-users, regulation 1.31 applies to all records required to be kept by the Act or the Commission's regulations, such as records required to be kept under regulations 1.35, 18.05 and 23.202. Therefore, Encana's request is better addressed in particular response to those other recordkeeping requirements than in a discussion of how those records should be kept. In response to CME's comment that although the Commission suggests that the retention period for swaps applies only to SDs and MSPs, as addressed in proposed regulation 23.203(b), the proposed amendment to regulation 1.31 is ambiguous in that it could be read to apply to all entities, the Commission clarifies that the final provision in regulation 1.31 regarding the retention period for records of swap transactions is triggered by the type of record and not the entity that is required to keep the record. Therefore, although regulation 23.203(b) only applies to SDs and MSPs with regard to their swap transactions, the final corresponding provision in regulation 1.31 applies to anyone who is required by the Act or by Commission regulations to keep records of swap or related cash or forward transactions.

IV. Administrative Compliance

A. Paperwork Reduction Act

Regulation 1.35(a) is being amended to provide that certain Commission registrants be required to record and keep records of their oral communications that lead to the execution of a commodity interest transaction and their written communications that lead to the execution of a commodity interest or related cash or forward transaction, similar to the requirement that SDs and MSPs keep records of their oral and written communications that lead to the execution of swaps and related cash or forward transactions. Only the oral communications recordkeeping amendments impose new information recordkeeping requirements. These new requirements constitute a collection of information within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[55] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it has been approved by the Office of Management and Budget (''OMB'') and displays a currently valid control number.[56] This rulemaking contains new collections of information, which amend the existing collection of information set forth in the ''Adaptation of Regulations to Incorporate Swaps'' final rule,[57] OMB Control Number 3038–0090, to add a new oral communication recordkeeping requirement that was not made part of the earlier Final Adaptation Rule. The Commission has submitted the Proposal containing the oral communication recordkeeping requirements that have been separately addressed in this release,[58] this final rule release, and supporting documentation to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to these information collections will be mandatory.

With respect to all of the Commission's collections, the Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information To Be Provided by Reporting Entities/Persons

a. Amendments to Regulation 1.35 (Records of Commodity Interest and Related Cash or Forward Transactions)

i. Obligation To Develop and Maintain Recordkeeping Policies and Controls

The final amendments to regulation 1.35(a) that require recordkeeping related to oral communications will require that each FCM, non-Small IB, RFED, and DCM or SEF member that is registered or required to be registered with the Commission in any capacity, except if registered as an FT, CPO, SD, or MSP, retain all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a commodity interest transaction, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media. The final amendments to regulation 1.35(a) will also apply to FBs who are members of a DCM or SEF. However, FBs will only be required to record oral communications that lead to the purchase or sale for any person other than the FB of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Act.

In the Proposal, the Commission anticipated that the aforementioned registrants may incur certain one-time start-up costs in connection with establishing a system to record oral communications. The Commission estimated that the cost of procuring systems to record these oral communications would be $55,000 for an average large entity that does not already have such systems in place, and estimated procurement costs of $10,000 for each small firm that does not already have such systems in place. Following publication of the Proposal, the Commission researched these costs further. As discussed below in the Cost-Benefit Considerations, the Commission now estimates that the cost for establishing a system to record oral communications on mobile phones using a cloud-based solution would be $90 per phone line and that the cost for establishing a system to record oral communications on a landline using a cloud-based solution would be $50 per phone line. The Commission estimates further that a small entity required to comply will have 10 phone lines and that a large entity required to comply will have 1,000 phone lines. Thus, to figure out the initial cost of establishing a system for recording oral communications, an entity will have to multiply the number of phone lines by the cost per line ($50 per landline and $90 per mobile phone). The Commission estimates each entity to have 50% landlines and 50% mobile phone lines. Therefore, the initial cost for a small firm (10 phone lines) to establish a system for recording oral communications would be $(5 \times \$50) + (5 \times \$90)$ or $700, and the initial cost for a large firm (1,000 phone lines) would be $(500 \times \$50) + (500 \times \$90)$ or $70,000. For purposes of the PRA, the Commission has chosen to use an average initial cost of $35,000.

Also in the Proposal, the Commission estimated the burden hours associated with these start-up costs to be 135 hours for any entity that does not already have a system in place. According to research referenced in the previous paragraph, the Commission now estimates that an entity will not have to spend any time

[55] 44 U.S.C. 3501 et seq.

[56] *Id.*

[57] On November 2, 2012, the Commission published in the **Federal Register** the Final Adaptation Rule. The Final Adaptation Rule promulgated the vast majority of the amendments that the Proposal had introduced. However, in the Final Adaptation Rule, the Commission stated that it would address in a separate release certain of the proposed changes to regulation 1.35 (*i.e.,* the oral communication recordkeeping requirements).

[58] *See* 76 FR 33066, June 7, 2011.

setting up a cloud-based solution for recording oral communications on a mobile phone or landline because the entity will merely have to contract for services from an outside vendor. However, an entity will spend an estimated range of 1 to 10 hours arranging the services of an outside vendor. If the entity chooses to negotiate the vendor's contract, the burden hours will be towards the higher end of the range.

The Commission also estimated in the Proposal that one employee from each affected entity would have to devote one hour per trading day to ensure the operation of the system to record oral communications. Pursuant to the research referred to above, the Commission estimates that employees of those entities who will be required to record oral communications will not have to spend any time each day to ensure the operation of the system because the Commission expects that outside vendors would maintain the system.

ii. Comments Received

As indicated earlier in this rule, in the Final Adaptation Rule, the Commission stated that it would address in a separate release certain of the proposed changes to regulation 1.35 and related amendments to regulation 1.31.[59] In response to the amendments to regulation 1.35(a) in the Proposal, the Commission received 35 comment letters from a variety of institutions, including DCMs, agricultural trade associations, and agricultural cooperatives.[60] The Commission has determined to adopt the Proposal's amendments to regulation 1.35(a), with certain modifications, discussed above, in order to address the comments the Commission received. In addition, as part of this final rulemaking, the Commission is making certain related modifications to the record retention periods set forth in regulation 1.31. The final rules provide for a retention period of one year for all records of oral communications that lead to the execution of a transaction in a commodity interest. This modification responds to comments stating that the proposed retention period of five years for records of oral communications was too long. This also is consistent with the final provision for SD and MSP oral communications under new regulation 23.203(b)(2).[61] Moreover, in light of comments stating, among other things, that it would be overly burdensome for Small IBs and DCM members that do not have customers to comply with the oral communications recordkeeping requirement, the Commission decided to exclude these market participants from the oral recordkeeping amendments to regulation 1.35(a).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities [62] and, if so, provide a regulatory flexibility analysis respecting the impact.[63] The Commission is adopting a substantive rule change to regulation 1.35(a). This substantive change would affect FCMs, certain IBs,[64] RFEDs, and any member of a DCM or SEF who is registered or required to be registered with the Commission in any capacity other than as an FT, CPO, SD, or MSP by requiring them to keep records of all oral communications leading to the execution of a commodity interest transaction.

1. FCMs and RFEDs

The Commission has previously determined that registered FCMs and RFEDs are not small entities for purposes of the RFA.[65] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the final rules will not have a significant economic impact on a substantial number of small entities with respect to these entities.

2. IBs

Regulation 1.35(a) may have a significant economic impact on IBs with annual receipts between $5 million and $7 million. The Commission provided an initial regulatory flexibility analysis in its proposed rulemaking for all IBs, regardless of their size, as the proposed rulemaking did not exclude any IBs from the application of the requirement to keep records of all oral communications.[66]

As discussed above, this final rule will involve substantive changes to regulation 1.35(a), by requiring, among others, non-Small IBs to record all oral communications that lead to the execution of a commodity interest transaction. As indicated above, the Commission provided an initial regulatory flexibility analysis for IBs in the Proposal, as required by 5 U.S.C. 603, because the oral recordkeeping requirement under regulation 1.35(a), as proposed, may have had a significant economic impact on a significant number of small IBs.[67]

The Commission has never previously determined that IBs, as a registrant category, are not ''small entities'' for the purposes of the RFA. Instead, historically, the Commission has evaluated within the context of a particular regulatory proposal whether all or some affected IBs would be considered to be small entities and, if they are considered small entities, the economic impact on them of the particular regulation. Accordingly, the Commission offers, pursuant to 5 U.S.C. 604, the following final regulatory flexibility analysis.

a. A Statement of the Need for, and Objectives of, the Rule

The primary objective of final regulation 1.35(a) is to increase market integrity by requiring IBs with greater than $5 million in total aggregate gross revenues over the preceding three years to keep records of all oral communications leading to the execution of a commodity interest transaction. This rule is necessary for several reasons. First, it will protect the integrity of the market as a whole by aiding the Commission in detecting and deterring market abuse, including manipulation and false reporting. Additionally, it will make enforcement investigations more efficient by preserving critical evidence that otherwise may be lost to memory lapses

[59] *See* supra section I.B.

[60] Comments are available in the comment file on *www.cftc.gov.*

[61] *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20204 (''Provided, however, that records of oral communications communicated by telephone, voicemail, mobile device, or other digital or electronic media pursuant to § 23.202(a)(1) and (b)(1) shall be kept for a period of one year.'').

[62] The Small Business Administration (SBA) identifies (by North American Industry Classification System codes) a small business size standard of $7 million or less in annual receipts for Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities. 13 CFR Ch. 1, § 121.201.

[63] 5 U.S.C. 601 et seq.

[64] *See* note 2323, *supra,* for discussion of definition of Small IB.

[65] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982) (DCMs, FCMs, and large traders) (''RFA Small Entities Definitions''); Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001) (ECPs); Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55410, 55416 (Sept. 19, 2010) (RFEDs) (''Retail Forex Final Rules''); and Position Limits for Futures and Swaps; Final Rule and Interim Final Rule, 76 FR 71626, 71680 (Nov. 18, 2011) (SEFs).

[66] *See* the Proposal, 76 FR at 33079. To the extent that small IBs were affected by the proposed rules, the Commission conducted an initial regulatory flexibility analysis. These final rules exclude Small IBs, as defined above. The final rules have therefore significantly reduced the number of IBs affected by regulation 1.35(a). However, to the extent that certain small IBs, for purposes of RFA, may be affected by these rules, the Commission is conducting a final regulatory flexibility analysis.

[67] *See* the Proposal, 76 FR at 33079–80.

and inconsistent recollections. This, in turn, is expected to increase the success of enforcement actions, which will benefit customers, regulated entities, and the markets as a whole.[68] Moreover, it also will protect customers from abusive sales practices, protect registrants from the risks associated with transactional disputes, and allow registrants to follow-up more effectively on customer complaints of abuses by their associated persons. Finally, final regulation 1.35(a) provides regulatory parity of futures and swaps markets because the requirements of final regulation 1.35(a) are consistent with recently finalized regulations requiring SDs and MSPs to keep records of all oral communications leading to the execution of a swap transaction or a related cash or forward transaction.[69]

b. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

i. Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

Comments on the proposed amendments to regulation 1.35(a) primarily focused on the implications of the proposed oral recordkeeping and tagging requirements and, in particular, on the portion of the Proposal requiring all DCM and SEF members, including commercial end-users and non-intermediaries, to keep records of their cash commodity transactions. One theme of the comments was that the proposed oral communications recordkeeping and tagging requirements were overly burdensome.[70] Commenters were also concerned that the proposed separate electronic file requirement was open-ended, seemingly impossible to achieve,[71] and overly burdensome. Commenters also explained that it could be difficult to link conversations occurring over several days,[72] and could require the recording of all conversations [73] because a call might begin unrelated to a covered transaction but eventually lead to a covered transaction. Commenters sought a reasonableness standard regarding oral recordkeeping and a limitation to exclude oral communications on mobile telephones and argued that the new oral communications recordkeeping requirement would be illegal in certain jurisdictions. Commenters also requested that the proposal to record and store oral communications should be reviewed in the context of available technology.

ii. Agency Assessment of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

The Commission carefully considered the comments, determined that a number of concerns and requested alternatives had merit and, as a result, made a number of adjustments in response. In response to commenters' concerns that the proposed amendments were overly burdensome to non-intermediaries' cash agricultural and energy transactions, the Commission has limited not only the oral recordkeeping requirements of regulation 1.35(a) to commodity interest transactions, but also the existing written recordkeeping requirements therein to commodity interest and related cash and forward transactions.

Some commenters expressed concerns that the proposed revisions to regulation 1.35(a) would be unduly burdensome for small entities and DCM and SEF members who are commercial end-users and non-intermediaries. In response, the Commission has excluded Small IBs (those IBs with less than $5 million in total aggregate gross revenues over the preceding three years) from the application of the rules and certain DCM and SEF members from the scope of the new requirement to record oral communications, namely FTs, CPOs, SDs, and MSPs that would have been obligated to comply by virtue of their status as a DCM or SEF member.

Commenters also expressed the view that the requirement to keep transaction records in separate files identifiable by transaction and counterparty is overbroad, overly burdensome, costly, and/or impossible to achieve. In response, the Commission has removed the requirement that each transaction be maintained as a separate electronic file. In response to a request that covered persons be able to rely on another Commission registrant's records to satisfy their recordkeeping obligations, the Commission provided for such reliance in the final rules, to be applicable only when the records being kept are identical.

The Commission declined to amend the Proposal in response to certain comments. Although commenters sought a reasonableness standard regarding oral recordkeeping and a limitation to exclude oral communications on mobile telephones, the Commission determined to retain the provisions of the Proposal that any covered communication must be recorded, whether it occurs on a firm-provided or personal device.[74]

The Commission also has determined not to amend the Proposal in response to commenters stating that compliance with the new oral communications recordkeeping requirement would be illegal in certain jurisdictions. It is not a violation of federal law to record a telephone call where the person recording the call is a party to the call or one of the parties to the call has given prior consent to being recorded.[75] While state laws differ regarding the ability to record customer telephone conversations, the difference is in the type of consent to recording required. Therefore, the most a covered participant will have to do to comply with the final oral communications recording rule without violating any other state or federal laws is to obtain the prior consent of the other parties to the call to record the conversation. The Commission also notes that DCM rules currently require all floor personnel who wear headsets to record their conversations, so there is only an incremental burden to the entities already subject to those rules, such as FBs.

iii. Changes Made in the Proposed Rule as a Result of Such Comments

• In response to comments, the Commission incorporated the following modifications to the Proposal into final regulation 1.35(a): Reduced the scope of the obligation to record oral

[68] In promulgating its own telephone recording rule, the Financial Services Authority issued guidance stating the following benefits: ''(i) Recorded communication may increase the probability of successful enforcement; (ii) this reduces the expected value to be gained from committing market abuse; and (iii) this, in principle, leads to increased market confidence and greater price efficiency.'' *See* Financial Services Authority, ''Policy Statement: Telephone Recording: Recording of voice conversations and electronic communications'' (Mar. 2008).

[69] *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20203–04 (to be codified at 17 CFR 23.202(a)(1) and (b)(1)).

[70] *See, e.g.,* comments from Amcot (overbreadthover breadth would be burdensome for agricultural DCM members) and NIBA (at the very least, small IBs should be exempt from the proposed amendments to 1.35(a) because the burden on such small entities would be too great).

[71] *See* comment from FIA.

[72] *See* comment from CME.

[73] *See id.*

[74] As discussed in more detail above, significant technological advancements in recent years, particularly with respect to the cost of capturing and retaining copies of electronic material, including telephone communications, have made the prospect of establishing recordkeeping requirements for digital and electronic communications more economically feasible and systemically prudent.

[75] *See* 18 U.S.C. 2511(2)(d).

communications as proposed by limiting it to commodity interest transactions; reduced the retention period for records of oral communications leading to a commodity interest transaction from five years to one; reduced the scope of persons required to record oral communications from FCMs, RFEDs, IBs and all members of a DCM or SEF to FCMs, RFEDs, IBs with total aggregate gross revenues of at least $5 million over the preceding three years, and any member of a DCM or SEF registered or required to be registered with the Commission in any capacity, other than FTs, CPOs, SDs, and MSPs (although SDs and MSPs are required to comply with regulations 23.202(a)(1) and (b)(1) which require recordkeeping of certain oral communications, among other requirements); eliminated the tagging requirement; and allowed for covered persons to rely on the records of another Commission registrant, where appropriate (since reliance will not be appropriate in all circumstances as discussed in section III above) in complying with their recording obligations, while confirming that the covered person will be liable for any violation of the regulation.

iv. Response to ETA Comment Letter

Among other things, the Proposal stated that, except for the proposed revision to regulation 1.35(a) requiring IBs to maintain records of voice communications, the Proposal would not have a significant economic effect on a substantial number of small entities. The Proposal included a Regulatory Flexibility Analysis with respect to the proposed requirement that IBs maintain such records. That analysis concluded with the determination to treat equally all Commission registrants transacting on behalf of customers with respect to keeping records of oral communications.

The ETA commented that the Proposal failed to reflect that the vast majority of the ETA's constituents, electrical utilities that the ETA believes would be affected by the Proposal, are ''small entities'' and, therefore, that an analysis under the RFA was required. The ETA's comment letter did not specify which proposed provisions in the instant rulemaking would affect its members or into which affected entity category or categories its members could fall. Notably, the RFA does not obligate the Commission to analyze the indirect effects on persons not subject to the rule itself. As the Commission understands, those electrical utilities that may be small entities will not be FCMs, RFEDs, IBs with annual receipts of over $5 million, or members of a DCM or SEF transacting business with customers. Rather, they most likely will be end-users of the transactions conducted, the recorded rather than the recorders. As such, there will be no direct, significant economic impact on these electric utilities. Rather, the impact will be imposed on the entities through which they may effect transactions.

c. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

An IB generally [76] is defined in CEA section 1a(31)(A) as follows:

> Any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—
> (i) Who—
> (I) Is engaged in soliciting or in accepting orders for—
> (aa) The purchase or sale of any commodity for future delivery, security futures product, or swap;
> (bb) Any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
> (cc) Any commodity option authorized under section 4c; or
> (dd) Any leverage transaction authorized under section 19; and
> (II) Does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or
> (ii) Who is registered with the Commission as an introducing broker.[77]

As the Commission stated in the initial Regulatory Flexibility Analysis, there are an estimated 1,500 IBs registered with the Commission at any given time. As of June 30, 2012, there were 1,431 registered IBs.[78] The Commission stated in the Proposal's Regulatory Flexibility Analysis that a large percentage of registered IBs are ''guaranteed'' IBs,[79] many of which may be small entities.[80] However, the Commission estimates that limiting, with respect to IBs, the scope of final regulation 1.35(a) to non-Small IBs excludes more than 95% of registered IBs from regulation 1.35's oral communications recordkeeping requirement. Thus, the Commission expects that no more than approximately 75 registered IBs will be subject to the final oral recordkeeping requirements of regulation 1.35(a) at any one time.

d. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Regulation 1.35(a), as amended, will require, among others, non-Small IBs to record all oral communications that lead to the execution of a commodity interest transaction.[81] The regulation is primarily a recordkeeping requirement, which will obligate covered IBs that do not already do so to record their oral communications [82] or the oral communications of their traders and sales forces. The final rules provide for a retention period of one year for all records of oral communications that lead to the execution of a transaction in a commodity interest. This modification responds to comments stating that the proposed retention period of five years for records of oral communications was too long. This also is consistent with the final provision for SD and MSP oral communications under new regulation 23.203(b)(2).

[76] CEA section 1a(31)(B), 7 U.S.C. 1a(31)(B), grants the Commission the authority to further define the term IB.

[77] 7 U.S.C. 1a(31)(A).

[78] Source: NFA.

[79] A guaranteed IB (''GIB'') is an IB that ''does not have to maintain a partic[ul]ar level of net capital but, instead, is guaranteed by a particular FCM/RFED and is generally required to introduce all its business to that FCM/RFED.'' Independent IBs ''must maintain adjusted net capital of at least $45,000 but may introduce business to any registered FCM/RFED.'' NFA, What is the difference between an independent IB and a guaranteed IB?, available at *http://www.nfa.futures.org/nfa-faqs/registration_faqs/requirements-for-FCM-IB-applicants/what-is-difference-between-IIB-and-GIB.html* last visited Sept. 28, 2012.

[80] According to the NFA, as of June 30, 2012, there were 832 registered GIBs.

[81] The Proposal had required recording of oral communications that lead to the execution of a commodity interest and cash commodity transaction. *See* the Proposal, 77 FR at 33091.

[82] Covered market participants will be allowed to arrange with third parties, including DCMs, SEFs, and FCMs, to have access to the DCMs', SEFs', or other Commission registrants' records and, to the extent the records are duplicative of what would be required ofby the covered entity under the rule, may rely on such records to satisfy their own recordkeeping obligations. The Commission notesNote, however, that this does not relieve the covered participant from liability for compliance failures.

e. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

In connection with adopting the final rules, the Commission considered, as alternatives, establishing different compliance or reporting requirements that take into account the resources available to smaller entities, exempting smaller entities from coverage of the disclosure requirements, and clarifying, consolidating, or simplifying disclosure for small entities. In response to comments that the proposed oral communications recordkeeping requirement would be overly burdensome for small IBs, the Commission dramatically scaled back the scope of regulation 1.35(a) as it applies to oral recordkeeping by IBs, reducing by well more than half the number of IBs expected to be subject to the requirement. The Commission further reduced the impact on IBs by limiting the oral communications recordkeeping requirement to commodity interest transactions from the proposed commodity interest and cash commodity transactions.

Although commenters sought a reasonableness standard regarding oral recordkeeping and a limitation to exclude oral communications on mobile telephones, the Commission has retained the provisions of the Proposal that any covered communication must be recorded, whether it occurs on a firm-provided or personal device.[83] The Commission is, however, ameliorating the impact thereof by stating that it will consider good faith compliance with policies and procedures reasonably designed to comply with the oral communications recording requirement as a mitigating factor when exercising its discretion for violations of the requirement.

[83] As discussed in more detail above, significant technological advancements in recent years, particularly with respect to the cost of capturing and retaining copies of electronic material, including telephone communications, have made the prospect of establishing recordkeeping requirements for digital and electronic communications more economically feasible and systemically prudent.

C. Consideration of Costs and Benefits

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

1. Background

The markets subject to the jurisdiction of the Commission have undergone a significant transformation over the last few decades, and particularly in the last few years. Technological advances have contributed to a tremendous growth in trading volume in swaps as well as other derivatives, including futures, as well as the number and type of market participants. Among other notable changes, today's derivative markets include significant numbers of retail customers that invest in the commodity markets through a variety of means. Markets are also more interconnected than ever before, with order flow distributed across multiple trading centers. With this interconnectivity comes not only positive efficiencies, but also the potential for cross-market manipulation that can be difficult to detect and prove without ready access to information evincing the intent of those engaged in market activity. In addition, the Commission notes that requiring the recording and retention of oral communications will serve as a disincentive for covered entities to make fraudulent or misleading communications to their customers over the telephone and could serve as a meaningful deterrent against violations such as trading ahead of customer orders by providing a record of the time that a customer's telephone order is received.

In July 2010, Congress passed the Dodd-Frank Act which, among other things, establishes a comprehensive regime for the regulation of swaps. The Dodd-Frank Act brings swaps under the Commission's jurisdiction and obligates the Commission to adopt new regulations related to registration and regulation of SDs and MSPs, trade execution and clearing requirements, and swap data recordkeeping and real time reporting. In section 731 of the Dodd-Frank Act, Congress added CEA section 4s to require the registration and regulation of SDs and MSPs by the Commission, including the establishment of requirements for SDs and MSPs to keep records of swap transactions.[84]

In response to Congress' act of requiring that SDs and MSPs keep daily trading records of their swaps, including records of communications made by telephone,[85] and to be consistent with the oral communications recordkeeping requirement for SDs and MSPs in connection with their swap and related cash and forward transactions,[86] the Commission is exercising its discretion to amend its regulations to require FCMs, RFEDs, non-Small IBs (*i.e.,* IBs that have generated more than $5 million in aggregate gross revenues over the preceding three years)[87] and members of a DCM or SEF who are registered or required to register with the Commission in any capacity other than FTs, CPOs, SDs, and MSPs to record all oral communications that lead to the execution of a transaction in a commodity interest. FBs that are members of a DCM or SEF are required to record all oral communications that lead to the purchase or sale for any person other than the FB of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Act. In this way, the Commission is affording the other markets subject to its jurisdiction the same market integrity and customer protections that Congress afforded the swaps markets in the Dodd-Frank Act. The Commission recognizes that these benefits are not without cost, and has carefully considered both benefits and costs in light of the considerations provided in CEA section 15(a) and, where appropriate, adopted alternatives to the Proposal that would achieve similar benefits as proposed, but at a lower cost.

2. Summary of the Final Rule

Prior to this amendment, regulation 1.35(a) specified which parties are required to keep written records related to commodity futures, commodity options, and cash commodities, and what information they are required to record. The requirements of regulation 1.35(a) applied to FCMs, RFEDs, IBs, and DCM members.

[84] 76 FR 33066.

[85] *See* 7 U.S.C. 6s(g)(1).

[86] *See* SD and MSP Recordkeeping Final Rule, 77 FR at 20203–04 (Regulation 23.202(a)(1) and (b)(1)).

[87] *See* note 2323, *supra,* for discussion of definition of Small IB.

As discussed above, the Commission is adopting a provision requiring certain entities to record all oral communications leading to the execution of a transaction in a commodity interest. Unlike existing regulation 1.35(a), this new provision will apply to FCMs, RFEDs, non-Small IBs, and DCM and SEF members that are registered or required to be registered with the Commission in any capacity other than as an FT, CPO, SD or MSP.

As described above, the Commission considered adopting an exclusion for certain FBs similar to the exclusion for Small IBs, but determined to not adopt such an exclusion, in part, because FBs are parties to oral communications relating to the means or methods by which a trade will be executed. However, the Commission did determine to limit the application of the rule to FBs so that an FB will only be required to record their oral communications that lead to the purchase or sale for any person other than the FB of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the CEA. This provision of the final rule addressed commenter concerns that the Proposal inappropriately captured the oral communications of certain members of DCMs who currently are registered as FBs, but are solely trading for their own accounts, *i.e.,* acting as FTs. In addition, in response to comments regarding implementation challenges associated with oral recordkeeping requirements for SDs and MSPs, the Commission is extending the implementation deadline to provide these entities with approximately one year to comply following the publication of the final rule.[88] This change provides entities subject to regulation 1.35(a) with the same amount of implementation time as was made available to SDs and MSPs.[89] The Commission believes that an extended period for implementation is warranted in order to ensure that entities subject to this rule have adequate time to address the implementation challenges noted by SIFMA, as discussed below.

3. Benefits

By this action, the Commission improves its ability to ensure the integrity of all the markets subject to its jurisdiction and that customers are similarly protected, whether they be engaged in a swap with an SD, or a futures transaction with an FCM.

As stated above, the markets subject to the jurisdiction of the Commission have undergone a significant transformation over the last few decades, and particularly in the last few years. Technological advances have contributed to a tremendous growth in trading volume as well as the number and type of market participants, including significant numbers of retail customers that invest in the commodity markets through a variety of means. Markets are also more interconnected than ever before, with order flow distributed across multiple trading centers. This interconnectivity yields important benefits but also presents increased risk, including the potential for cross-market manipulation where an action in one market is purposefully orchestrated to yield a desired outcome in another market. Therefore, to ensure that the integrity of the markets and customers are similarly protected across all markets subject to the Commission's jurisdiction, the Commission must have similar access to information regardless of whether the market participant is registered, for example, as an SD or an FCM.

• As the Commission explained when adopting similar transactional level recordkeeping requirements for SDs and MSPs, the Commission believes these recordkeeping requirements will protect market participants and promote the integrity of the markets by ensuring the existence of an audit trail that includes relevant oral communications. A strong audit trail, among other things: Provides a basis for efficiently resolving transactional disputes; acts as a disincentive to engage in unduly risky, injurious, or illegal conduct in that the conduct will be traceable; and in the event such conduct does occur, provides a mechanism for policing such conduct, both internally as part of a firm's compliance efforts and externally by regulators enforcing applicable laws and regulations.

With respect to the latter-noted benefit—enforcing applicable laws and regulations—oral records have proven to be no less, and in some cases perhaps more, valuable than written records alone.[90]

By requiring records of all communications leading to a transaction in a commodity interest, the public benefits and the financial integrity of the markets is protected because additional documentation enhances the Commission's ability to detect and enforce rule violations, including manipulation and fraud. In particular, records of oral communications related to such transactions provide a record of the facts and circumstances that give rise to a violation that can be used in enforcement proceedings to redress the same. Effective enforcement of the Commission's regulations, particularly those prohibiting fraud and manipulation, protects market participants and the public and promotes the integrity of the markets subject to the Commission's jurisdiction.

Notwithstanding the important, practical benefits of the final rules, the Commission has considered commenters' concerns regarding costs and product availability.

4. Costs

The public comments related to changes to regulation 1.35(a) can be broken down into roughly four general categories: Concerns about the costs of compliance to firms,[91] concerns about the feasibility of complying with the requirements of the regulation,[92] concerns about market participants choosing to exit the market or of a market bifurcation,[93] and privacy concerns.[94]

Commenters cited a broad range of compliance costs associated with setting up and maintaining systems to record and tag oral communications. One commenter that is a recording technology provider stated that it would cost in the range of $50/month to record a landline phone or $90/month to record a mobile phone with minimal

[88] *See* letter from SIFMA dated August 10, 2012, Re: Request for No-Action Relief: Recordkeeping Requirements under the Internal Business Conduct Rules. Available at: [XXXX].

[89] *See* Letter from the Division of Swap Dealer and Intermediary Oversight of the CFTC to SIFMA, dated Oct. 29, 2012, CFTC Letter No. 12–29. Available at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12–29.pdf.*

[90] *See* note 4646, *supra.*

[91] *See, e.g.,* FIA; NFA; ICE, Inc.; Hunton and Williams, LLP; National Grain and Feed Association, Land O' Lakes; Minneapolis Grain Exchange, Inc.; CME Group; Commodity Markets Council; Barclay's Capital; Amcot; Grain and Feed Association of Illinois; Agribusiness Council of Indiana; Minnesota Grain and Feed Association; Agribusiness Association of Iowa; American Petroleum Institute; Ohio AgriBusiness Association; American Feed Industry Association; South Dakota Grain and Feed Association; Natural Gas Supply Association; Commodity Markets Council; Natural Gas Supply Association; the Fertilizer Institute; Kansas City Board of Trade; Oklahoma Grain and Feed Association; Electric Power Supply Association; Henderson & Lyman; Rocky Mountain Agribusiness Association; American Cotton Shippers Association.

[92] *See, e.g.,* Land O'Lakes; Minneapolis Grain Exchange, Inc.; CME Group; Commodity Markets Council.

[93] *See, e.g.,* National Grain and Feed Association; Grain and Feed Association of Illinois; Agribusiness Council of Indiana; Minnesota Grain and Feed Association; Agribusiness Association of Iowa; Ohio AgriBusiness Association; American Feed Industry Association; Kansas City Board of Trade.

[94] *See, e.g.,* Virginia Nobbe; American Feed Industry Association; Henderson and Lyman.

fixed setup costs. They also stated that market participants may be able to negotiate more favorable rates if they are able to sign longer contracts, or if they have a large number of phones and/or landlines that need to be recorded. While other commenters did not provide per line estimates, they did provide aggregate cost estimates that are significantly higher than those cited above.[95]

The Commission has considered that the requirement to record and maintain records of oral communications that lead to the execution of commodity interest transactions will create additional costs for market participants subject to the requirements. Those costs include set-up costs to implement voice recording technology on both landlines and mobile phones, recurring costs (such as a monthly fee per user or per phone line to record), and the costs incurred by data storage. Commenters estimate that for participants using a so-called ''cloud-based solution,'' the monthly fees would be approximately $90/month/phone for mobile phones, and approximately $50/month/line for landlines. The setup costs, in each case, are estimated to be roughly one month's subscription fees or less.[96] Commenters estimate that data storage costs are likely to be approximately $13/month/line.[97]

According to commenters, internal recording solutions (*i.e.,* ''non-cloud-based solutions'') typically entail more significant implementation costs, though those costs are likely to vary widely based on existing technology, and particularly on any existing recording capabilities, that an entity already has. The Commission does not have adequate data to estimate the number of entities that already have recording capabilities, or the extent to which such capabilities are deployed in parts of the organization that would be impacted by the oral recordkeeping requirements in regulation 1.35.

SIFMA, in response to the final oral recordkeeping requirements for SDs and MSPs, noted implementation challenges related to recording calls made on both landlines and cell phones, recording calls outside the U.S., and the ability to search and retrieve records of calls, and requested additional time to address those challenges.[98]

The Commission, mindful of the fact that the entities subject to this rule will likely face some of the same implementation challenges, is providing the same amount of time for entities subject to regulation 1.35(a) to comply as was afforded to SDs and MSPs to comply with regulations 23.202(a)(1) and (b)(1). In addition, 1.35(a)(4)(i) permits entities seeking to comply in good faith with the oral communications recordkeeping requirements of regulation 1.35(a)(1) to submit a request for relief if compliance is technologically or economically impracticable for an affected entity prior to the compliance deadline. The Commission anticipates that the additional time for implementation will benefit entities subject to this rule by providing more time to address the challenges noted by SIFMA. Moreover, it will create opportunities for entities that are subject to this rule to benefit from solutions developed by vendors serving SDs and MSPs.

The Proposal included an additional requirement that transaction records be kept in separate electronic files identifiable by transaction and counterparty.[99] In response to comments, the Commission is not adopting that requirement, such that firms are not required to keep records in separate electronic files. Instead, firms are only required to identify and retrieve relevant records upon Commission request. Therefore, the cost associated with ''tagging'' of oral communication records has been eliminated. Relevant entities, however, will need to be able to search and select records related to a particular transaction or counterparty when the Commission requests them. The Commission expects that this may be done in one of two ways. Market participants may use an electronic means of scanning records by key word or they may identify key words and concepts in records manually by listening to the recordings. In either case, participants must be able to identify and retrieve records if they are required to do so by the Commission.

If, when recordings are requested by the Commission, an entity chooses to assign or hire personnel to listen to recordings and identify those being requested, the costs will vary significantly depending on the number and length of oral communications that must be reviewed. These variables will, in turn, be influenced by a host of other factors, including: the number of transactions or counterparties for which relevant recordings must be identified; the length of time across which specified traders were active or specified trades were likely discussed, or the specified counterparties were in contact with the entity from whom the recordings are requested; the number of oral communications that specified traders or counterparties made during the period that may be in question; and the average length of each call. The Commission estimates that in such cases, an entity might dedicate personnel to spend as little as 50 hours reviewing recordings, or as much as 5,000 hours reviewing recordings. The average wage for a compliance specialist is $155.96 per hour and therefore the cost for manual review, if an entity chooses that option when the

[95] For example, FIA cited expenditures on the part of several of its members of between $300,000–$600,000 to upgrade and maintain their landline phones in order to record conversations and estimated expenditures of anywhere from $160,000 to $2.5 million to record conversations on mobile phones depending on firm size. Further, FIA cited a fee of $500,000 to purchase licenses for ''word spotting'' software to search and retrieve these oral records. The Commercial Energy Working Group stated that this compliance with the amended regulation 1.35 could cause costs to firms to ''increase exponentially'' (they cited an ''unidentified investment bank'' in the UK that spent $4.2 million each year to monitor its Blackberry phones in response to a similar Financial Services Authority mandate).

[96] Compliant Phones.

[97] *Id.*

[98] *See* SD and MSP Recordkeeping Final Rule, 77 FR 20128. Based on SIFMA's representations, the Commission determined that relief from certain oral recordkeeping requirements for SDs and MSPs is warranted to address the issues presented, and granted no-action relief to SDs and MSPs until March 31, 2013.

Among other things, SIFMA stated that implementing systems to record landline conversations will require upgrades to data retention infrastructure, testing that must occur on nights and weekends, and overcoming difficulties obtaining products and services. Further, they stated that mobile phone recording technology has ''not achieved the levels of stability, performance and scalability that would be considered for commercial grade products.'' They stated that shipping delays, testing and troubleshooting challenges due to different time zones, legal requirements, and ''an apparent lack of recording capabilities'' in certain countries and uncertainty about what transactions may be subject to the requirements would delay efforts to implement solutions in foreign offices. And last, they asserted that limitations related to caller identification technology and associated metadata would prevent SDs and MSPs from rapidly implementing solutions that would enable them to search and retrieve calls related to specific counterparties or transactions.

[99] With respect to the proposed requirement that entities proactively identify which communications relate to specific traders, trades, and counterparties and then ''tag'' them as such, comments expressed concerns regarding the reliability of technological solutions. For instance, the FIA writes, ''We understand that two software providers, NICE Actimize and Nexidia, offer so-called 'word spotting' programs'' but that they believe that these programs ''are not foolproof and may identify less than 50 percent of potentially relevant conversations.'' The Commercial Energy Working Group stated that in lieu of an accurate software solution, manual identification and retrieval of oral records would require ''as many as 3–5 analysts and 1–2 additional technical support personnel to support transactions'' for ''a small or modest-sized end-user commodity business'' and that ''the total cost to a commodity business is likely to be in excess of $1 million annually.''

Commission requests records, could range from $7,800 to $780,000.[100]

Alternatively, the Commission is aware that vendors that provide recording services are also capable of providing speech analytic search capabilities for a set fee. For example, one vendor estimated this cost at $40 to $80 per user per month.[101] According to commenters, other entities may choose to acquire speech analytics services that can be housed internally rather than on the vendor's servers. Another vendor stated that the costs would depend on the number of hours sent through the speech analytics device and that initial deployment costs would likely range from $160,000 to $1,500,000 for the largest organizations with ongoing annual fees that are approximately 18% of the initial cost ($29,000—$270,000 per year). Alternatively, small entities can implement a desktop solution with the same analytics capabilities. The initial license costs approximately $25,000 per user and 18% ongoing maintenance fees ($4,500 per year per user).[102] Another vendor estimated that setup costs, including relevant licenses, would range from $450,000 for a small entity to $4,000,000 for a large entity, and that annual maintenance costs would range from $80,000 to $800,000.[103] These numbers assume that entities do not yet have speech analytics services being used in other parts of the company's operations that could be expanded to include the oral records required under this rule. However, the Commission understands that some of the largest financial entities may already be customers of companies that provide speech analytics services. As a consequence, the costs for those entities may be less than if they were implementing speech analytics services de novo.

In response to the Proposal, some commenters expressed concern that the imposition of more stringent recordkeeping requirements on DCM members could prompt a bifurcation in the markets for certain services because of the compliance cost advantage that market participants who are not DCM members enjoy.[104] They suggested that entities that are DCM members might stop offering services that make them subject to the regulation 1.35 requirements.[105]

In the Proposal, the Commission proposed to include FCMs, RFEDs, IBs, and all DCM and SEF members under the oral recordkeeping requirement and also proposed that such recordkeeping requirements would apply to all transactions in commodity interests and cash commodities. However, in the final rule, the Commission amended regulation 1.35(a) such that Small IBs and members of DCMs and SEFs who are not otherwise registered or required to be registered with the Commission in any capacity, as well as those members registered as FTs, CPOs, SDs, and MSPs, are not subject to the oral communication recordkeeping requirements under regulation 1.35(a). The limiting principle for the determination of which classes of registrants must comply with the final rule are, as discussed further above, transactions by entities that could affect both market integrity and customer protection.

Finally, some commenters expressed concern that if employees of a regulated entity use personal phones (either landline or mobile) for business purposes, calls on those lines must be recorded. Commenters stated privacy concerns with the same. However, simple solutions to protect employee privacy do exist. For example, depending on the policies of the firm, it is possible for certain phone numbers to be excluded from recording.[106] Alternatively, the company could institute a policy that employees are not to conduct personal business on recorded lines.

In addition, amendments in this final rule will require SEF members to comply with regulation 1.35, and it is likely that some of those members will not have been subject to regulation 1.35(a) previously. In addition to the costs related to oral communications recordkeeping, mentioned above, the Commission estimates that SEF members that are newly subject to regulation 1.35(a) will spend additional time each day compiling and maintaining transaction records. The Commission estimates that the cost of that additional time is $236,000 to $393,000 per entity per year.[107]

Also, the amendments in this final rule will require FCMs, RFEDs, IBs, and members of DCMs to comply with the regulation 1.35(a) recordkeeping requirements for any swap transactions into which they enter. The Commission estimates that such entities will spend an additional 0.5 hours per swap capturing and maintaining the records required under regulation 1.35(a), and therefore estimates that the per-swap cost will be $83.00.[108]

4. Consideration of Alternatives

As compared to the Proposal, the Commission has limited the range of entities that are subject to the oral recordkeeping requirement, narrowing it to entities that could affect market integrity and customer protection by way of their function as intermediaries for other parties. The Commission also has limited the range of transactions that are subject to the requirement from commodity interest and cash commodity transactions to commodity interest transactions. Limiting the range of entities that must record and keep oral communications reduces the number of entities that must bear the costs of creating and maintaining records required by regulation 1.35(a). In particular, by excluding from the new regulation 1.35(a) oral communications recordkeeping provisions Small IBs and DCM or SEF members that are registered as FTs or CPOs, or SDs or MSPs (as SDs and MSPs are covered by regulations 23.202(a)(1) and (b)(1)), or neither registered nor required to be registered with the Commission in any capacity, certain entities such as agricultural cooperatives, energy end-users and other smaller entities that may transact on DCMs and SEFs on their own behalf, but not on behalf of customers, avoid mandatory recordkeeping costs.

[100] The average wage for a compliance specialist is $155.96 [($58,303 per year)/(2,000 hours per year) * 5.35 = $155.96]. For the purposes of the Cost Benefit Considerations section, the Commission has used wage estimates that are taken from the SIFMA ''Report on Management and Professional Earnings in the Securities Industry 2011'' because industry participants are likely to be more familiar with them. Hourly costs are calculated assuming 2,000 hours per year and a multiplier of 5.35 to account for overhead and bonuses. All totals calculated on the basis of cost estimates are rounded to two significant digits.

[101] *See* Compliant Phones communication.

[102] *See* Nexidia communication.

[103] *See* NICE communication.

[104] Several commenters submitted a form letter addressing this point. Entities submitting this letter, with minor modifications in some cases, include: National Grain and Feed Association, Grain and Feed Association of Illinois, Agribusiness Council of Indiana, Minnesota Grain and Feed Association, Agribusiness Association of Iowa, Ohio AgriBusiness Association, South Dakota Grain and Feed Association, Kansas City Board of Trade, and Oklahoma Grain and Feed Association.

[105] For instance, the Kansas City Board of Trade writes that the operators of delivery warehouses are often required to be DCM members and that the added expense of compliance with regulation 1.35 could cause firms to withdraw from the business of providing warehousing services, thereby decreasing market competitiveness.

[106] *See* Compliant Phones communication.

[107] This is estimated to take 6–10 hours per day (assuming 252 days per year) of the time of an office services supervisor. The average wage for an office services supervisor is $155.96 [($58,303 per year)/(2,000 hours per year) * 5.35 = $155.96]. $155.95*6*252 = 235,812.31. $155.95*10*252 = 393,020.52.

[108] This estimates 0.5 hours of time from an office services supervisor. The average salary for an office services supervisor is $165.25/hour [($61,776 per year)/(2,000 hours per year) * 5.35 = $165.25 per hour]. $165.25*0.5 = $82.63.

As noted above, new regulation 1.35 will not require entities to keep records in separate electronic files. Instead, the amendments as adopted require only that subject entities be able to identify which records relate to specific parties or transactions when requested to do so by the Commission. Such requests are infrequent for any one market participant, and therefore the costs of complying with them will be far less than what would have been the case under the proposed rule.

As described above, the Commission considered alternatives to compliance, including various safe harbors, but determined not to adopt them. For example, the Commission has considered, but declines to adopt, recommendations that it include a ''reasonableness'' standard because such a standard could result in market participants documenting policies and procedures but failing to vigorously monitor for compliance with the same. The Commission also declines to adopt this recommendation as inconsistent with the requirements applicable to SDs and MSPs under Part 23 of the Commission's regulations. Rather, the Commission determines that it would be more appropriate to consider good faith compliance with policies and procedures reasonably designed to comply with the oral communications recording rule as a mitigating factor when exercising its enforcement discretion with respect to violations of the rule.

5. Consideration of Section 15(a) Factors

(1) a. Protection of Market Participants and the Public

The oral recordkeeping requirement in regulation 1.35(a) will protect market participants and the public by ensuring the existence of an audit trail that includes relevant oral communications. A strong audit trail, among other things, provides a basis for resolving transactional disputes; acts as a disincentive to engage in unduly risky, injurious or illegal conduct in that the conduct will be traceable; and in the event such conduct does occur, provides a mechanism for policing such conduct, both internally as part of a firm's compliance efforts and externally by regulators enforcing applicable laws and regulations.

(2) b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Requiring records of all oral communications leading to a transaction in a commodity interest promotes the efficiency, competitiveness and financial integrity of the markets by increasing the Commission's ability to detect and prosecute violations of the Act and the Commission's rules related to fraud, manipulation and other disruptive trade practices.

(3) c. Price Discovery

Neither the Commission nor commenters have identified consequences for price discovery that are expected to result from this rule.

(4) d. Sound Risk Management Practices

The Commission believes that proper recordkeeping—though likely to require initial investment in recordkeeping and other back office systems—is essential to risk management because it facilitates an entity's awareness of its transactions, positions, trading activity, internal operations, and any complaints made against it, among other things. Such awareness supports sound internal risk management policies and procedures ensuring that decision-makers within affected entities are fully informed about the entity's activities and can take steps to mitigate and address significant risks faced by the firm. When individual market participants engage in sound risk management practices the entire market benefits. Accordingly, the Commission believes that this final rule, notwithstanding the potential costs identified above, will promote the public interest in sound risk management.

(5) e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations that could be impacted by the oral communications recordkeeping rule under regulation 1.35(a).

List of Subjects in 17 CFR Part 1

Agricultural commodity, Agriculture, Brokers, Committees, Commodity futures, Conflicts of interest, Consumer protection, Definitions, Designated contract markets, Directors, Major swap participants, Minimum financial requirements for intermediaries, Reporting and recordkeeping requirements, Swap dealers, Swaps.

For the reasons stated in the preamble, under the authority of 7 U.S.C. 1 *et seq.,* the Commodity Futures Trading Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as set forth below:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 1.31 by revising paragraph (a)(1) to read as follows:

§ 1.31 Books and records; keeping and inspection.

(a)(1) All books and records required to be kept by the Act or by these regulations shall be kept in their original form (for paper records) or native file format (for electronic records) for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period; *Provided, however,* That records of any swap or related cash or forward transaction shall be kept until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of five years after such date. Records of oral communications kept pursuant to §§ 1.35(a) and 23.202(a)(1) and (b)(1) of this chapter shall be kept for a period of one year. All such books and records shall be open to inspection by any representative of the Commission, or the United States Department of Justice. For purposes of this section, native file format means an electronic file that exists in the format in which it was originally created.

* * * * *

■ 3. Amend § 1.35 by revising the section heading and paragraph (a) to read as follows:

§ 1.35 Records of commodity interest and related cash or forward transactions.

(a) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets or swap execution facilities.* (1) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity interests and related cash or forward transactions. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, which have been prepared in the course of its business of dealing in commodity

interests and related cash or forward transactions. Among such records each member of a designated contract market or swap execution facility must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission, the designated contract market or the swap execution facility. For purposes of this section, such documents are referred to as ''original source documents.'' Such records shall be kept in a form and manner identifiable and searchable by transaction. Also included among the records required to be kept by this paragraph are all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media; *provided, however,* the requirement in this paragraph (a)(1) to record oral communications shall not apply to:

(i) Oral communications that lead solely to the execution of a related cash or forward transaction;

(ii) Oral communications provided or received by a floor broker that do not lead to the purchase or sale for any person other than the floor broker of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Commodity Exchange Act;

(iii) An introducing broker that has generated over the preceding three years $5 million or less in aggregate gross revenues from its activities as an introducing broker;

(iv) A floor trader;

(v) A commodity pool operator;

(vi) A swap dealer;

(vii) A major swap participant; or

(viii) A member of a designated contract market or swap execution facility that is not registered or required to be registered with the Commission in any capacity.

(2) For purposes of paragraph (a)(1) of this section, ''related cash or forward transaction'' means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a commodity interest transaction where the commodity interest transaction and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.

(3) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall retain the records required to be kept by this section in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States Department of Justice.

(4)(i) The Commission may in its discretion establish an alternative compliance schedule for the requirement to record oral communications under paragraph (a)(1) of this section that is found to be technologically or economically impracticable for an affected entity that seeks, in good faith, to comply with the requirement to record oral communications under paragraph (a)(1) of this section within a reasonable time period beyond the date on which compliance by such affected entity is otherwise required.

(ii) A request for an alternative compliance schedule under paragraph (a)(4)(i) of this section shall be acted upon within 30 days from the time such a request is received, or it shall be deemed approved.

(iii) The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight or such other employee or employees as the Director may designate from time to time, the authority to exercise the discretion. Notwithstanding such delegation, in any case in which a Commission employee delegated authority under this paragraph believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an alternative compliance schedule should be established. The delegation of authority in this paragraph shall not prohibit the Commission, at its election, from exercising the authority set forth in paragraph (a)(4)(i) of this section.

(iv) Relief granted under paragraph (a)(4)(i) of this section shall not cause an affected entity to be out of compliance or deemed in violation of any recordkeeping requirements.

* * * * *

Issued in Washington, DC, on December 17, 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

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

Appendices to Adaptation of Regulations To Incorporate Swaps—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.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule to amend 1.31 and 1.35(a) of the Commodity Futures Trading Commission's (CFTC) regulations to conform them to recordkeeping requirements for swap dealers and major swap participants. The rule enhances the Commission's enforcement program for the futures market to promote market integrity and protect customers.

These conforming amendments integrate the CFTC's regulations with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which expanded the scope of the Commodity Exchange Act to include swaps.

As proposed, the rule would have required members of a designated contract market (DCM) or swap execution facility (SEF) to record all oral communications that lead to the execution of a transaction in a cash commodity. The Commission received numerous comments about the effect of such a requirement on members of the agricultural community that trade in cash commodities and are not required to be registered with the Commission other than, in some cases, as floor traders.

In consideration of comments, the Commission adopted modifications that preserve the rule's purpose without adversely affecting the agricultural community. Only those oral communications that lead to a transaction in a commodity interest (i.e. a commodity futures contract, commodity option contract, foreign exchange contract, or swap) will have to be recorded. Furthermore, only FCMs, certain introducing brokers (IBs), retail foreign exchange dealers (RFEDs), and those members of a DCM or SEF who are registered or required to be registered with the Commission (except for floor traders, commodity pool operators, swap dealers, major swap participants, and floor brokers who trade for themselves) will have to record oral communications.

Market participants that must comply will be required to record communications relating to: Quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest. Methods of communication that fall under the rule include telephone, voicemail, facsimile, instant messaging, electronic mail, mobile device, or other digital or electronic media. Thus, the rulemaking also clarifies that the existing requirement under regulation 1.35(a) to keep written records applies to electronic written communications, such as emails and instant messages. Records of oral communications must be kept for one year.

The rule will make enforcement investigations more efficient by preserving

critical evidence that otherwise may be lost to memory lapses and inconsistent recollections. The Commission will have access to evidence of fraud and market manipulation, which is expected to increase the success of enforcement actions for the benefit customers, market participants and the markets. Moreover, it also will protect customers from abusive sales practices, lower the risk of transactional disputes and allow registrants to follow-up more effectively on customer complaints.

[FR Doc. 2012–30691 Filed 12–20–12; 8:45 am]

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NATIONAL MEDIATION BOARD

29 CFR Part 1206

[Docket No. C–7034]

RIN 3140–ZA01

Representation Procedures and Rulemaking Authority

AGENCY: National Mediation Board.

ACTION: Final rule.

SUMMARY: In response to amendments to the Railway Labor Act in the Federal Aviation Administration Modernization Reform Act of 2012, the National Mediation Board amends its existing regulations pertaining to representation elections, run-off elections, and rulemaking to reflect changes in statutory language.

DATES: The final rule is effective December 21, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *infoline@nmb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 2012, the Federal Aviation Administration and Modernization and Reform Act of 2012, Public Law 112–0095 (FAA Reauthorization) was signed into law. The FAA Reauthorization contained, inter alia, several amendments to the Railway Labor Act (RLA or Act). The changes contained in these amendments require changes to the National Mediation Board's (NMB or Board) existing Rules relating to run-off elections, showing of interest requirements, and rulemaking. On May 15, 2012, the NMB published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** inviting public comments for 60 days on a proposal to revise those rules to comply with the statutory language. The Board invited commenters to address the specific amendments along with any other matters they consider relevant to the changes wrought by the amended statutory language. In the NPRM, the Board also indicated its particular interest in receiving comments regarding the effect of the amendments on the Board's policies and practices with respect to representation disputes in mergers. The NPRM also stated that the NMB may incorporate any comments in a Final Rule in this proceeding. On June 7, 2012, the Board issued a correction to the text of the proposed rules. On June 19, 2012, the Board held an open public hearing to solicit the views of interested parties on the NPRM.

II. Notice and Comment Period

In response to the NPRM, the NMB received ten submissions during the official comment period from trade and professional associations, labor unions, and members of Congress. Additionally, the NMB received written and oral comments from seven labor organizations that participated in the June 19, 2012 open public hearing. The NMB has carefully considered all of the comments and analyses of the proposed changes and the impact of the amended statutory language on its merger procedures set forth in the Board's Representation Manual (Manual).

The overwhelming majority of the substantive comments addressed the applicability of the amended statutory language providing that a showing of interest of not less than 50 percent is required to support an ''application requesting that an organization or individual be certified as the representative of any craft or class of employees,'' to representation disputes in mergers. The preamble will focus on the Board's response to the arguments raised in these comments.

III. Summary of Comments

The major comments received and the Board's responses to those comments are as follows. The Board notes that it is required to respond to significant comments and, therefore, has not addressed every issue raised in the comments. *See, e.g., Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 394 (D.C. Cir. 1973) (''[C]omments must be significant enough to step over a threshold requirement of materiality before any lack of agency response or consideration becomes of concern.'').[1]

A. Showing of Interest

The showing of interest requirements applicable in mergers are set forth in the Board's Manual.[2] Manual Section 19.1 defines a merger as ''a consolidation, merger, purchase, lease, operating contract, acquisition of control, or similar transaction of two or more business entity.'' The courts have long recognized that the NMB, under Section 2, Ninth, has the authority to resolve representation disputes arising from a merger involving a carrier or carriers covered by the RLA. *Air Line Employees Ass'n, Int'l* v. *Republic Airlines, Inc.,* 798 F.2d 967 (7th Cir. 1986). An organization or individual initiates this process by filing an application supported by evidence of representation or a showing of interest. If, after an investigation, the NMB determines that a single transportation system exists, the Board will proceed to resolve the representation of the craft or class on the merged carrier. The Board's current policy in mergers requires that ''[i]ncumbent organizations or individuals on the affected carrier(s) must submit evidence of representation or a showing of interest from at least thirty-five (35) percent of the employees in the craft or class.'' Manual Section 19.601. The Manual further states that the ''rules regarding percentage of valid authorizations in NMB Rule 1206.2 (29 CFR 1206.2) and bar rules in NMB Rule 1206.4 (29 CFR 1206.4) do not apply to applications'' in merger situations. Manual Section 19.6.

In the oral and written statements received at the June 19, 2012 public meeting and in written comments submitted pursuant to the NPRM, commenters including the Transportation Trades Department, AFL–CIO (TTD), Brotherhood of Locomotive Engineers and Trainmen (BLET), International Association of Machinists and Aerospace Workers (IAM), Association of Flight Attendants—CWA (AFA), Transportation Workers Union of America (TWU), and the International Brotherhood of Teamsters (IBT) state that neither the plain language of Section 2, Twelfth nor the legislative history indicate that Congress intended the 50 percent showing of interest requirement should apply to mergers.

[1] There were no comments related to the proposed rules amending the Board's rulemaking procedures. In addition, there was only one comment related to the run-off election procedures under Proposed Rule 1206.1. Right to Work objects to Rule 1206.1(c), arguing that new hires should be permitted to vote in run-off elections. The language of 1206.1(c) remains unchanged from the current rule. The Board has a long-standing policy of only including employees who were eligible in the initial election in the run-off election and will not change that in this Final Rule.

[2] The Manual is an internal statement of agency policy and not a compilation of regularly promulgated regulations having the force and effect of law. *Hawaiian Airlines* v. *NMB,* 107 L.R.R.M. 3322 (D. Haw. 1979), *aff'd without op.* 659 F.2d 1088 (9th Cir. 1981).

Thus, in effect, these commenters suggest that the amendments do not affect the Board's existing merger policy and procedures. This position is also supported in the written comments from Democratic Senators Harry Reid, Tom Harkin and John D. Rockefeller IV urging the Board to leave its current merger procedures in place. The opposite view, namely that Section 2, Twelfth unequivocally applies to all representation elections and disputes including those arising as a result of a merger, is urged in written comments submitted pursuant to the NPRM by Republican House Members John L. Mica, Thomas E. Petri, John J. Duncan, Sam Graves, Bill Shuster, Jean Schmidt and Chip Cravaack, the National Right to Work Legal Defense Foundation (Right to Work), Airlines for America and the Regional Airline Association (A4A/RAA), and the National Railway Labor Conference (NRLC).

The TTD, along with other labor organizations, asserts that the language and structure of Section 2, Twelfth indicates that Congress did not intend for it to apply to merger proceedings. TTD argues that the language used in Section 2, Twelfth to refer to a representation dispute, namely ''upon receipt of an application requesting that an organization or individual be certified as the representative,'' does not describe a representation dispute resulting from a merger. According to TTD, the Board's process in a merger ''focuses on determining the impact, if any, of a merger of two or more carriers upon existing representation certifications.'' TTD also argues that if Congress had intended Section 2, Twelfth to apply to every representation dispute under Section 2, Ninth, it would have explicitly stated as much or added the new statutory language directly into Section 2, Ninth. Instead, TTD argues, Congress chose different language and Section 2, Twelfth should be read as narrower than Section 2, Ninth.[3]

The TTD and other commenters opposed to applying the new showing of interest to mergers also point to statements made by Senators Harkin, Reid, and Rockefeller in a colloquy in the Congressional Record. In particular, Senator Reid made the following statement:

> And I would also like to explain that it is not intended to apply to the unique situation in mergers. The text of the amendments apply to all applications for representation elections, but not to the entirely different circumstance where a labor organization or employees petition the National Mediation Board for a determination as to whether a merger or other transaction has altered an existing representational structure as a result of a creation of a single transportation system. In those cases, it is our intent that the National Mediation Board's existing merger procedures, as modified from time to time by the National Mediation Board, shall determine the percent of the craft or class to establish a showing of interest. Otherwise, employees could lose their representation simply by merging with a slightly larger unit without even having the opportunity to vote, which is unacceptable.

TTD argues that this language plainly indicates that Section 2, Twelfth was not intended to apply to mergers.

In contrast to the TTD's arguments regarding statutory interpretation, several members of Congress, in their written comment to the Board,[4] stated that ''[h]ad Congress wished to exclude merger-related representation elections from the scope of Section 2, Twelfth, such an exception could have easily been written into the amendment: clearly it was not.'' These members of Congress further argue that there is no reason why Congress would have excluded mergers from the amendment when a majority of airline workers involved in recent representation elections were participating in elections that resulted from mergers. NRLC argues that the Board must apply the showing of interest requirements to any application for representation because there is nothing in Section 2, Twelfth to suggest that all applications are not covered. The title of Section 3 of the FAA Reauthorization was ''Bargaining Representation Certification.'' According to the NRLC, ''when congress circumscribed the Board's authority in 'Bargaining Representation Certification,' it necessarily did so in all circumstances in which the NMB certifies a bargaining representative, including in the merger context.''

A4A/RAA, in a joint written statement, also argue that the text of Section 2, Twelfth, along with the title I of the section ''Showing of interest for representation elections,'' does not leave any doubt that showing of interest requirements apply in all representation elections. They summarize their argument in the following way:

> In light of (a) the unequivocal language of Section 2, Twelfth, (b) the absence of any exception for mergers, (c) the reality that excluding merger-related elections would effectively gut the amendment, and (d) the fact that the Merger Procedures in the Board's Representation Manual require that an application be supported by a showing of interest, A4A submits that all merger-related applications must be subject to the 50% showing of interest.

A4A/RAA also argue that the comments by Senator Reid described above were isolated comments, part of a colloquy among a small number of senators, and ''cannot override the clear directive of the amendment.'' In their comment, they cite Supreme Court cases for the rule of statutory interpretation that isolated comments are not a reliable indicator of Congressional intent and little or no weight is given to comments by a single legislator.

Having carefully reviewed and considered the comments, the Board believes that by enacting Section 2, Twelfth, Congress intended to apply the same showing of interest to requirement in all representations disputes under the Act. Thus, any application seeking the Board's investigation of a representation dispute under Section 2, Ninth must be supported by a showing of interest of not less than 50 percent. For the reasons discussed below, the Board believes that this includes applications filed as part of a single carrier determination in mergers.

In Section 2, Ninth of the RLA, Congress delegated to the NMB the authority to resolve disputes as to the identity of representatives of employees of airlines and railroads for purposes of collective bargaining. The Board's duty with respect to representation disputes is set forth in Section 2, Ninth: ''upon request of either party to the dispute'' the Board shall investigate such dispute and certify to the parties and to the carrier ''the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute.'' 45 U.S.C. 152, Ninth. Section 2, Ninth further provides that ''[i]n such investigation'' of the representation dispute,

> the Mediation Board shall be authorized to take a secret ballot of the employees involved or use any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.

[3] The TTD also requests that the Board retain the current language in Rule 1206.2(a) (requiring a showing of interest of a majority of employees in a represented craft or class), while changing the language in 1206(b) as proposed in the NPRM. The result of this change would be that the showing of interest for represented crafts or classes would be one more card than for unrepresented crafts or classes. The TTD does not provide a justification for making this minor distinction. Congress has amended the statute to require a minimum 50 percent showing of interest in any craft or class and the Board sees no reason to make such a distinction.

[4] On August 2, 2012, Representatives John L. Mica, Thomas E. Petri, John J. Duncan, Sam Graves, Bill Shuster, Jean Schmidt, and Chip Cravaack submitted a comment in response to the Notice of Proposed Rulemaking.

Thus, the language and structure of Section 2, Ninth makes clear that the Board has an affirmative duty to investigate a representation dispute upon ''request of either party to the dispute'' and the Board is ''authorized'' to conduct an election or use any other appropriate method in connection with ''such an investigation'' to resolve the dispute as to the identity of the employees' representative.'' The Court of Appeals for the District of Columbia has previously described the limitations on the Board with regard to its representation functions,

> The (first sentence of Section 2, Ninth) imposes four significant *conditions* that must be satisfied as a prelude to the board's authority to investigate a representation dispute: there must be a dispute; the dispute must relate to representation; it must be among a carrier's employees; and one of the parties to the dispute must request the Board's services in resolving it.

Railway Labor Executives' Ass'n v. *NMB,* 29 F.3d 655, 666–67 (DC Cir. 1994) (*RLEA*) (emphasis in original).

Through Section 2, Twelfth, Congress has added an additional limitation to the Board's authority under Section 2, Ninth, namely that once requested to investigate a representation dispute (''upon receipt of an application''), the NMB cannot direct an election or use any other method to determine the representative of a craft or class of employees without a showing of interest from not less than 50 percent of the employees in that craft or class. When the Board's current showing of interest rules were enacted in 1947, mergers were not a factor in the airline industry. The Board recognizes that it did not apply Rule 1206.2 to mergers and that it was not until the 1980s that the Board created separate procedures for dealing with mergers in the Manual. Congress is aware that mergers are a major factor in the airline industry and that the Board had separate procedures for dealing with mergers. In the Board's view, Congress amended the RLA to require a 50 percent showing of interest before the Board can authorize an election in any craft or class.

Representation disputes resulting from mergers are disputes subject to the Board's authority under Section 2, Ninth. The Board clarified this in its decision in *TWA/Ozark Airlines,* 14 NMB 218, 222 (1987) (citing Section 2, Ninth as requiring the Board to resolve the representation dispute between the merging carriers, TWA and Ozark Airlines). In response to TWA's assertion that the Board did not have statutory authority to determine the representation status of existing certifications at Ozark Airlines, the Board stated the following: ''We hasten to clarify that pursuant to Section 2, Ninth the Board upon investigation has *exclusive* authority to grant, withhold and revoke representation certifications.'' *Id.* at 235 (emphasis in original). In each single carrier determination issued by the Board, the Board invokes its authority under Section 2, Ninth to investigate representation disputes, making no distinction between this type of representation dispute and the more typical case where an organization or individual files an application seeking to represent a previously unrepresented craft or class of employees.

Likewise, in *RLEA,* the court recognized that the Board's authority in that representation dispute, resulting from a merger, came from Section 2, Ninth. *RLEA,* 29 F.3d at 660–61. The court considered whether the Board's merger procedures at that time violated Section 2, Ninth. There was no argument that a representation dispute resulting from a merger was anything other than a ''dispute'' under Section 2, Ninth.

According to Section 2, Twelfth, the showing of interest requirement applies ''upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees * * *'' The language indicates that this requirement applies to all representation applications filed with the Board. Unlike representation proceedings under the National Labor Relations Act (NLRA), which provides for different types of petitions,[5] the RLA only provides for investigation of a representation dispute by the NMB ''upon request of either party'' to that dispute. Thus, the statutory language does not distinguish between requests to investigate where the craft or class is unrepresented, where the employees wish to change representation or become unrepresented, or where there has been a merger or other corporate transaction. Under the Board's practice, the Section 2, Ninth request is made in the form of an application and the Board has always had one application, ''Application for Investigation of Representation Dispute,'' which requests the Board to investigate and certify the name or names of the individuals or organizations authorized to represent the employees involved in accordance with Section 2, Ninth.

This requirement in Section 2, Twelfth applies to an application by an organization seeking to represent ''any craft or class.'' Courts have considered what ''any'' means in a statute. For example, in *Carter* v. *Welles-Bowen Realty, Inc.,* 553 F.3d 979, 986 (6th Cir. 2009), the court, after discussing the dictionary definition of ''any,'' stated that when Congress included the term ''any charges'' in a statute, ''[t]he ordinary definition of 'any' indicates that charges are neither restricted to a particular type of charge nor limited to a specific (charge).'' Here, Congress' language stated that the showing of interest requirements applied to applications to represent ''any craft or class'' and the language is not restricted as argued by TTD and other commenters.

TTD argues that Congress did not intend for Section 2, Twelfth to apply to merger proceedings because ''single carrier determinations concern existing certifications,'' while Section 2, Twelfth applies where a representative is seeking to ''be certified'' as the representative of a craft or class. The Board is not persuaded by this distinction. The question before the Board in any investigation of a representation dispute is ''who are the representatives of such employees'' as described in Section 2, Ninth. This is the issue even if the employees are already represented, for example, when an organization seeks to ''raid'' an already-certified craft or class or when an individual files an application with the intention to change their representative or become unrepresented. Furthermore, after the Board makes a single carrier determination, the issue becomes who is the representative of the new craft or class created by the merger; it is not simply a question of existing certifications as stated by TTD. The applicant is seeking to ''be certified'' as the representative of the newly created craft or class. Prior to these amendments, the Board had one application with different showing of interest requirements. Congress is now saying, with Section 2, Twelfth, that the Board must require the same showing of interest requirement for any application.

Congress could have provided for an exception to the showing of interest requirements in Section 2, Twelfth. When interpreting statutory language, courts have noted that when Congress intends for a specific exception, it makes this intent clear. Therefore, courts are reluctant to find an exception

[5] Section 9(c) of the NLRA provides for three types of petitions to the National Labor Relations Board (NLRB): (1) A petition seeking certification, (2) an employer petition seeking resolution of a question concerning representation, and (3) a petition seeking decertification of a previously recognized representative. 29 U.S.C. 159(c)(1). In addition, the NLRB's Rules and Regulations, Section 102.60(b) provides for petitions for clarification of a bargaining unit and petitions for amendment of certifications. 29 CFR 102.60(b).

to a provision in a statute that is not expressed. For example in *Baker* v. *Runyon,* 114 F.3d 668, 670 (7th Cir. 1997), a plaintiff sought to recover punitive damages from the Postal Service despite the prohibition in the Civil Rights Act from recovering damages from ''a government, government agency, or political subdivision.'' The plaintiff seeking damages argued that Congress' history of treating the Postal Service differently under other statutes and the legislative history of the Civil Rights Act indicated that Congress did not intend to exempt it from punitive damages. The court responded that the plaintiff was ''asking this court to read into the Act an exception to Congress' blanket exemption, despite the absence of any textual support for such an exclusion * * * We therefore presume that Congress would have said that all government agencies, except the Postal Service, are exempt from punitive damages, if this is what it intended.'' *Id.* (internal citations omitted). Like in *Baker,* Congress did not intend for there to be an exception to the showing of interest requirements because it did not expressly provide for it. Section 2, Twelfth requires a 50 percent showing of interest whenever the Board is requested to certify a representative of any craft or class of employees.

The Board is also not persuaded that the differences in language between Section 2, Ninth and Section 2, Twelfth indicate that Congress did not intend for the showing of interest requirements to apply in mergers. The language in Section 2, Twelfth does not track the language in Section 2, Ninth exactly, but there is no language in Section 2, Twelfth that indicates that Congress intended there to be such a large exception to its provisions. The Board recognizes that courts consider whether Congress used the same phrasing in different sections of a statute to interpret its intent; however, the negative implications of different language apply most strongly when the sections in question were considered simultaneously. *Lindh* v. *Murphy,* 521 U.S. 320, 21 (1997). Because these sections were not constructed simultaneously and were, in fact, considered decades apart, the assumption that Congress deliberately chose contrasting language is a weak one. *Field* v. *Mans,* 516 U.S. 59, 75 (1995). (''As for the rule of construction, of course it is not illegitimate, but merely limited. The more apparently deliberate the contrast, the stronger the inference, as applied, for example, to contrasting statutory sections originally enacted simultaneously in relevant respects''.)

Finally, the Board does not agree that the comments in the Congressional Record cited by TTD and others provide insight into congressional intent. The most dispositive form of legislative history is the conference report. *United States* v. *Commonwealth Energy Sys.* 235 F.3d 11 (1st Cir. 2000). The conference report for the FAA Reauthorization did not include any discussion of this issue. In the absence of this or other legislative history indicating that Congress intended there to be an exception in mergers, the statements made by the Democratic senators in floor debates should not be given controlling weight in making this determination. The United States Court of Appeals for the District of Columbia Circuit has noted that judges must exercise caution before relying on a statement made in a floor debate or at a hearing given the interplay in Congress of political and legislative considerations that are unrelated to the interpretive tasks of a court. *Gersman* v. *Group Health Ass'n, Inc.,* 975 F.2d 886, 892 (DC Cir. 1992) (quoting *Antolok* v. *United States,* 873 F.2d 369, 377 (DC Cir. 1989)) *cert. denied,* 511 U.S. 1068 (1994). This caution is especially warranted when it appears that a colloquy was a direct result of ''a single member * * * attempting to reassure his own constituency or even to create legislative history for citation by the courts.'' *Id.*

B. Request To Change Representation Manual Section 19.7

The NLRC and A4A/RAA requested that the Board revise its Manual in response to the amendments. Specifically, they argue that Manual Section 19.7, part of the Board's Merger Procedures, is inconsistent with Section 2, Twelfth. Manual Section 19.7 currently states that ''[e]xisting certifications remain in effect until the NMB issues a new certification or dismissal.''

The practical effect of Section 19.7 is that after the Board makes a single carrier determination, current certifications remain in effect until either an election or until the Board addresses the representation consequences of the merger without an election. The NRLC and A4A/RAA's comments argue that, unlike other merger provisions in the Manual, Section 19.7 is substantive. A4A/RAA's comment states that the rule ''pre-determines the effects of mergers on existing certifications in a way that is contrary to a basic precept of the Railway Labor Act. To the extent that Rule 19.7 permits a union to remain as the representative of a 'minority' faction of a larger system-wide craft or class on a merged airline, Section 19.7 is directly contrary to long-standing interpretations of the RLA.'' As the NRLC's comment notes, the NRLC objected to the precursor to Section 19.7 when the Board invited comments on changes to its merger procedures in 2001. The NRLC argued in 2001, as they do now, that Section 19.7 results in unions representing only a fraction of a merged carrier's craft or class.

The NRLC and A4A/RAA further claim that Section 2, Twelfth reinforces Congressional intent that a representative must have the support of a majority of the craft or class. According to NRLC, ''Section 2, Twelfth, by requiring a 50 percent showing of interest in all representation cases, reinforces congressional intent that any representative must have the support of a majority of the craft or class'' and Section 19.7 may allow a union to continue representing a portion of a craft or class without the support of a majority of the craft or class.

Courts have long recognized the Board's authority over representation disputes and specifically its authority in resolving disputes in merger situations. ''All the courts of appeals to have considered the issue * * * have held that the question whether a union's certification survives an airline merger is a matter within the exclusive jurisdiction of the NMB.'' *Ass'n of Flight Attendants* v. *Delta Air Lines,* 879 F.2d 906, 912 (DC Cir. 1989). *See also Air Line Employees Ass'n* v. *Republic Airlines, Inc.,* 798 F.2d 967, 968–69 (7th Cir. 1986); *International Ass'n of Machinists* v. *Northeast Airlines, Inc.,* 536 F.2d 975, 977 (1st. Cir. 1976); *Brotherhood of Ry. Clerks* v. *United Air Lines, Inc.,* 325 F.2d 576, 579–80 (6th Cir. 1963). The commenters fail to provide an explanation as to how Section 2, Twelfth changes this basic principle. These courts based the Board's discretion on Section 2, Fourth's requirement that a representative is chosen by ''the majority of any craft or class * * *'' and the Board's duty to investigate representation disputes under Section 2, Ninth. *Delta Air Lines,* 879 F.2d at 910; *Int'l Brotherhood of Teamsters* v. *Frontier Airlines, Inc.,* 628 F.3d 402, 405 (7th Cir. 2010). The amendment does not change the definition of majority under Section 2, Fourth (which refers to employees voting in an election) nor does it change the Board's duty under Section 2, Ninth. It merely takes away the Board's discretion regarding a requirement that must be satisfied

before the Board can authorize an election under Section 2, Ninth.

The Board cannot take action regarding existing certifications, including extinguishing those certifications, at merging carriers where no application has been filed by employees. The Board cannot initiate a single carrier investigation. *RLEA,* 29 F.3d at 665–69. The Board cannot extinguish a certification on its own initiative upon learning of carriers' intent to merge. Nor can it do so on the request of a carrier. *Frontier Airlines,* 628 F.3d at 406. The statute requires that the Board wait for an employee or organization to file an application before investigating and resolving the representation consequences of a merger. In its single carrier determination, the Board determines when there has been a merger for labor relations and representation purposes and immediately moves on to address the representation consequences. Generally, the representation consequences of a merger are resolved shortly following a single carrier determination. Only at that time can the Board authorize an election or extend or extinguish certifications, depending on its precedent regarding the representation status and sizes of the merging groups. Even if the Board had the authority to extinguish a certification earlier, doing so would likely lead to instability during an election campaign, confusion about what laboratory conditions are necessary during the election period, and frustrate the expectations of employees who at some point voted for representation. Courts have noted that the RLA ''abhors a contractual vacuum.'' *Air Line Pilots Ass'n,* v. *UAL Corp.,* 897 F.2d 1394, 1398 (7th 1990). The Board will not introduce such a vacuum and resulting instability where a representation investigation is underway.

Furthermore, the courts that have addressed this issue were not unaware that in some situations, a merger will result in a minority of employees being temporarily represented by an organization. In this situation, the Board maintains the authority to determine the representation consequences of the merger. *Int'l Brotherhood of Teamsters* v. *Texas Int'l Airlines, Inc.,* 717 F.2d 157, 164 (5th Cir. 1983) (''After a merger that makes the employee group hitherto represented by the Union a minority of the craft, the question of employee representation inevitably arises. When this happens, resolution of that question is the function of the National Mediation Board.'')

The Board also disagrees with these comments' supposition that ''minority unions'' result from Section 19.7. Without an investigation, it cannot be determined whether an incumbent union or any other organization represents the employees in the combined craft or class on a merged carrier. This finding is the purpose of the investigation of representation consequences following a merger. As one court noted, ''the merger created real doubts about whether plaintiffs represent the majority of * * * employees, and where there is such doubt, federal courts leave resolution of the dispute to the National Mediation Board.'' *Int'l Ass'n of Machinists and Aerospace Workers* v. *Northeast Airlines, Inc.,* 536 F.2d 975, 977 (1st Cir. 1976).

Neither NRLC nor A4A/RAA explains the connection between Section 2, Twelfth and Manual Section 19.7. These commenters simply state that Section 2, Twelfth reinforces Congressional intent that a representative must have the support of a majority of the craft or class and that Manual Section 19.7 undermines this intent but do not explain how this is so. In the Board's view there is no conflict. The showing of interest is a threshold requirement that enables the Board to determine whether or not there is sufficient interest among employees to justify holding an election without the needless expenditure of Government time, efforts, and funds. *Compass Airlines,* 35 NMB 14 (2007). In Section 2, Twelfth, Congress has decided that the Board should require the same showing of interest for any application. Congress, however, has not required a showing of interest from a majority of employees in the craft or class to trigger an election. Rather, Section 2, Twelfth requires only a showing of interest from ''not less than 50 percent of employees in the craft or class'' to proceed to an election in which the majority of employees participating in the election will then choose their representative in accordance with Section 2, Fourth. *Air Transport Ass'n* v. *National Mediation Board,* 719 F.Supp.2d 26 (DC Cir. 2011). Likewise, the fact that, in the interests of stability, the Board requires that existing certifications remain in effect until the representation dispute is resolved does not impair the Congressional intent. The representation dispute will end with the employees in the merged craft or class casting ballots for or against representation and the choice of the majority of votes cast in that election will prevail.

The Board cannot take action with respect to crafts or classes at merging carriers where no application has been filed and Section 2, Twelfth does not change the Board's duties under Section 9, Ninth. Accordingly, in the Board's view, Manual Section 19.7 is not inconsistent with the RLA and the Board will not change it.

C. Request To Maintain Current Showing of Interest Requirements for Intervenors

AMFA asks the Board to reconsider proposed Rule 1206.5, regarding the showing of interest for an intervenor. AMFA argues that the FAA amendments do not require that the 50 percent showing of interest be extended to intervenors and that ''[a]bsent express language in the RLA to the contrary, the Board should not pursue a policy of according inferior organizing rights to workers in the airline and railroad industries.'' AMFA argues that Section 2, Twelfth does not require intervenors to also satisfy the 50 percent showing of interest requirement because the Board can hold an election once the 50 percent showing of interest requirement is satisfied by the initial applicant. AMFA requests that the Board maintain its current 35 percent showing of interest for intervenors in both merger and non-merger situations and argues that changing the showing of interest requirement for intervenors would serve no other purpose than to ''limit democratic choice'' by limiting the choices on the ballot.

In contrast, IBT, in its comment, contends that the Board's proposed Rule 1206.5 is appropriate because allowing a party to intervene with a lower showing of interest than the initial applicant would allow that party to ''ride the coattails'' of the initial applicant. According to IBT, it would be inconsistent to allow an intervenor to have their name on the ballot with a showing of interest lesser than that required of the initial applicant. In addition, IBT contends that allowing a lower showing of interest for intervenors may result in more multi-party elections and a greater number of run-off elections. TWU, in its comment, also approves of the Board's proposed rule, which adjusts the showing of interest for intervenors. According to TWU, ''it would be inappropriate and inconsistent with Board practice for the Board to allow intervenors who seek certification to piggyback on an applicant's 50% showing of interest but produce only a 35% showing of interest on their own.''

As discussed above, there is only one application that an individual or organization files to invoke the Board's services. The Board requires all

organizations, whether initial applicant or intervenor, to file the same application. Congress has stated that an application must be supported by a 50 percent showing of interest and the Board sees no reason to make a distinction between initial applicants and intervenors at this point. While the language of Section 2, Twelfth does not specifically refer to intervenors, the Board recognizes that it is unlikely that Congress intended for an organization or individual to get their name on the ballot with less than a 50 percent showing of interest after another organization has complied with the 50 percent requirement.

In addition, the Board notes that it has not prevented employees from signing more than one authorization card. *See Wisconsin Central Trans. Corp. RR,* 24 NMB 307 (1997). In a merger situation, a union could collect signatures from employees who are represented by another union. If 50 percent of the craft or class is either already represented by that union or willing to sign an authorization card for that union, the showing of interest requirement will be satisfied. In a merger situation, there is no reason to hold the union who files the first application to a higher standard than unions who file subsequent applications.

D. Request To Include Merger Procedures in CFR

TTD requests that that the Board include the current merger procedures in the Code of Federal Regulations (CFR) to provide clear guidance to labor and management and in order to enjoy the high level of deference afforded under the *Chevron* standard. TTD asked the Board to ''incorporate existing merger procedures'' into the CFR and provided proposed language.

Because Congress has removed the Board's discretion with regards to showing of interest requirements in merger procedures, the existing merger procedures in the Manual will be amended to reflect that change. The Manual provides procedural guidance to the Board's staff in processing representation disputes. While these provisions are not mandatory for the Board or its staff, they do provide guidance to labor and management during representation disputes. It is not a compilation of regularly promulgated regulations having the force and effect of law. *Hawaiian Airlines* v. *NMB,* 107 L.R.R.M. 3322 (D. Haw. 1979), *aff'd without op.* 659 F.2d 1088 (9th Cir. 1981).

The Board has made changes to the Manual in the past and may do so in the future. These changes are communicated to labor and management. *See e.g. Revised Materials for NMB's New Voting Procedures,* 38 NMB 83 (2011). By maintaining discretion where Congress has not required specific action by the Board, the Board is able to change the Manual as required by changes in the industry, Board practice, or the law. For example, the Board amended the write-in procedures in the Manual after determining that new voting procedures clarified voters' choices, making a write-in vote for ''Any Other Organization or Individual'' unnecessary. *Id.* The Board will not codify merger procedures that are not required by Congress into the CFR in order to maintain this flexibility.

E. Request To Provide Greater Protection Against Carrier Interference in the Manual

The TTD requests that the Board amend its Manual to require carriers to provide information verifying voter eligibility when providing the initial List of Eligible Voters and impose remedies on a case-by-case basis where a carrier has failed to provide accurate information necessary to determine eligibility. It also requests that the Board ensure that carriers do not abuse the election process by claiming that terminated employees are furloughed. According to TTD, the new showing of interest requirements will ''incentivize carriers to pad voting lists with hard-to-reach workers or individuals no longer employed at the company in an effort to prevent employees from even having an opportunity to vote in an election.''

The Board has the authority under Section 2, Ninth to implement measures to insure that an election is free from carrier interference at any stage of a representation dispute. The Board has in place a procedure to ensure the accuracy of the list. Manual Section 3.6 provides the parties with an opportunity to review the Eligibility List if it appears that the showing of interest requirement has not been met. *See also American Airlines,* 39 NMB 341 (2012) (providing a schedule for challenges and objections to the Eligibility List prior to showing of interest determination).

The Board will not change its Manual at this time but will continue to request information from carriers when it is necessary to make eligibility determination and remains free to take appropriate measures as necessary on a case-by-case basis. The Board can also investigate allegations of election interference prior to the tally in extraordinary circumstances.

The Board has always investigated allegations of election interference and addressed related issues in its determinations. If there are allegations of carrier or union interference following the change in showing of interest requirements, the Board will address these changes. Following prior changes to the election rules, the Board addressed how these changes influenced interference allegations following a subsequent election and interference investigation. *See, e.g. Delta Air Lines,* 39 NMB 53, 73 (2011) (discussing how changes to election procedures to allow employees to affirmatively vote against representation mean that the fact that a carrier is aware that an employee voted no longer carries as great a risk of reprisal or coercion). As discussed above, the Board seeks to maintain its flexibility in responding to changes in the airline and railroad industries. The Board will continue to address changes in the industry, communications, technology, and whether these new showing of interest requirements change interference investigations as part of its statutory duty to ensure that elections are free from carrier interference.

F. Request To Change Decertification Procedures

Right to Work requested that the Board ''provide an explicit decertification procedure.'' It notes that employees under the NLRA have a straightforward process for decertifying a union and that the lack of such a process under the RLA deprives airline and railroad workers of a right that other employees in the private sector have.

The Board has in the past considered comments on the issue of changing its decertification procedures when it was considering changing its voting rules. *See Chamber of Commerce,* 14 NMB 347 (1987). The Board recognized that the close relationship between the form of the ballot and the issue of decertification called for the issues to be addressed together. Here, however, Right to Work has not even explained how this issue is relevant to the changes to the RLA by the FAA Reauthorization. The change in showing of interest requirements in Rules 1206.2 and 1206.5 will apply to all representation elections, including those resulting from an application filed by an individual or organization seeking to decertify a union, equally. The Board currently has a procedure for decertification and the amendments and the proposed rules do not substantively change that procedure because the showing of interest requirement where the craft or class was represented was greater than 50 percent under the prior rule.

While not as direct as Right to Work might prefer, the Board's current

election process allows employees to decertify a union and has been utilized for that purpose. The Board previously had a higher showing of interest requirement where a craft or class of employees was already represented. As noted during the Board's prior rulemaking proceedings, this policy was based on the Board's desire to preserve stability in collective bargaining relationships. 75 FR 26062, 26078 (May 11, 2010). The Board has required a majority showing of interest before authorizing an election that would disturb an existing collective bargaining relationship. Consistent with Congressional intent, the Board will require a 50 percent showing of interest for any application, leaving current decertification procedures virtually unchanged. Because the proposed rules will not affect the decertification process, this is not an issue that the Board will address at this time. Furthermore, Right to Work points to the NLRA's decertification procedure. As the Board noted the last time this issue was raised in rulemaking proceedings, the NLRA specifically provides for a decertification process. The 1947 Taft-Hartley Amendments to the NLRA added a provision allowing an employee, group of employees, or any individual or labor organizations acting on their behalf to file a petition asserting that the currently certified or recognized bargaining representative no longer represents the employees in the bargaining unit. 29 U.S.C. 159(c)(1)(A)(ii). No similar provisions have been included in the RLA.

IV. Conclusion

Based on the rationale in the proposed rule and this rulemaking document, the Board hereby adopts provisions of the proposal and clarification as a final rule.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The NMB certifies that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will not directly affect any small entities as defined under the Regulatory Flexibility Act.

National Environmental Policy Act

This rule will not have any significant impact on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

List of Subjects in 29 CFR Part 1206

Air carriers, Labor management relations, Labor unions, Railroads.

Accordingly, as set forth in the preamble, the NMB amends 29 CFR part 1206 as follows:

PART 1206—HANDLING REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT

■ 1. The authority section for 29 CFR part 1206 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

■ 2. Revise § 1206.1 to read as follows:

§ 1206.1 Run-off elections.

(a) In an election among any craft or class where three or more options (including the option for no representation) receive valid votes, if no option receives a majority of the legal votes cast, or in the event of a tie vote, the Board shall authorize a run-off election.

(b) In the event a run-off election is authorized by the Board, the names of the two options which received the highest number of votes cast in the first election shall be placed on the run-off ballot, and no blank line on which voters may write in the name of any organization or individual will be provided on the run-off ballot.

(c) Employees who were eligible to vote at the conclusion of the first election shall be eligible to vote in the run-off election except:

(1) Those employees whose employment relationship has terminated; and

(2) Those employees who are no longer employed in the craft or class.

■ 3. Revise § 1206.2 to read as follows:

§ 1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.

(a) Upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least fifty (50) percent of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

(b) Any intervening individual or organization must also produce proved authorizations (checked and verified as to date, signature, and employment status) from at least fifty (50) percent of the craft or class of employees involved to warrant placing the name of the intervenor on the ballot.

§ 1206.5 [Removed]

■ 4. Remove § 1206.5.

§§ 1206.6 and 1206.7 [Redesignated as §§ 1206.5 and 1206.6]

■ 5. Redesignate §§ 1206.6 and 1206.7 as §§ 1206.5 and 1206.6.

■ 6. Add § 1206.7 to read as follows:

§ 1206.7 Amendment or rescission of rules in this part.

(a) The Board may at any time amend or rescind any rule or regulation in this part by following the public rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) and after providing the opportunity for a public hearing.

(b) The requirements of paragraph (a) of this section shall not apply to any rule or proposed rule to which the third sentence of section 553(b) of the Administrative Procedure Act applies.

(c) Any interested person may petition the Board, in writing, for the issuance, amendment, or repeal of a rule or regulation in this part. An original and three copies of such petition shall be filed with the Board in Washington, DC, and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

§ 1206.8 [Removed]

■ 7. Remove § 1206.8.

Dated: December 18, 2012.

Mary Johnson,

General Counsel, National Mediation Board.

[FR Doc. 2012–30853 Filed 12–20–12; 8:45 am]

BILLING CODE 7550–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions for valuation dates in the first quarter of 2013. The interest assumptions are used for valuing benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC. As discussed below, PBGC has published a separate final rule document dealing with interest assumptions under its regulation on Benefits Payable in Terminated Single-Employer Plans for January 2013.

DATES: Effective January 1, 2013.

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

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. Assumptions under the asset allocation regulation are updated quarterly and are intended to reflect current conditions in the financial and annuity markets. This final rule updates the asset allocation interest assumptions for the first quarter (January through March) of 2013.

The first quarter 2013 interest assumptions under the allocation regulation will be 2.67 percent for the first 20 years following the valuation date and 3.01 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2012, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.40 percent in the select rate, and an increase of 0.01 percent in the ultimate rate (the final rate).

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

Because of the need to provide immediate guidance for the valuation of benefits under plans with valuation dates during the first quarter of 2013, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, a new entry for January—March 2013, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *		*		*		*
January–March 2013	0.0267	1–20	0.0301	>20	N/A	N/A

Issued in Washington, DC, on this 18th day of December 2012.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–30819 Filed 12–20–12; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–1020]

RIN 1625–AA08

Special Local Regulations; 2013 Orange Bowl Paddle Championship, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Biscayne Bay and the Miami River in Miami, FL during the 2013 Orange Bowl Paddle Championship. The event will take place on January 13, 2013 between the hours of 9 a.m. to 1 p.m. Approximately 300 kayaks and paddleboards will participate in the event. The special local regulation is necessary to ensure the safety of the participants, participant vessels, and the general public during the event. Non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule will be enforced from 9 a.m. to 1 p.m. on January 13, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1020. To view documents mentioned in this preamble as being

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary event information in regards to the event location until November 20, 2012. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators and the general public.

B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish special local regulations pursuant to: 33 U.S.C. 1233. The purpose of the rule is to provide for the safety of life on navigable waters during the 2013 Orange Bowl Paddle Championship.

C. Discussion of the Final Rule

On January 13, 2013, the Orange Bowl Committee is sponsoring the 2013 Orange Bowl Paddle Championship. The event will be held on the waters of Biscayne Bay and the Miami River. Approximately 300 participants on paddle boards will be transiting the Miami River and surrounding areas requiring a controlled environment due to large commercial traffic.

The special local regulation will encompass certain waters of Biscayne Bay and the Miami River in Miami, Florida. The special local regulation will be enforced from 9:00 a.m. until 1:00 p.m. on January 13, 2013. The regulated area will encompass all waters west of the Intracoastal Waterway from just south of the Port Miami Bridge to just north of the Rickenbacker Causeway Bridge, to include the Miami River up until the Interstate 95 Bridge. Non-participant persons and vessels are prohibited from entering, transiting though, anchoring in, or remaining within this regulated area.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami via telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the event area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for a maximum of 4 hours; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the event area if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not authorized by the Captain of the Port Miami or designated representative to enter, transit through, anchor in, or remain within the event area may operate in the surrounding area during the enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Biscayne Bay and the Miami River encompassed within the special local regulation from 9:00 a.m. until 1:00 p.m. on January 13, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a marine event. This rule is categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T07–1020 to read as follows:

§ 100.35T07–1020 Special Local Regulations; 2013 Orange Bowl Paddle Championship, Biscayne Bay, Miami, FL.

(a) *Regulated area.* The following regulated area is established as a special local regulation: all waters starting at point 1 in position 25°46′45″ N 80°10′57″ W; thence northwest to point 2 in position 25°46′48″ N 80°11′05″ W; thence southeast to point 3 in position 25°46′46″ N 80°11′10″ W; thence southeast to point 4 in position 25°46′40″ N 80°11′10″ W; thence southeast to point 5 in position 25°46′38″ N 80°11′05″ W; thence northeast to point 6 in position 25°46′45″ N 80°11′01″ W; thence southeast to point 7 in position 25°46′44″ N 80°10′59″ W; thence southwest to point 8 in position 25°46′31″ N 80°11′06″ W; thence south to point 9 in position 25°46′18″ N 80°11′06″ W; thence westward including all waters of the Miami River to point 10 in position 25°46′13″ N 80°11′57″ W; thence eastward including all waters of the Miami River to point 11 in position 25°46′11″ N 80°11′16″ W; thence southwest to point 12 in position 25°45′28″ N 80°11′20″ W; thence southwest to point 13 in position 25°44′54″ N 80°12′06″ W; thence southeast to point 14 in position 25°44′48″ N 80°11′22″ W; thence northeast to point 15 in position 25°46′09″ N 80°10′57″ W; thence northwest to point 16 in position 25°46′22″ N 80°11′01″ W; thence north to point 17 in position 25°46′36″ N 80°11′01″ W; thence northeast back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and

other officers operating Coast Guard vessels, and Federal, state and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement date.* This rule will be enforced from 9 a.m. until 1 p.m. on January 13, 2013.

Dated: December 6, 2012.

C.P. Scraba,

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

[FR Doc. 2012–30768 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–1063]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Biscayne Bay, and Miami River, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviations from regulations.

SUMMARY: The Coast Guard has issued temporary deviations from the regulations governing the operation of the following four bridges in Miami, Florida: The Venetian Causeway Bridge (West), mile 1088.6, across the Atlantic Intracoastal Waterway; the Venetian Causeway Bridge (East), across Biscayne Bay; the Miami Avenue Bridge, mile 0.3, across the Miami River; and the Brickell Avenue Bridge, mile 0.1, across the Miami River. The deviations are necessary to allow for race participants to traverse the bridges during the ING Marathon. This deviation will result in the bridges remaining in the closed position during the ING Marathon. Tugs and tugs with tows are not exempt from this deviation.

DATES: These deviations are effective from 6 a.m. through 1 p.m. on January 27, 2013.

ADDRESSES: The docket for this temporary deviation, USCG–2012–1063, is available online by going to *http://www.regulations.gov,* inserting USCG–2012–1063 in the ''Search'' box and then clicking ''Search''. The docket is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Michael Lieberum, Seventh District Bridge Branch, Coast Guard; telephone (305) 415–6744, email *Michael.B.Lieberum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The ING Marathon Director has requested temporary modifications to the operating schedules of the Venetian Causeway Bridge (West), the Venetian Causeway Bridge (East), the Brickell Avenue Bridge, and the Miami Avenue Bridge in Miami, Florida. These deviations will result in the bridges remaining in the closed position during the ING Marathon on January 27, 2013. The ING Marathon route passes over these four bridges. Any bridge opening would disrupt the race. The temporary deviations will be in effect from 6 a.m. through 1 p.m. on January 27, 2013.

The vertical clearance, regular operating schedule, and deviation period for each bridge are set forth below.

1. *Venetian Causeway Bridge (West), mile 1088.6.* The vertical clearance of the Venetian Causeway Bridge (West), across the Atlantic Intracoastal Waterway, is 12 feet. The normal operating schedule for the Venetian Causeway Bridge (West) is set forth in 33 CFR 117.261(nn), which requires the bridge to open on signal, except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridge need only open on the hour and half-hour. As a result of this temporary deviation, the Venetian Causeway Bridge (West) will remain closed to navigation from 6:10 a.m. to 9:56 a.m. on January 27, 2013.

2. *Venetian Causeway Bridge (East).* The vertical clearance of the Venetian Causeway Bridge (East), across Biscayne Bay, is 5 feet. The normal operating schedule for the Venetian Causeway Bridge (East) is set forth in 33 CFR 117.269, which requires the bridge to open on signal, except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridge need only open on the hour and half-hour. As a result of this temporary deviation, the Venetian Causeway Bridge (East) will remain closed to navigation from 6 a.m. to 9:15 a.m. on January 27, 2013.

3. *Miami Avenue Bridge, mile 0.3.* The vertical clearance of the Miami Avenue Bridge, across the Miami River, is 21 feet. The normal operating schedule for the Miami Avenue Bridge is set forth in 33 CFR 117.305(c), which requires the bridge to open on signal, except that from 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m., and 4:35 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open for the passage of vessels. As a result of this temporary deviation, the Miami Avenue Bridge will remain closed to navigation from 6:25 a.m. to 10:35 a.m. on January 27, 2013.

4. *Brickell Avenue Bridge, mile 0.1.* The vertical clearance of the Brickell Avenue Bridge, across the Miami River, is 23 feet. The normal operating schedule for the Brickell Avenue Bridge is set forth in 33 CFR 117.305(d), which requires the bridge to open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridge need open only on the hour and half-hour. From 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m., and 4:35 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open for the passage of vessels. As a result of this temporary deviation, the Brickell Avenue Bridge will remain closed to navigation from 6:25 a.m. to 1 p.m. on January 27, 2013.

In accordance with 33 CFR 117.35(e), these four drawbridges must return to their regular operating schedules immediately at the end of the effective period of this temporary deviation. These deviations from the operating regulations are authorized under 33 CFR 117.35.

Dated: December 11, 2012.

B.L. Dragon,

Bridge Program Director, Seventh Coast Guard District.

[FR Doc. 2012–30840 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0470]

RIN 1625–AA09

Drawbridge Operation Regulation; Apalachicola River, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operating schedules for two bridges that cross the Apalachicola River in Florida. These changes are being made in response to two requests to the Coast Guard. First, the CSX Railroad requested to modify the operating schedule of their swing bridge at mile 105.9, at River Junction to require eight hours advanced notice at all times. Second, the Apalachicola and Northern Railroad (ANRR) requested to maintain the swing bridge at mile 4.5 (GIWW mile 347.0 East of Harvey Lock (EHL)), at Apalachicola, untended and in the open-to-navigation position at all times.

DATES: This rule is effective January 22, 2013.

ADDRESSES: The docket for this rulemaking, USCG–2012–0470, is available online by going to *http://www.regulations.gov,* inserting USCG–2012–0470 in the ''Search'' box, and then clicking ''Search.'' The docket is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email David Frank, Bridge Administration Branch; telephone 504–671–2128, email *David.M.Frank@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

A. Regulatory History and Information

On July 30, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulation; Apalachicola River, FL'' in the **Federal Register** (77 FR 44525). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The CSX swing bridge across the Apalachicola River, mile 105.9, presently opens on signal for the passage of vessels Monday through Friday from 8 a.m. until 4 p.m. At all other times, the bridge opens on signal if at least four hours advanced notice is given. The bridge owner has requested to change the operation regulations to reflect usage of the bridge by mariners. The request was made based upon a documented decrease in the number of requests for openings in the last three years. In 2010, the bridge opened 12 times for the passage of vessels. Eight of those openings were for either a United States Coast Guard (USCG) vessel or for a United States Army Corps of Engineers (USACE) vessel. In 2011, the bridge opened four times for the passage of vessels. Three of those openings were for either a USCG vessel or for a USACE vessel. Thus far in 2012, the bridge has only opened one time for a USACE vessel. It should be noted that all of the openings in the past three years have occurred between 8 a.m. and 4 p.m.; therefore, the bridge opened on signal for their passages. Information gathered regarding the decrease in vessel movements indicates that the lack of commercial facilities and the lack of maintenance on the waterway have contributed to the decline in traffic. While water elevations may return to their pre-drought levels, there is presently no evidence that the number of requests for bridge openings will increase in the future due to limited industrial development along the waterway. Accordingly, the bridge owner requested to change the operation regulations so that the bridge is allowed to open on signal at all times if at least eight hours advanced notification is given. USACE and USCG units using the waterway indicated that the proposed change to the operation of the bridge will not affect their ability to maintain the waterway and they have no objections to the proposed change.

The ANRR swing span bridge crosses the Apalachicola River at mile 4.5 (GIWW mile 347.0 EHL) and is required to open on signal for the passage of vessels. Since the bridge owner applied for and received an embargo for the suspension of train traffic on the line, the operation of the bridge is unnecessary and the operator of the bridge requested permission to leave the bridge in the open-to-navigation position and have the bridge untended. The bridge provides unlimited vertical clearance and 119 feet of horizontal clearance in the open-to-navigation position. Transit times for mariners should not be impeded with the bridge left in the open-to-navigation position. The bridge owner/operator will be required to maintain all bridge navigation lights in proper working order and will be required to periodically check the lights to see that they are working.

C. Discussion of Comments, Changes, and the Final Rule

The Coast Guard provided a 60-day comment period on the notice of proposed rulemaking. No comments were received and no changes were made to the rule as proposed.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Very few vessels will be impacted by the proposed changes and those few vessels should be able to provide adequate advanced notification of their arrivals as is already done for the CSX Railroad bridge and vessels may transit through the ANRR bridge without delay as it will be maintained in the open-to-navigation position.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the Apalachicola River above mile 105.9. This action will not have a significant economic impact on a substantial number of small entities because these few vessels should be able to provide adequate advanced notification of their arrivals.

This action will not have a significant economic impact on a substantial number of small entities because these few vessels should be able to provide adequate advanced notification of their arrivals.

3. Assistance for Small Entities

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

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

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.258 to read as follows:

§ 117.258 Apalachicola River.

(a) The draw of the Apalachicola and Northern Railroad Bridge, mile 4.5 (GIWW mile 347.0 EHL), at Apalachicola, is maintained in the fully open-to-navigation position and untended. The bridge will not be returned to service until proper notification is published in the **Federal Register**.

(b) The draw of the CSX Railroad Bridge, mile 105.9, at River Junction shall open on signal if at least eight hours notice is given.

Dated: December 10, 2012.

Roy A. Nash,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2012–30762 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–1061]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Louisiana

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation governing the operation of the Lapalco Boulevard bascule span drawbridge across the Harvey Canal Route, Gulf Intracoastal Waterway (GIWW), mile 2.8 at New Orleans, Jefferson Parish, Louisiana. The deviation is necessary to allow for the removal and replacement of the bridge's electrical components. This deviation allows the bridge to remain closed to navigation for eight consecutive days.

DATES: This deviation is effective from 6 a.m. on Thursday, January 10, 2013, until 6 a.m. on Friday, January 18, 2013.

ADDRESSES: The docket for this temporary deviation, USCG–2012–1061, is available online by going to *http://www.regulations.gov,* inserting USCG–2012–1061 in the ''Search'' box and then clicking ''Search''. The docket is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Kay Wade, Bridge Branch Office, Coast Guard; telephone 504–671–2128, email *Kay.B.Wade@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Jefferson Parish has requested a temporary deviation from the operating schedule for the Bascule Span Bridge across the Harvey Canal Route, Intracoastal Waterway, mile 2.8 at New Orleans, Jefferson Parish, Louisiana. The bridge has a vertical clearance of 45 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Vessels requiring a clearance of less than 45 feet may transit beneath the bridge during maintenance operations.

In accordance with 33 CFR 117.451(a), the bridge currently opens on signal for the passage of vessels; except that, from 6:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m. Monday through Friday except holidays, the draw need not be opened for the passage of vessels. This deviation allows the bridge to remain closed to navigation from 6 a.m. on Thursday, January 10, 2013, until 6 a.m. on Friday, January 18, 2013. At all other times, the bridge will open on signal for the passage of vessels in accordance with 33 CFR 117.451(a).

The closure is necessary in order to remove and replace the bridge's electrical system. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists mainly of tugs with tows with some commercial fishing vessels and recreational craft. Coordination between the Coast Guard and the waterway users determined that there should not be any significant effects on these vessels. The bridge will be unable to open during these repairs; however, an alternate route is available via the GIWW (Algiers Alternate Route).

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 5, 2012.

David M. Frank,

Bridge Administrator.

[FR Doc. 2012–30845 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2012–0993]

Safety Zone; Sacramento New Year's Eve Fireworks Display, Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the 1,000 foot safety zones during the Sacramento New Year's Eve Fireworks Display in the navigable waters of the Sacramento River on December 31, 2012 and January 1, 2013. The fireworks displays will occur from 9 p.m. to 9:15 p.m. on December 31, 2011 and from 11:59 p.m. on December 31, 2012 until 12:15 a.m. on January 1, 2013 for the annual Sacramento New Year's Eve Fireworks Display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191, Table 1, Item number 29, will be enforced from 9 p.m. to 9:15 p.m. on December 31, 2012 and from 11:59 p.m. on December 31, 2012 to 12:15 a.m. on January 1, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Sacramento New Year's Eve Fireworks Display safety zones in the navigable waters of the Sacramento River near positions 38°34′48.26″ N, 121°30′38.52″ W (NAD 83) and 38°34′49.84″ N, 121°30′29.59″ W (NAD 83). Upon the commencement of the first fireworks display, scheduled to take place from 9 p.m. until 9:15 p.m.

on December 31, 2012, the safety zone applies to the navigable waters around the fireworks launch site near position 38°34′48.26″ N, 121°30′38.52″ W (NAD 83) within a radius of 1,000 feet. Upon the commencement of the second fireworks display, scheduled to take place from 11:59 p.m. on December 31, 2012 until 12:15 a.m. on January 1, 2013, the safety zone applies to the navigable waters around the fireworks launch sites near positions 38°34′48.26″ N, 121°30′38.52″ W (NAD 83) and 38°34′49.84″ N, 121°30′29.59″ W (NAD 83) within a radius of 1,000 feet. These safety zones will be in effect from 9 p.m. to 9:15 p.m. on December 31, 2012 and from 11:59 p.m. on December 31, 2012 to 12:15 a.m. on January 1, 2013.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: December 4, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–30754 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1041]

RIN 1625–AA00

Safety Zones; New Year's Eve Fireworks Displays Within the Captain of the Port Miami Zone, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones during New Year's Eve fireworks displays on certain navigable waterways in Biscayne Bay and Palm Beach, Florida. These safety zones are necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the three safety zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 10:00 p.m. December 31, 2012 until 12:30 a.m. January 1, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1041. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive all Marine Event Permit Application information regarding the fireworks displays until November 16, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks displays. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

C. Discussion of Rule

Multiple fireworks displays are planned for New Year's Eve celebrations throughout the Captain of the Port Miami Zone. The fireworks will be launched from barges and will explode over navigable waters of the United States.

The Coast Guard is establishing three temporary safety zones for New Year's Eve fireworks displays on Monday, December 31, 2012 on navigable waters of the Captain of the Port Miami Zone. The three safety zones are listed below.

1. *Miami, Florida.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located 200 yards east of Bay Front Park. This safety zone will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

2. *Miami Beach, Florida.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located 650 yards northeast of Star Island, and west of the Mondrian Hotel in Miami Beach, FL. This safety zone will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

3. *West Palm Beach, Florida.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located 650 yards north of Royal Park Bascule Bridge. This safety zone will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the safety zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) The safety zones will be enforced for a maximum of 2 and a half hours each; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the safety zones if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not authorized by the Captain of the Port Miami or designated representative to enter, transit through, anchor in, or remain within the safety zones may operate in the surrounding area during the enforcement periods; and (4) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within the three safety zones established by this regulation during the respective enforcement period.

For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of three temporary safety zones that will be enforced for a total of 31 minutes. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–1041 to read as follows:

§ 165.T07–1041 Safety Zones; New Year's Eve Fireworks Displays within the Captain of the Port Miami Zone, FL.

(a) *Regulated Areas.* The following regulated areas are safety zones:

(1) *Miami, FL.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46′32″ N, 80°10′56″ W. This regulated area will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

(2) *Miami Beach, FL.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46′55″ N, 80°08′41″ W. This regulated area will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

(3) *Palm Beach, FL.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located on Intracoastal Waterway in approximate position 26°42′32″ N, 80°02′48″ W. This regulated area will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

(b) *Palm Beach, FL.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located in the Intracoastal Waterway in approximate position 26°42′32″ N, 80°02′48″ W. This regulated area will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

Dated: December 7, 2012.

C.P. Scraba,

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

[FR Doc. 2012–30752 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1064]

Safety Zone; Fireworks Event in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone in the Captain of the Port New York Zone on the specified date and time. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the

enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulation for the safety zone described in 33 CFR 165.160 will be enforced on the date and time listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Kristopher Kesting, Coast Guard; telephone 718–354–4154, email *Kristopher.R.Kesting@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.160 on the specified date and time as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Circle Line NYE Fireworks, Liberty Island Safety Zone, 33 CFR 165.160(2.1).	• Launch site: A barge located in approximate position 40°41′16.5″ N, 074°02′23″ W (NAD 1983) located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. • Date: December 31, 2012–January 1, 2013. • Time: 11:30 p.m.–12:40 a.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the Captain of the Port (COTP) or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: December 7, 2012.

G.P. Hitchen,

Captain, U.S. Coast Guard Acting Captain of the Port New York.

[FR Doc. 2012–30761 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0029; FRL–9367–6]

Chlorantraniliprole; Pesticide Tolerances, Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of October 3, 2012, concerning the establishment of tolerances for the insecticide chlorantraniliprole on multiple commodities. This document corrects inadvertent errors and omissions. The corrections are further discussed in Unit II.

DATES: This technical correction is effective December 21, 2012.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0029, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jennifer Urbanski, Registration Division, (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0156; email address: *urbanski.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action.

II. What does this technical correction do?

EPA issued a final rule in the **Federal Register** on October 3, 2012, establishing tolerances for residues of the insecticide chlorantraniliprole in or on multiple commodities. (77 FR 60311). That rule incorrectly established tolerances for ''Rapeseed subgroup 20B'' and ''Sunflower subgroup 20C.'' Under EPA's crop group regulation there are no such crop groups or subgroups. Rather, as correctly indicated several times in the preamble to the rule, including in the description of the action being taken by the Agency and the amendatory instruction for § 180.628, the correct regulatory crop subgroup designation is ''Rapeseed subgroup 20A'' and ''Sunflower subgroup 20B.'' The rule also incorrectly established the tolerance level for the Sunflower subgroup as 0.3 parts per million (ppm) instead of 2.0 ppm, as indicated in the preamble. Both the correct crop subgroup names and the 2.0 tolerance level for the Sunflower subgroup tolerance were included in the publication of the notice of the petition. (77 FR 20344, April 4, 2012). The October 3, 2012 rule also incorrectly established tolerances for ''Vegetable, foliage of legume, group 7, forage'' and ''Vegetable, foliage of legume, group 7, hay''. Under EPA's crop group regulation there are no such crop groups. Rather, there is only a crop group for ''Vegetable, foliage of legume, group 7.'' The petition correctly requested a tolerance for ''Vegetable, foliage of legume, group 7.'' Therefore, this correction is replacing those two incorrect crop group designations and tolerances with ''Vegetable, foliage of legume, group 7'' at a tolerance of 90 ppm.

In addition, despite indicating that EPA was granting the petitioner's request for the revocation of existing tolerances made redundant by the establishment of crop group tolerances, EPA failed to remove from § 180.628 the tolerances for cotton, undelinted seed, and lunaria, seed, even though tolerances for Cottonseed subgroup 20C and Rapeseed subgroup 20A, which cover cotton, undelinted seed and lunaria seed were granted. Therefore, EPA is revoking the tolerances for cotton, undelinted seed, and lunaria, seed, to address these redundancies.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this action merely corrects erroneous crop group names and an erroneous tolerance level that were due to an inadvertent error. Both the correct crop group names and tolerance level received prominent notice in the published notice of the petition and in EPA's preamble to the final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive Order reviews apply to this action?

No. For a detailed discussion concerning the statutory and executive order reviews, refer to Unit VI. of the October 3, 2007 final rule.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 12, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

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

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

■ 2. In Section 180.628, the table to paragraph (a) is amended as follows:

■ i. Remove the entries for Cotton, undelinted seed; Lunaria, seed; Rapeseed subgroup 20B; Sunflower subgroup 20C; Vegetable, foliage of legume, group 7, forage; and Vegetable, foliage of legume, group 7, hay.

■ ii. Add alphabetically entries for Rapeseed subgroup 20A; Sunflower subgroup 20B; and Vegetable, foliage of legume, group 7.

The added entries read as follows:

§ 180.628 Chlorantraniliprole; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Rapeseed subgroup 20A	2.0
* * * * *	
Sunflower subgroup 20B	2.0
* * * * *	
Vegetable, foliage of legume, group 7	90
* * * * *	

* * * * *

[FR Doc. 2012–30850 Filed 12–20–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0010; FRL–9372–4]

Quinclorac; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of quinclorac in or on berry, low growing, except strawberry, subgroup 13–07 H and rhubarb. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 21, 2012. Objections and requests for hearings must be received on or before February 19, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0010, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: *nollen.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must

identify docket ID number EPA–HQ–OPP–2012–0010 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 19, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0010, by one of the following methods:

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

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of April 4, 2012 (77 FR 20334) (FRL–9340–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7957) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.463 be amended by establishing tolerances for residues of the herbicide quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, in or on berry, low growing, except strawberry, subgroup 13–07H at 1.1 parts per million (ppm) and rhubarb at 0.4 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance levels for the proposed commodities. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Quinclorac has a low order of acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not a skin irritant, but is a mild eye irritant and tested positive for dermal sensitization. Following subchronic exposures to quinclorac, signs of toxicity included decreased body weight gains, increased water intake, increased liver enzymes, and focal chronic interstitial nephritis (rats). Chronic toxic effects included body weight decrement, increase in kidney and liver weights, and hydropic degeneration of the kidneys (dogs). At high doses, chronic toxicity also included increased incidences of pancreatic acinar cell hyperplasia and adenomas in rats. There was no evidence of neurotoxicity in any acute, subchronic and chronic studies for quinclorac.

There was no increased qualitative or quantitative fetal or offspring susceptibility in the prenatal developmental or postnatal reproduction studies. Developmental toxicity in the rabbit consisted of increased resorptions, post-implantation loss, decreased number of live fetuses, and reduced fetal body weight. These effects occurred at higher doses than the maternal effects of decreased food consumption and increased water consumption and decreased body weight gain. In the rat, no developmental toxicity was observed up to the highest dose tested (HDT). In the 2-generation rat reproduction study, parental toxicity and offspring toxicity occurred at the same dose. Parental toxicity consisted of reduced body weight in both sexes during premating and lactation periods, and offspring toxicity consisted of decreased pup weight, developmental delays, and possible marginal effect on pup viability. No reproductive toxicity occurred up to the HDT in this study.

Quinclorac is not mutagenic in bacterial assays and does not cause unscheduled DNA damage in primary rat hepatocytes. There is also no evidence of a genotoxic response in whole animal test systems (*in vivo* mouse bone marrow micronucleus assay) and was negative in a mammalian cell *in vitro* cytogenetic chromosomal aberration assay in Chinese hamster ovary cells. Quinclorac produced an equivocal increase in the incidence of one type of benign tumor (pancreatic acinar cell adenomas) in only one sex of one species of animals (male Wistar rats). There was no evidence of carcinogenicity in mice or female rats. Based on this limited evidence on cancer, a quantification of cancer risk is not warranted because the chronic RfD will adequately account for all chronic effects, including carcinogenicity, that may result from exposure to quinclorac.

Specific information on the studies received and the nature of the adverse effects caused by quinclorac as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://*

www.regulations.gov in document, ''Quinclorac: First Risk Assessment In Support of Registration Review and for New Proposed Use on Rhubarb and Berry, low growing, except Strawberry, Subgroup 13–07H,'' pp. 62–65 in docket ID number EPA–HQ–OPP–2012–0010.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for quinclorac used for human risk assessment is shown in following Table.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 200 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 2.0 mg/kg/day. aPAD = 2.0 mg/kg/day	Developmental toxicity study in rabbits. LOAEL = 600 mg/kg/day based on increased early resorptions and postimplantation loss, decreased live fetuses, decreased fetal body weight.
Acute dietary (General population including infants and children).	Not applicable. An endpoint for acute dietary exposure to the general population was not selected because there was no available endpoint attributable to a single exposure that was appropriate for this scenario (effects observed in the available studies are presumed to require more than one exposure).		
Chronic dietary (All populations)	NOAEL= 37.5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.38 mg/kg/day. cPAD = 0.38 mg/kg/day	Carcinogenicity study in mice. LOAEL = 150 mg/kg/day based on decreased body weight.
Inhalation short-term (1 to 30 days)	Oral study NOAEL= 70 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental toxicity study in rabbits. LOAEL = 200 mg/kg/day based on decreased maternal body weight gain and food consumption, and increased water consumption.
Incidental oral short-term (1 to 30 days).	NOAEL= 70 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental toxicity study in rabbits. LOAEL = 200 mg/kg/day based on decreased maternal body weight gain and food consumption, and increased water consumption.
Cancer (Oral, dermal, inhalation)	The chronic RfD will adequately account for all chronic effects, including carcinogenicity, that may result from exposure to quinclorac.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to quinclorac, EPA considered exposure under the petitioned-for tolerances as well as all existing quinclorac tolerances in 40 CFR 180.463. EPA assessed dietary exposures from quinclorac in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. EPA identified such an effect (increased early resorptions and post-implantation loss, decreased live fetuses, and decreased fetal body weight in developmental toxicity study in rabbits) for the population subgroup females 13 to 49 years old; however, no such effect was identified for the general population, including infants and children.

In estimating acute dietary exposure for females 13–49, the population group identified as having an acute dietary exposure, EPA used Dietary Exposure Evaluation Model software with the Food Commodity Intake Database

(DEEM–FCID) Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA), conducted from 2003–2008. As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance-level residues for all commodities. In addition, DEEM version 7.81 default processing factors were used when appropriate.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA assumed 100 PCT and tolerance-level residues for all commodities. In addition, DEEM version 7.81 default processing factors were used when appropriate.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to quinclorac. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

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

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

Based on the Tier I Rice Model, Version 1.0, the estimated drinking water concentrations (EDWCs) of quinclorac for surface water are estimated to be 511 parts per billion (ppb) for acute and chronic exposures. Based on the Screening Concentration in Ground Water (SCI GROW) model, the EDWCs for ground water are estimated to be 29 ppb for acute and chronic exposures.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessments, the water concentration value of 511 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Quinclorac is currently registered for the following uses that could result in residential exposures: Turf grass and ornamentals. EPA assessed residential exposure using the following assumptions: Short-term inhalation exposures for residential handlers from mixing, loading, and applying quinclorac to residential turf and short-term postapplication incidental oral exposures (hand-to-mouth activities) of children from contact with treated turf. Intermediate-term exposures resulting from adult handler and postapplication exposures were not assessed due to a lack of a dermal point of departure. Incidental oral scenarios for children are considered to be short-term only. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

EPA has not found quinclorac to share a common mechanism of toxicity with any other substances, and quinclorac does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that quinclorac does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The toxicology database for quinclorac consists of developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats. There is no indication of increased qualitative or quantitative susceptibility of rats or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity data.

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

i. The toxicity database for quinclorac is complete.

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

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

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

E. Aggregate Risks and Determination of Safety

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

PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to quinclorac will occupy 1.6% of the aPAD for females 13–49, the population group for which a potential acute risk was identified.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to quinclorac from food and water will utilize 8.9% of the cPAD for infants less than 1 year of age, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of quinclorac is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Quinclorac is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to quinclorac.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,100 for adults and 1,600 for children 1–2 years old. Because EPA's level of concern for quinclorac is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, quinclorac is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for quinclorac.

5. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., EPA has concluded that the cPAD is protective of possible cancer effects.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography with electron capture detection (GC/ECD) method (BASF Method A8902), is available to enforce the tolerance expression.

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

B. International Residue Limits

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

The Codex has not established a MRL for quinclorac.

C. Revisions to Petitioned-for Tolerances

Based on analysis of the residue field trial data supporting the petition, EPA revised the proposed tolerances on berry, low growing, except strawberry, subgroup 13–07H from 1.1 ppm to 1.5 ppm and rhubarb from 0.4 ppm to 0.5 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures.

V. Conclusion

Therefore, tolerances are established for residues of quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, in or on berry, low growing, except strawberry, subgroup 13–07H at 1.5 ppm; and rhubarb at 0.5 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian

tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 12, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.463, add alphabetically the following commodities to the table in paragraph (a) to read as follows:

§ 180.463 Quinclorac; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Berry, low growing, except strawberry, subgroup 13–07H	1.5
* * * * *	
Rhubarb	0.5
* * * * *	
* * * * *	

[FR Doc. 2012–30851 Filed 12–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2012–0740; FRL–9373–8]

RIN 2070–AB27

Significant New Use Rule on Certain Chemical Substances; Withdrawal of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is withdrawing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures. EPA received notices of intent to submit adverse comments on these rules. Therefore, the Agency is withdrawing these SNURs, as required under the expedited SNUR rulemaking process. EPA intends to publish in the near future proposed SNURs for these eight chemical substances under separate notice and comment procedures.

DATES: This final rule is effective January 2, 2013.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of November 2, 2012 (77 FR 66149) (FRL–9366–7). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What rule is being withdrawn?

In the **Federal Register** of November 2, 2012 (77 FR 66149), EPA issued several direct final SNURs, including SNURs for the chemical substances that are the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with § 721.160(c)(3)(ii), EPA is withdrawing the rule issued for eight chemical substances which were the subject of PMNs P–11–327, P–11–328, P–11–329, P–11–330, P–11–331, P–11–332, P–12–298, and P–12–299, because the Agency received notices of intent to submit adverse comments. EPA intends to publish a proposed SNUR for these chemical substances under separate notice and comment procedures.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNURs for the chemical substances that are being withdrawn was established at EPA–HQ–OPPT–2012–0740. That record includes information considered by the Agency in developing these rules and the notices of intent to submit adverse comments.

III. How do I access the docket?

To access the electronic docket, please go to *http://www.regulations.gov* and follow the online instructions to access docket ID number EPA–HQ–OPPT–2012–0740. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** of November 2, 2012 (77 FR 66149). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Statutory and Executive Order Reviews

This final rule revokes or eliminates an existing regulatory requirements and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rules were discussed in the **Federal Register** of November 2, 2012 (77 FR 66149). Those review requirements do not apply to this action because it is a withdrawal

and does not contain any new or amended requirements.

V. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

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

Dated: December 12, 2012.

Maria J. Doa,

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

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

PART 9—[AMENDED]

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

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

§ 9.1 [Amended]

■ 2. The table in § 9.1 is amended by removing the entries ''§ 721.10612,'' ''§ 721.10613,'' ''§ 721.10614,'' ''§ 721.10615,'' ''§ 721.10616,'' ''§ 721.10617,'' and ''§ 721.10623'' under the undesignated center heading ''Significant New Uses of Chemical Substances''.

PART 721—[AMENDED]

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

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

§ 721.10612 [Removed]

■ 4. Remove § 721.10612.

§ 721.10613 [Removed]

■ 5. Remove § 721.10613.

§ 721.10614 [Removed]

■ 6. Remove § 721.10614.

§ 721.10615 [Removed]

■ 7. Remove § 721.10615.

§ 721.10616 [Removed]

■ 8. Remove § 721.10616.

§ 721.10617 [Removed]

■ 9. Remove § 721.10617.

§ 721.10623 [Removed]

■ 10. Remove § 721.10623.

[FR Doc. 2012–30694 Filed 12–20–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number 121214713–2713–01]

RIN 0660–XC004

Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) hereby makes certain changes to its regulations, which relate to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). Specifically, NTIA updates the version of the Manual of Regulations and Procedures for Federal Radio Frequency Management with which federal agencies must comply when requesting use of the radio frequency spectrum.

DATES: *Effective Date:* This regulation is effective on December 21, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 21, 2012.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW., Room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Mitchell, Office of Spectrum Management, at (202) 482–8124 or *wmitchell@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

NTIA authorizes the U.S. Government's use of the radio frequency spectrum. 47 U.S.C. 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable federal agencies. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of the spectrum.

Part 300 of title 47 of the Code of Federal Regulations provides information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual when requesting frequency assignments for use of the radio frequency spectrum. *See* 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp. at 158.

This rule updates section 300.1(b) of title 47 of the Code of Federal Regulations to specify the version of the NTIA Manual with which federal agencies must comply when requesting frequency assignments for use of the radio frequency spectrum. In particular, this rule amends section 300.1(b) by replacing ''May 2011'' with ''May 2012.'' *See* Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management, 76 FR 56984, 56984–85 (Sept. 15, 2011) (revising the Manual through May 2011). Upon the effective date of this rule, federal agencies must comply with the requirements set forth in the 2008 edition of the NTIA Manual, as revised through May 2012.

The NTIA Manual is scheduled for revision in January, May, and September of each year and is submitted to the Director of the Federal Register for Incorporation by Reference approval. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and part 51 of title 1 of the Code of Federal Regulations. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402, by referring to Catalog Number 903–008–00000–8. A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW., Room 1087, Washington, DC 20230, or call William Mitchell on (202) 482–8124, and available online at *http://www.ntia.doc.gov/page/2011/manual-regulations-and-procedures-federal-radio-frequency-management-redbook.* The NTIA Manual is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection displays a currently valid OMB Control Number.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Administrative Procedure Act/ Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment as it is unnecessary. This action amends the regulations to include the date of the most current version of the NTIA Manual. These changes do not impact the rights or obligations of the public. The NTIA Manual applies only to federal agencies. Because these changes impact only federal agencies, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. 553. NTIA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the reasons provided above. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Congressional Review Act

The NTIA Manual provides for the policies and procedures for federal agencies' use of the radio spectrum. The NTIA Manual and the changes thereto do not substantially affect the rights or obligations of the public. As a result, this notice is not a ''rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C).

Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in E.O. 13132.

List of Subjects in 47 CFR Part 300

Incorporation by reference, Radio.

Regulatory Text

For the reasons set forth in the preamble, NTIA amends title 47, Part 300 as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Section 300.1 (b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The federal agencies shall comply with the requirements set forth in the 2008 edition of the NTIA Manual, as revised through May 2012, which is incorporated by reference with approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Dated: December 17, 2012.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2012–30682 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120213124–1066–02]

RIN 0648–XC388

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2013 Commercial and Recreational Quotas for Red Snapper

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

ACTION: Temporary rule.

SUMMARY: NMFS sets the 2013 commercial and recreational quotas for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. NMFS has determined that the allowable biological catch (ABC) for red snapper in 2012 has been exceeded. Therefore, NMFS is maintaining the commercial and recreational quotas for red snapper in 2013 at the 2012 level. The intent of this action is to help achieve optimum yield (OY) for the Gulf red snapper resource without increasing the risk of red snapper experiencing overfishing.

DATES: This rule is effective January 1, 2013, through December 31, 2013, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, telephone 727–824–5305; email: *Cynthia.Meyer@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On May 30, 2012, NMFS published a final rule (77 FR 31734), that in part, set the 2012 commercial quota at 4.121 million lb (1.869 million kg), round weight, and the 2012 recreational quota at 3.959 million lb (1.796 million kg), round weight. NMFS also set the 2013 commercial quota at 4.432 million lb (2.010 million kg), round weight, and the 2013 recreational quota at 4.258 million lb (1.931 million kg), round weight. However, the 2013 quota increases are contingent on the ABC not being exceeded in the 2012 fishing year.

NMFS has determined that the 2012 ABC has been exceeded, therefore, NMFS is maintaining the 2012 commercial and recreational quotas in the 2013 fishing year.

The Council is currently developing a 2013 red snapper regulatory amendment, which could revise the commercial and recreational quotas for red snapper. Any increase in the commercial and recreational quotas would be released during the 2013 fishing year. This means that if the commercial quota is increased, additional pounds of allocation would be released to participants in the Gulf red snapper individual fishing quota (IFQ) program. If the recreational quota is increased, recreational fishermen could see an increase in the length of the 2013 recreational fishing season. If the 2013 regulatory amendment results in a decrease to the commercial and recreational quotas for red snapper, the decrease wouldn't become effective until the 2014 fishing year.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the Magnuson-Stevens Act and other applicable law.

This action is exempt from review under Executive Order 12866 and is exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B). Allowing prior notice and opportunity for public comment is unnecessary because the final rule establishing the commercial and recreational quotas for red snapper for the 2012 and 2013 fishing years has already been subject to notice and comment. All that remains is to notify the public that the 2012 quotas will be maintained during the 2013 fishing year. Providing prior notice and opportunity for public comment would also be contrary to the public interest because the red snapper fishing year begins January 1, 2013, and IFQ allocation is released to Gulf red snapper IFQ participants on that date. Commercial red snapper fishermen need to be aware of the entire quota before the fishing year begins to help plan their business practices for the year.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: December 18, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–30832 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XC404

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the State of New Jersey

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2012 summer flounder commercial quota allocated to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 2012, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective at 0001 hr local time, December 22, 2012, through 2400 hr local time December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2012 fishing year is 13,136,001 lb (5,958,490 kg) (76 FR 82189, December 30, 2011). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, resulting in a commercial quota of 2,196,995 lb (996,557 kg).

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial quotas and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined based upon dealer reports and other available information that New Jersey has harvested its quota for 2012.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 22, 2012, landings of summer flounder in New Jersey by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2012 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours December 22, 2012, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

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: December 18, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–30831 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120330244–2673–02]

RIN 0648–BB77

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 12 to the Fishery Management Plan for Salmon Fisheries in the EEZ off the Coast of Alaska (FMP). Amendment 12 comprehensively revises and updates the FMP to reflect the North Pacific Fishery Management Council's (Council) salmon management policy and to comply with Federal law. This action is necessary to revise specific regulations and remove obsolete regulations in accordance with the modifications in Amendment 12. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective January 22, 2013.

ADDRESSES: Electronic copies of the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and Finding of No Significant Impact (FONSI) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 12 to the FMP. NMFS published a Notice of Availability for Amendments 10, 11, and 12 in the **Federal Register** on April 2, 2012 (77 FR 19605) with comments invited through June 1, 2012. NMFS published a proposed rule to implement Amendment 12 on April 11, 2012 (77 FR 21716) with comments invited through May 29, 2012. No implementing regulations are necessary to implement Amendments 10 and 11. NMFS approved Amendments 10, 11, and 12 on June 29, 2012.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR part 679. NMFS approved the original FMP in 1979. Since then, the FMP was comprehensively revised by Amendment 3 in 1990, and again by Amendment 12 in 2012. The FMP conserves and manages the Pacific salmon that occur in the vast majority of the exclusive economic zone (EEZ) off Alaska. The FMP establishes the Salmon Management Area, which is divided into two management areas: the East Area is the EEZ in the Gulf of Alaska east of Cape Suckling (143°53.6' West Longitude), and the West Area is most of the EEZ off Alaska west of Cape Suckling. The FMP manages commercial fishing for salmon in the West Area and delegates to the State of Alaska (Alaska) management of commercial and sport fishing for salmon in the East Area. The following paragraphs provide a summary description of the changes made to the FMP by Amendment 12 and the regulatory changes made by this final rule.

Amendment 12

In December 2011, the Council voted unanimously to recommend Amendment 12 to the FMP. Amendment 12 comprehensively revises the FMP to reflect the Council's salmon management policy, which is to facilitate State of Alaska (State) salmon management in accordance with the Magnuson-Stevens Act, Pacific Salmon Treaty, and applicable Federal law. Under this policy, the Council identified six management objectives to guide salmon management under the FMP and achieve the management policy: (1) Prevent overfishing and achieve optimum yield; (2) manage salmon as a unit throughout their range; (3) minimize bycatch and bycatch mortality; (4) maximize economic and social benefits to the Nation over time; (5) protect wild stocks and fully utilize hatchery production; and (6) promote safety. The Council, NMFS, and the State of Alaska will consider these management objectives in developing future FMP amendments and associated fishery management measures.

To reflect the Council's policy and objectives, Amendment 12 redefines the FMP's management area to remove three small pockets of Federal waters adjacent to Cook Inlet, Prince William Sound, and the Alaska Peninsula from the West Area. Figure 23 to part 679 provided in this final rule defines the specific net fishing areas excluded from the West Area. (For the remainder of the preamble, these areas are referred to collectively as the net fishing areas and individually as the Cook Inlet Area, the Prince William Sound Area, or the Alaska Peninsula Area.) The salmon fisheries in these areas are managed by the State. Amendment 12 also removes the sport fishery in the West Area from the FMP. The Council determined and NMFS agreed that State management of the stocks and fisheries occurring in the net fishing areas and the sport fishery in the West Area is consistent with the policies and standards of the Magnuson-Stevens Act, and that Federal management of the net fishing areas and the sport fishery in the West Area would serve no useful purpose or provide present or future benefits that justified the costs of Federal management. The Council and NMFS determined that removing the net fishing areas and the sport fishery from the West Area allows the State to manage Alaska salmon stocks and directed fishing for those stocks as seamlessly as practicable throughout their range. Additional information on the Council's and NMFS' rationale for removing the net fishing areas and the sport fishery is provided in the Responses to Comments below. The FMP continues to apply to the vast majority of the EEZ west of Cape Suckling and maintains the prohibition on commercial salmon fishing in the redefined West Area.

In the East Area, Amendment 12 maintains the current scope of the FMP and reaffirms that management of the commercial and sport salmon fisheries in the East Area is delegated to the State. The FMP relies on a combination of State management and management under the Pacific Salmon Treaty to ensure that salmon stocks, including trans-boundary stocks, are managed as a unit throughout their ranges and that interrelated stocks are managed in close coordination. Maintaining the FMP in the East Area leaves existing management structures in place, recognizing that the FMP is the nexus for the application of the Pacific Salmon Treaty and other applicable Federal law.

Amendment 12 contains a number of provisions to update the FMP and bring it into compliance with the Magnuson-Stevens Act and other applicable Federal law. Amendment 12 includes these changes in a reorganized FMP with a more concise title, ''Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska.'' The Notice of Availability prepared for Amendment 12 (77 FR 19605, April 2, 2012) provides detailed information on the provisions of Amendment 12, as

well as additional explanation of the Council's rationale for Amendment 12.

The primary new FMP provision is a mechanism to establish annual catch limits (ACLs) and accountability measures (AMs) for the salmon stocks caught in the East Area commercial troll fishery, the only commercial fishery authorized under the FMP. Amendment 12 does not establish ACLs or AMs in the West Area, because no commercial salmon fisheries are authorized in the West Area.

The mechanism to establish ACLs and AMs for the East Area commercial troll fishery builds on the FMP's existing framework for establishing status determination criteria. Amendment 12 does not establish a mechanism for specifying ACLs and AMs for Chinook salmon because the Magnuson-Stevens Act exempts stocks managed under an international fisheries agreement in which the United States participates from the ACL requirement (16 U.S.C. 1853). Under Amendment 12, the mechanisms for specifying ACLs for Tier 2 (coho salmon) and Tier 3 (coho, pink, chum, and sockeye salmon stocks managed as mixed-species complexes) salmon stocks are established using the State's scientifically-based management measures to control catch and prevent overfishing. This approach represents an alternative approach to the methods prescribed in NMFS' National Standard 1 Guidelines (50 CFR 600.310) for specifying ACLs. The Council recommended and NMFS approved an alternative approach because the State's escapement-based management system is a more effective management system for preventing overfishing of Alaska salmon than a system that places rigid numeric limits on the number of fish that may be caught. Escapement is defined as the annual estimated size of the spawning salmon stock in a given river, stream, or watershed.

Amendment 12 also revises the definition of optimum yield (OY). For Chinook salmon stocks in Tier 1, an all-gear maximum sustainable yield (MSY) is prescribed in terms of catch by the Pacific Salmon Treaty and takes into account the biological productivity of Chinook salmon and ecological factors in setting this limit. Under Amendment 12, the portion of the all-gear catch limit allocated to troll gear represents the OY for that fishery and takes into account the economic and social factors considered by the State in making allocation decisions. For stocks in Tiers 2 and 3, MSY currently is defined in terms of escapement. MSY escapement goals account for biological productivity and ecological factors, including the consumption of salmon by a variety of marine predators. Under Amendment 12, the OY for the troll fishery is that fishery's annual catch, which, when combined with the catch from all other salmon fisheries, results in a post-harvest run size equal to the MSY escapement goal for each indicator stock. The portion of the annual catch harvested by the troll fishery reflects the biological, economic, and social factors considered by the State in determining when to open and close the coho salmon harvest by the troll fishery. For the redefined West Area under Amendment 12, commercial fishing is prohibited; therefore the directed harvest OY is zero. The redefined West Area has been closed to commercial net fishing since 1952 and commercial troll fishing since 1973, and there has not been any commercial yield from this area. This OY recognizes that salmon are fully utilized by state-managed fisheries, and that the State manages fisheries based on the best available information using the State's escapement goal management system. This OY also recognizes that non-Alaska salmon are fully utilized and managed by their respective management authorities when they return to their natal regions.

Finally, Amendment 12 adds a fishery impact statement to the FMP, revises the current FMP process for Federal review of State management measures to more fully describe the process and bring it into compliance with Magnuson-Stevens Act requirements (16 U.S.C. 1856(a)(3)(B)), and removes existing FMP language governing the issuance of Federal salmon permits. The Council recommended removing FMP language related to Federal salmon permits because all current participants have State of Alaska limited entry permits and Federal permits are no longer necessary. According to language included in the original 1979 FMP, provisions for Federal salmon permits were established to complement the State limited entry permit, in order to limit capacity in the EEZ so that persons who did not receive a State limited entry permit would not simply shift their fishing efforts into Federal waters.

Final Rule

While many of the provisions of Amendment 12 do not require implementing regulations, several provisions require modifications to the regulations implementing the FMP. To implement Amendment 12, this final rule:

- Revises § 679.1(i) to reflect the new FMP title and clarify that the FMP governs commercial salmon fishing in the West Area and commercial and sport salmon fishing in the East Area.
- Revises the definition of Salmon Management Area, at § 679.2, to explicitly exclude the Cook Inlet Area, the Prince William Sound Area, and the Alaska Peninsula Area from the West Area.
- Revises § 679.3(f) to remove references to laws that are no longer applicable or current, such as references to the North Pacific Fisheries Act of 1954.
- Removes and reserves § 679.4(a)(1)(v) and (h), which required Federal salmon permits.
- Revises § 679.7(h) to explicitly prohibit commercial fishing for salmon using any gear except troll gear in the East Area, and to explicitly prohibit commercial fishing for salmon in the West Area.
- Replaces Figure 23 with a new map to show the newly defined Salmon Management Area and the three net fishing areas excluded from the West Area.

Additional information is provided in the proposed rule for Amendment 12 (77 FR 21716, April 11, 2012).

Response to Comments

NMFS received 12 letters of public comment during the public comment periods for Amendments 10, 11, and 12 and the proposed rule to implement Amendment 12. NMFS summarized these letters into 47 separate comments, and responds to them below. All of the comments received addressed various provisions of Amendment 12; NMFS received no comments on Amendments 10 or 11, or on the specific wording of the regulatory text contained in the proposed rule.

Comment 1: The redefined scope of the FMP serves to facilitate State management of salmon fisheries by avoiding the creation of duplicative Federal and State management structure in the West Area and reaffims that management of the commercial and sport salmon fisheries in the East Area is delegated to the State, in accordance with the Pacific Salmon Treaty and other Federal law.

Response: NMFS acknowledges the comment.

Comment 2: Excluding the sport fishery and three traditional commercial net fishing areas from the West Area and prohibiting commercial salmon fishing in the West Area more clearly reflects the Council's policy regarding State management authority over these fisheries and acknowledges that salmon warrant an alternative approach, per the National Standard 1 Guidelines, to control catch and prevent overfishing.

Response: NMFS acknowledges the comment.

Comment 3: The FMP revisions maintain the current management structure, whereby salmon fisheries are managed as a unit throughout their range in both the East and West Areas through the State's escapement-based system. Real-time monitoring and inseason management actions by the State help ensure that escapement goals are met and optimum production is achieved. The FMP revisions recognize the necessity of maintaining this effective and flexible management system for salmon.

Response: NMFS acknowledges the comment.

Comment 4: Reject Amendment 12 and the proposed rule because removing the EEZ waters of Cook Inlet from the FMP is arbitrary, capricious, and contrary to the Magnuson-Steven Act. This rule should be rejected because (1) The Magnuson-Steven Act, at 16 U.S.C. 1801(b)(1), specifically states that anadromous species need immediate protection; (2) the Cook Inlet salmon fishery is currently facing significant management concerns; and (3) the regulated community in Cook Inlet has unanimously asked the Council to take action to address these concerns.

Response: Amendment 12 and this final rule are consistent with the Magnuson-Stevens Act and are not arbitrary or capricious. NMFS does not agree with the comment's interpretation of this statutory provision as requiring immediate protection for salmon or any other fishery resources. The Salmon FMP is consistent with the purpose of the Congress in the Magnuson-Stevens Act, at 16 U.S.C. 1801(b)(1), in that it exercises sovereign rights for the purposes of conserving and managing salmon, among other fisheries, within the EEZ. The Salmon FMP exercises sovereign rights in managing salmon within the EEZ by closing the majority of the EEZ to commercial salmon fishing. In addition, removing the EEZ waters adjacent to Cook Inlet from the FMP to facilitate State management of the salmon fisheries does not interfere with these sovereign rights.

Management concerns in Cook Inlet were one of the primary issues discussed by the Council during the development of Amendment 12 and analyzed in the EA prepared for this action (see **ADDRESSES**). The Council took action with full consideration of the situation in Cook Inlet and decided that Federal conservation and management are not required for the commercial salmon fishery in the Cook Inlet Area.

NMFS and the Council received extensive public testimony during the development of Amendment 12 concerning dissatisfaction with State salmon management in Cook Inlet and the desire for a specific type of Federal involvement. The Council, in their deliberations on this issue, explained in detail why the Council determined that Federal conservation and management are not necessary for the commercial salmon fisheries that occur in the Cook Inlet Area. Further, the Council explained why the type of Federal involvement envisioned by some members of the public was not realistic or consistent with the Magnuson-Steven Act.

The Council determined that (1) The State is the governmental entity best suited to manage salmon fisheries; (2) the salmon fisheries are adequately managed by the State consistent with the policies and standards of the Magnuson-Steven Act; and (3) Federal management of salmon fisheries should only occur in those areas and for those fisheries where Federal management serves a useful purpose. The State has managed the salmon fisheries since statehood in 1959, and the Council has relied on State management of the salmon fisheries in the EEZ since 1979. State salmon management is consistent with the policies and standards of the Magnuson-Stevens Act, as explained in EA Chapter 2 and throughout the EA (see **ADDRESSES**). The State actively manages Alaska salmon stocks in every region of the State through its use of escapement-based management. Escapement-based management takes into consideration the unique life history of Pacific salmon and escapement goals maintain spawning levels that provide for maximum surplus production. The State has the expertise and infrastructure to manage Alaska salmon as a unit in consideration of all fishery removals and to meet escapement goals.

The Council recognized that FMP management of directed salmon fisheries would only apply to the portion of the fisheries conducted in the EEZ, and that directed fisheries for salmon are more appropriately managed as a unit in consideration of all fishery removals to meet in-river escapement goals. Under the Magnuson-Stevens Act, an FMP only has authority to manage the fisheries that occur in the EEZ. The Magnuson-Stevens Act, at 16 U.S.C. 1856(a) is clear that nothing in it shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. Absent formal preemption in accordance with the Magnuson-Stevens Act (16 U.S.C. 1856(b)), the Magnuson-Stevens Act does not provide authority for the Council to manage fisheries in state waters, which would be required for the Council to change escapement goals or to allocate more salmon to a specific gear group or to direct the Alaska Board of Fisheries (Board) to make these types of changes.

The Council determined that continuing to include these areas and the sport fishery in the FMP would not serve a useful purpose or result in present or future benefits that would justify the costs of overlapping Federal management when the State is adequately managing the sport fishery and the salmon fisheries that occur in the areas removed. The Council determined that the redefined management area in the West Area asserts Federal management in those areas and for those fisheries in which Federal management serves a useful purpose by allowing the State to manage Alaska salmon stocks as seamlessly as practicable throughout their range. Under Amendment 12, the FMP continues to manage the vast majority of the EEZ, and maintains the prohibition on commercial salmon fishing in the redefined West Area.

Comment 5: Amend the Salmon FMP to (1) Produce management goals and objectives for salmon in Cook Inlet consistent with the Magnuson-Steven Act and the national standards; (2) delegate day-to-day management and implementation of those goals and objectives to the State; and (3) provide oversight to ensure that the State complies with those management goals and objectives.

Response: The Council and NMFS declined to amend the FMP as requested by the comment. While a primary function of a fishery management plan is to specify the Council's goals and objectives for the fishery being managed by the plan, each plan must also include provisions that address all of the Magnuson-Stevens Act requirements for fishery management plans. The Magnuson-Stevens Act, at 16 U.S.C. 1856(a), provides councils with the authority to establish a fishery management plan for a fishery that delegates management of that fishery to a state, but it does not exempt such a fishery management plan from including provisions required by the Magnuson-Stevens Act for fishery management plans. No North Pacific fishery management plan that delegates management of a fishery to the State contains only goals and objectives with an oversight process. See response to comment 6.

Comment 6: The Council's concerns over dual Federal/State management for the Cook Inlet Area are irrational. There are a number of other fishery management plans whereby the Council sets management goals and objectives for the fishery and then delegates management to the State.

Response: NMFS and the Council have determined that Federal management of the commercial salmon fisheries that occur in the Cook Inlet Area is not necessary, would serve no useful purpose, and would be costly and burdensome for managers and participants. The response to comment 4 provides the Council's and NMFS' reasons for this decision.

The comment incorrectly states that there are other fishery management plans that only set goals and objectives and delegate management to the State. As explained in EA section 2.2, the Council has two FMPs that cooperatively manage the subject fisheries with the State—the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs and the Fishery Management Plan for the Scallop Fisheries off Alaska.

These two fishery management plans contain much more than just management goals and objectives. Both plans implement Federal management measures, delegate specific categories of management measures to the State, and establish a process for delineating roles and responsibilities between State and Federal managers. These fishery management plans have provisions, either implemented by NMFS or the State, that address each requirement in Magnuson-Steven Act (16 U.S.C. 1853(a)). Examples of Federal management measures included in these plans are Federal limited access programs, on-board observer coverage requirements, and mandatory vessel monitoring systems. These fishery management plans require extensive coordination among NMFS, Council, and State staffs and between the Council, NMFS, and the Alaska Board of Fisheries.

Joint Federal and State management of the net fishing areas would also add burdens to fishery participants as management measures would be implemented by both Federal and State managers. This change would require fishery participants to attend or follow Board and Council processes as decisions regarding different aspects of management are made by these different bodies.

Comment 7: The Council failed to consider the lack of meaningful opportunity for salmon industry participants and stakeholders to share concerns and experience in a substantive manner during the FMP review process.

Response: NMFS disagrees. Under the Magnuson-Steven Act, the Council is responsible for developing fishery management plans, and stakeholders have an opportunity to express their opinions on the action being considered through oral and written testimony at public meetings that are noticed in the **Federal Register**. The public can also review and comment on analytical documents being developed by the Council prior to, or during, these regularly scheduled Council meetings. Salmon industry participants had the same meaningful opportunity for participation as all members of the public do for Council actions.

The Council considered revisions to the FMP at five separate meetings that occurred over more than a year, starting with a Council and Board Joint Protocol Committee meeting in October 2010 (75 FR 55743, September 14, 2010). At each regularly scheduled and noticed public meeting, the Council took public testimony and considered written and oral public comments, providing stakeholders with opportunities for involvement on this issue. Additionally, the Council conducted a special open workshop for stakeholders in September 2011 (76 FR 52942, August 24, 2011). More than 20 members of the public, three Council members, Council staff, and State and Federal agency staff attended this workshop. Council staff presented a report from this workshop at the October 2011 Council meeting. The Council considered the comments and suggestions made during that workshop in developing Amendment 12.

Comment 8: The EA fails to discuss the status or trends of the Cook Inlet salmon fisheries or adequately describe the population status and trends of the salmon stocks in Cook Inlet. The EA does not evaluate whether these stocks are increasing, stable, or decreasing. Without such a baseline, the Council cannot properly evaluate the impacts of its decision to completely turn over management to the State.

Response: Contrary to the comment's assertions concerning the contents of the EA, the EA prepared for Amendment 12 provides detailed information on, and analysis of, the commercial and sport salmon fisheries that occur in the Cook Inlet Area and the status and trends of Cook Inlet salmon (see **ADDRESSES**).

EA Chapter 4 contains a comprehensive discussion of how the State manages the Cook Inlet commercial and sport salmon fisheries that occur in the EEZ along with harvest and economic information. EA Chapter 4 also contains a table showing the trends in the Cook Inlet drift gillnet salmon harvests compared to total Cook Inlet salmon harvests associated with directed commercial fisheries from 1991 through 2010.

EA Chapter 5 contains a comprehensive discussion of the status of the salmon stocks in Cook Inlet, including an overview of salmon stocks in Cook Inlet for which escapement goals exist, a numerical description of the goal, type of goal, year the current goal was first implemented, and recent years' escapement data for each stock. It also includes summary statistics documenting performance in achieving escapement goals. In EA Chapter 5, escapements from 2002 through 2010 are compared against escapement goals in place at the time of enumeration to assess outcomes in achieving goals. Escapements for a particular stock were classified as ''below'' if escapement for a given year was less than the lower bound of the escapement goal. If escapement fell within the escapement goal range or was greater than a lower-bound goal, escapements were classified as ''met.'' Where escapements exceeded the upper bound of an escapement goal range, they were classified as ''above.'' Additionally, where escapement goals or enumeration methods changed between 2002 and 2010 for a stock, EA Chapter 5 assesses outcomes by comparing escapement estimates with the escapement goals and methods in place at the time of the fishery.

The Council considered this information and analysis to evaluate the impacts of the various alternatives under consideration by the Council, including Amendment 12. Based on this information, as well as other information in the EA and public comments received, the Council and NMFS concluded that Federal conservation and management are not necessary for the salmon fisheries in the Cook Inlet Area and approved Amendment 12, which maintains exclusive State management of the Cook Inlet Area salmon fisheries.

Comment 9: The State is not properly managing salmon escapement in Cook Inlet and the EA fails to address the impacts of over-escapement. State management decisions allow significant harvestable surplus to go unutilized resulting in over-escapement. Over-escapement is particularly damaging to sockeye, which utilize lakes as part of their life cycle. Every over-escapement event results in (1) lost yield in the year of over-escapement (because the harvestable surplus escaped), and (2)

additional lost yields three to five years later, when the impacted juveniles return in diminished numbers. Given the State's current track record of escapement exceeding the high end of the escapement goals as much as 35 percent of the time, and its practice of setting escapement goals that are already well above MSY, the impact of continuing to defer to the State must be considered.

Response: The Council and NMFS determined, based on the information and analysis provided in the EA, that the State is properly managing salmon escapement in Cook Inlet. First, the EA does assess the impacts of continuing State salmon management, which includes the escapement goals established by the State, instances when escapement goals are exceeded, and the effects of over-escapement on salmon stocks. As detailed in EA sections 3.2, 4.1, and 5.1, where possible, the State sets salmon escapement goals in Cook Inlet based on MSY. For instance, the current escapement goals for sockeye salmon in the Kenai and Kasilof rivers are set at approximately 90 to 100 percent of MSY.

It is not possible to manage mixed stock salmon fisheries for MSY on all stocks and species in circumstances where the composition, abundance, and productivity of stocks and species in those fisheries varies substantially. Over-escapement is a common occurrence in areas with salmon fisheries in the EEZ, as shown in the EA section 5.1.2. Over-escapement means that the number of spawning salmon exceeds the upper bound of the escapement goal range established for any particular system. Over-escapement usually results from (1) A lack of fishing effort, (2) unexpectedly large salmon runs, or (3) management or economic constraints on the fishery. Management constraints result, in part, from State management of salmon fisheries for maximum harvest of the largest, most productive salmon stocks, while protecting less abundant salmon stocks and species. Currently, the State considers a number of salmon stocks in Upper Cook Inlet as stocks of concern. The State has established clearly-defined goals to manage salmon to provide for escapement of identified stocks of concern within mixed-stock fisheries (see the description of the State's Policy for the Management of Mixed Stock Salmon Fisheries (5AAC 39.220) in EA section 4.1). Layering Federal management on top of State management for the commercial fisheries in the Cook Inlet Area would not reduce the potential for over-escapement or address any of the factors that cause over-escapement. As discussed in EA section 2.2, Federal management of the fishery in the Cook Inlet Area would be responsive to State management decisions. In response to this comment, NMFS has revised the EA section 5.1 to expand the discussion on over-escapement to better explain the issue.

Comment 10: The State has no escapement goals or estimates of MSY for many salmon runs in Cook Inlet. Without escapement goals, the State has no idea of the health of the salmon returns or whether they are being managed in a manner consistent with either the Magnuson-Stevens Act or the State's sustainable salmon policy.

Response: According to the State, they do not have the necessary resources to monitor all the salmon runs in Cook Inlet. Therefore, the State does not have the information necessary to set escapement goals or estimate MSY for many of the salmon runs. However, the State (in conjunction with salmon resource users) has identified the most important species and runs, and has tried to monitor those salmon runs. Currently, the State monitors the largest runs of sockeye and Chinook salmon in Cook Inlet. Even though the State does not monitor some of the smaller stocks of sockeye, Chinook, pink, chum, and coho, the State has other information (catch and test fish indices) to indirectly monitor the abundance on some of these species. The State manages all the salmon stocks in Upper Cook Inlet based on the information it collects from indicator stocks (stocks that can be assessed) and the performance of salmon fisheries in Upper Cook Inlet. In the absence of specific stock information, the State has managed these stocks conservatively following the precautionary principle, similar to the National Standard 1 Guidelines for dealing with data poor stocks (50 CFR 600.10). Therefore, in the absence of information, the State is managing the data-poor salmon runs consistently with the Magnuson-Steven Act and consistently with the way NMFS manages data-poor fish stocks.

Continuing to include the Cook Inlet Area in the FMP would not necessarily improve the scientific information available for individual salmon runs. NMFS does not independently monitor returns of Cook Inlet salmon stocks or assess Cook Inlet salmon abundance. The biology of salmon is such that escapement is the point in the species life history best suited to routine assessment and long-term monitoring. The State collects information on Cook Inlet salmon escapement—returns of specific salmon stocks to specific river systems—from sampling sites (e.g., weirs, sonar stations, counting towers) that are located within State waters and NMFS relies on this information. It is not possible to collect information on escapement or run strength from sampling in the EEZ. Given that the Magnuson-Stevens Act does not provide NMFS with the authority to manage salmon resources within State waters, absent preemption in accordance with the Magnuson-Stevens Act (16 U.S.C. 1856(b)), and extensive information is already collected by the State on numerous salmon stocks, NMFS would have limited ability to independently collect escapement information.

Additionally, NMFS, like the State, has limited funds for stocks assessment research. NMFS allocates research funds based on national and regional priorities, and would need to eliminate or reduce an existing project to start a new project to gather the scientific information necessary to conduct a stock assessment for any given salmon run.

Comment 11: The State's sustained yield principle is not the same as the Magnuson-Stevens Act's OY; therefore it is not consistent with National Standard 1.

Response: For the following reasons, the Council and NMFS determined that the State's sustained yield principle is equivalent to the Magnuson-Stevens Act's OY and that it achieves the objectives of National Standard 1 (16 U.S.C. 1851(a)(1)). The Magnuson-Stevens Act defines OY as the amount of fish which:

(A) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

The Magnuson-Stevens Act does not prescribe the method for determining OY and NMFS uses various methods to determine OY throughout the Nation, depending on the information available and the unique characteristics of specific fisheries. For Alaska salmon, the Council and NMFS determined that the State's sustained yield principle is equivalent to OY because it represents MSY as reduced by relevant economic, social, and ecological factors.

The Council determined that the State's salmon escapement goal management is the appropriate approach for satisfying the National Standard 1 requirements of the Magnuson-Stevens Act. The biology of salmon is such that escapement is the point in the species life history best suited to routine assessment and long-term monitoring and is the metric most commonly used for assessing the status of salmon stocks. The State establishes escapement goals intended to maximize surplus productivity of future runs, estimates run strength in advance, monitors actual run strength and escapement during the fishery, and utilizes in-season management measures, including fishery closures, to ensure that minimum escapement goals are achieved.

The State sets salmon escapement goals based on the Policy for the Management of Sustainable Salmon Fisheries (SSFP; 5 AAC 39222) and the Policy for Statewide Salmon Escapement Goals (5 AAC 39.223). These policies ensure that the State's salmon stocks are conserved, managed, and developed using the sustained yield principle. These policies require the State to set escapement goals based on the sustained yield principle. The SSFP goes on to identify escapement goals based on MSY as biological escapement goals and those based on sustained yield as sustainable escapement goals. The State set sustainable escapement goals in the absence of adequate escapement and/or stock specific catch information to set a biological escapement goals and when the State is unable to determine what level of escapement would produce MSY.

Comment 12: The State is not managing the Cook Inlet salmon fishery in a manner consistent with the Magnuson-Stevens Act's National Standards. Therefore, the Council and NMFS cannot facilitate State salmon management in accordance with the Magnuson-Stevens Act and should not remove the Cook Inlet Area from the FMP. The Council failed to consider the consequences of removing the ten National Standards from Cook Inlet Area salmon management and how that will impact sustainability of salmon returns over time.

Response: As explained in EA sections 4.3.1 and 5.1, the Council and NMFS assessed the State's current salmon management and the sustainability of salmon returns under the current management procedures, and determined that current management, as codified in the Alaska constitution, laws, regulations, and policies, is consistent with the Magnuson-Stevens Act's national standards. For this and other reasons explained in this preamble and the EA, the Council and NMFS concluded that Federal conservation and management are not required and would not serve a useful purpose.

Comment 13: The State fails to meet National Standard 2 (best available science) because the Alaska Board of Fisheries (Board) process is based on the ''best available politics,'' is ad hoc, and fails to consider the scientific, economic, and social ramifications of the Board's actions. The Council failed to consider that the current State regulatory system allows for in-season salmon management decisions to be regularly influenced by a few politically connected individuals despite professional biologists recommendations or direction.

Response: NMFS disagrees. The Board decision-making process achieves the objectives of National Standard 2. The Board is responsible for (1) Considering and adopting regulations through a public process to conserve and allocate fisheries resources to various user groups, (2) establishing fish reserves and conservation areas, fishing seasons, quotas, bag limits and size restrictions, (3) protecting habitat, (4) recommending stock enhancement, and (5) developing commercial, subsistence, sport and personal use fisheries. The Board consists of seven members who are appointed by the Alaska Governor and confirmed by the State Legislature. Members are appointed on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the Board, with a view to providing diversity of interest and points of view in the membership (see Alaska Statute 16.05.221).

As with the Federal regional management council system, the Board considers and weighs all of the information available to it in making its decisions. In fulfilling its responsibilities, the Board process utilizes the best science available to it—primarily provided by ADF&G—and considers the economic and social ramifications of the Board's actions. Through its process, the Board considers and applies allocative criteria (AS 16.05.251(e), 5 AA 39.205, 5 AAC 75.017, 5 AAC 77.007, and Board Finding #91–129–FB), the Policy for the Management of Sustainable Salmon Fisheries (5 AAC 39.222), the Policy for the Management of Mixed Stock Salmon Fisheries (5 AAC 39.220), and information provided to it by the Alaska Commercial Fisheries Entry Commission and Alaska Department of Commerce, Community, and Economic Development, ADF&G's economic research, and any information provided by members of the public.

The Council and NMFS considered the State's inseason salmon management process and decisions, as described in EA Chapter 4. The comment did not provide any evidence to support the assertion that the State's inseason management decisions are influenced by a few politically connected individuals despite professional biologists' recommendations or direction.

Comment 14: The Council's analysis under National Standard 7 is legally and factually flawed. Each factor of the National Standard 7 Guidelines weighs heavily in favor of developing an FMP for Cook Inlet.

Response: Amendment 12 is consistent with National Standard 7, as explained in EA section 2.5.1. While the commenter may not agree with the Council's and NMFS' decision, the analysis is not legally or factually flawed. National Standard 7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. NMFS' National Standard 7 Guidelines provide the criteria for deciding whether a fishery needs management under an FMP (50 CFR 600.340). The Guidelines state that the principle that not every fishery needs management through regulations implementing an FMP is implicit in National Standard 7. The Guidelines also state that Councils should prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

The National Standard 7 Guidelines provide seven general factors that should be considered, among others, in deciding whether a fishery needs management through regulations implementing an FMP. EA section 2.5.1 compares how each alternative addresses each National Standard 7 factor. Each factor and the Council's and NMFS' determinations for Amendment 12 are summarized as follows—

(1) The importance of the fishery to the Nation and to the regional economy. The Council and NMFS determined that Amendment 12 will not change the importance of the salmon fishery in the regional economy of Cook Inlet or for the Nation because the State will remain as the primary manager of the fishery, and the vast majority of the EEZ will remain closed to commercial salmon fishing. EA section 4.5.2 provides detailed information on the economic

importance of the Cook Inlet salmon fishery in the EEZ.

(2) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition. The Council and NMFS determined an FMP would not improve or maintain the condition of the salmon stocks in the Cook Inlet Area. Including the Cook Inlet Area in the FMP would not improve the condition of salmon stocks since the FMP could not control harvests in state waters or ensure escapement goals are met. The Council and NMFS recognized that the State is in a unique position to manage Alaska salmon as a unit in consideration of all fishery removals and to meet escapement goals. The condition of each salmon stock is a result of many factors, including harvest by a number of fisheries that target salmon throughout their range. EA section 5.1 describes the condition of the Cook Inlet salmon stocks.

(3) The extent to which the fishery could be or is already adequately managed by states, by state/federal programs, by federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act. The State has managed the salmon fisheries since statehood in 1959 and the Council and NMFS have relied on State management of the salmon fisheries in the EEZ since 1979. As such, the Council and NMFS have determined that salmon fisheries are adequately managed by the State; therefore, the Council and NMFS only considered the role of federal management given existing State management. The Council and NMFS have determined that State salmon management is consistent with the policies and standards of the Magnuson-Stevens Act, as explained throughout the EA.

(4) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution. Competing interests and conflicts exist among user groups that harvest salmon throughout its range, as explained in EA Chapter 4. The Council and NMFS determined that including the Cook Inlet Area in the FMP would not further the resolution of the State's difficult task of allocating salmon to the multiple user groups—subsistence, sport, personal use, and different commercial gear types—that harvest salmon from EEZ waters through to headwaters of Alaska streams and rivers. Amendment 12 actually minimizes potential conflicts by prohibiting commercial salmon fishing in the vast majority of the EEZ to allow salmon to return to their natal region and be available for harvest by various user groups in those areas.

(5) The economic condition of a fishery and whether an FMP can produce more efficient utilization. The Council and NMFS recognized that the economic conditions of the fishery and the efficiency of the utilization are closely tied to State salmon management. The Council and NMFS determined that including the Cook Inlet Area in the FMP would not change the economic conditions of these fisheries or change the efficiency of the utilization of salmon resources. EA section 4.5.2 describes the economic conditions of the FMP salmon fisheries in the Cook Inlet Area.

(6) The needs of a developing fishery, and whether an FMP can foster orderly growth. The Council and NMFS determined that Amendment 12 fosters orderly growth of salmon fishing in the Cook Inlet Area and other natal regions, by predominantly closing EEZ waters.

(7) The costs associated with an FMP, balanced against the benefits. Neither the Council nor NMFS identified any benefits of an additional layer of federal management on top of State salmon management for the fisheries in the Cook Inlet Area. The Council and NMFS determined that applying federal management would be costly, redundant, and not provide any conservation or management benefits. As discussed in EA Chapter 5, an FMP in the Cook Inlet Area would not further NMFS' obligations under the Marine Mammal Protection Act or Endangered Species Act, or to Essential Fish Habitat, and therefore is not beneficial from the perspective of other marine resources. An FMP would not benefit the condition of salmon stocks in these areas, as discussed above. While there is the perception that an FMP could benefit certain salmon fishermen in the Cook Inlet Area relative to other salmon user groups, that perception is not supported by current federal management practices.

The Council and NMFS determined that the EA's analysis of the factors to be considered in the National Standard 7 guidelines support the decision to redefine the FMP's fishery management unit to exclude the net fishing areas where salmon fisheries are already adequately managed by the State. This decision minimizes the costs associated with creating Federal management and layering Federal management on top of existing State management and avoids unnecessary duplication with existing State management.

Comment 15: Amendment 12 is directly contrary to National Standard 3. Federal abdication of salmon fishery management in those areas of the EEZ that are removed from the FMP under Amendment 12 does not create seamless management. Vessels registered with the State would be subject to State regulations when fishing in those areas; vessels not registered with the State would be unregulated when fishing in those areas. Additionally, the Federal government would still have management authority over salmon subsistence harvest in Federal inland waters and for managing salmon subject to international treaties.

Response: The Council and NMFS determined that Amendment 12 is consistent with National Standard 3, as explained in EA section 2.5.1. National Standard 3 states that, to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination (16 U.S.C. 1851(a)(3)). National Standard 3 guidelines explain how to structure appropriate management units for stocks and stock complexes (§ 600.320). The Guidelines state that the purpose of the standard is to induce a comprehensive approach to fishery management (§ 600.320(b)). The guidelines define ''management unit'' as ''a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives,'' and state that the choice of a management unit ''depends on the focus of the FMP's objectives and may be organized around biological, geographic, economic, technical, social, or ecological perspectives'' (§ 600.320(d)).

The Council and NMFS determined that prohibiting commercial fishing in the redefined West Area and removing the net fishing areas and the sport fishery in the West Area from the scope of the FMP would best enable the State to manage salmon as a unit throughout their range. This approach recognizes that the biology of salmon is such that escapement is the point in the species' life history that is most appropriate for assessing stock status, and that escapement happens in the river systems, not in the EEZ waters. The State manages for all sources of fishing mortality, from the commercial fisheries in the EEZ to the in-river subsistence fisheries. The State monitors actual run strength and escapement during the fishery, and utilizes in-season management measures, including fishery closures, to ensure that minimum escapement goals are achieved. National Standard 3 guidelines provide councils and NMFS with discretion to determine the appropriate management unit for a stock

or stock complex under an FMP and clearly contemplate that the selected management unit may not encompass all Federal waters if, such as here, complementary management exists for a separate geographic area (§ 600.320(e)(2)).

Additionally, managing a stock as a unit, consistent with National Standard 3, does not require exclusive management by a single governmental entity throughout the stock's entire range. The fact that the U.S. Fish and Wildlife Service manages subsistence salmon fishing on Federal lands, or that the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean defines management authority for salmon in international waters beyond the U.S. EEZ, does not constrain or otherwise limit the Council's and NMFS' ability to determine if Federal conservation and management are necessary for the commercial and sport salmon fisheries that occur in Federal waters adjacent to Cook Inlet.

The Council, NMFS, and the State recognized that removing the net fishing areas from the FMP could create an opportunity for unregulated commercial salmon fishing activity by U.S. vessels in those areas. The Council and NMFS assessed this risk and concluded that unregulated fishing is unlikely due to the risk and limitations associated with a business plan dependent on fishing relatively small pockets of salmon fishing grounds separated by substantial distance, avoiding entry into state waters under any circumstance, and shedding all state permits and licenses. Responses to comments 16 through 20 address this point with additional detail. The Council and NMFS determined that removing the net fishing areas from the FMP does not pose a risk to the overall conservation or management of salmon resources within these areas.

Comment 16: Amendment 12 has the ability to change the importance of the commercial fisheries in their regional economies or for the Nation because it (a) opens the EEZ to unregulated fishing that will draw resources away from permit holders, local processors, and the regional community, and (b) the current problems associated with State management in Cook Inlet will continue to erode the importance of these fisheries.

Response: NMFS disagrees. Amendment 12 does not open the EEZ to unregulated fishing. Fishing for salmon in the vast majority of the EEZ will continue to be regulated under the FMP. The Council and NMFS expect that all vessels fishing for salmon in the net fishing areas will be regulated by the State. In recommending and approving Amendment 12, the Council and NMFS considered the risks associated with removing the net fishing areas from the FMP and determined that the risk of unregulated fishing in these areas is negligible. As explained in EA section 2.5.2, a vessel not registered with the State may be able to circumvent the application of State regulations within the net fishing areas if the vessel never enters State waters and has no contacts with the State. While this scenario is possible, the practical constraints on such a scenario make it unlikely to occur. First, the net fishing areas are in remote locations, far from any port other than an Alaskan port. A large vessel would likely be required for such fishing because it would have to carry onboard everything it would need for the entire fishing trip to avoid entry into State waters under any circumstance. According to the State, if a vessel involved in unregulated fishing entered State waters for fuel, supplies, or a mechanical or medical emergency, the vessel would be subject to State enforcement—greatly increasing the risk of failure for such a business plan. Additionally, a large vessel that had to prepare for any contingency would have high operating costs, but the net fishing areas are relatively small pockets of salmon fishing grounds that may not provide the return needed to cover such costs. Finally, such a vessel would have to shed all State permits and licenses.

As explained in EA section 2.5.2, inherent in the Council's recommendation and NMFS' approval of Amendment 12 is the conclusion that commercial and sport salmon fishermen will be registered with the State when fishing for salmon in these areas, and subject to the laws of the State governing commercial and sport salmon fishing. Based on the logistical complications and business risks identified in the EA and summarized above, it is reasonable to expect that salmon fishing occurring in the net fishing areas will be by vessels registered with the State and that fishing in these areas will be regulated by the State. Removal of these areas from the FMP does not indicate the Council's or NMFS' intent for unregulated salmon fishing to occur in these areas.

Based on available information, NMFS does not agree with the conclusion that current State management erodes the importance of the salmon fisheries in regional economies or for the Nation. See response to comment 23 on the performance of the 2011 commercial fishery in the Cook Inlet Area.

Comment 17: Amendment 12 creates a jurisdictional loophole for unregulated fishing in the EEZ. Neither the State nor NMFS has any mechanism in place to deal with this unregulated fishing by vessels not registered with the State, instead relying on hope that no one will exploit this attractive option. The EA underestimates the potential harm that could result from unregulated fishing in the EEZ. The only available solution, closing the EEZ waters, would further harm existing permit holders.

Response: The response to comment 16 explains why the Council and NMFS determined that unregulated fishing in the net fishing areas is unlikely to occur. Given the significant risks and practical limitations associated with any attempt to conduct unregulated fishing in the net fishing areas, the Council and NMFS reasonably concluded that such activity is unlikely to occur and the EA adequately analyzes the potential harm.

If unregulated fishing does occur, the Council and NMFS could take action under the Magnuson-Stevens Act to regulate salmon fishing in the net fishing areas. While it is difficult to predict what action would be taken, it is likely that the action taken would be tailored to the extent and severity of the problem identified. One action could be to assert Federal management over the net fishing areas and close the areas to fishing while the Council develops a long-term solution. As both the commenter and EA section 2.5.2 note, closing the net fishing areas would impose costs on all operations utilizing these salmon fishing areas, including the State-regulated participants operating in these areas.

Comment 18: The Council should not rely on the State's assurances that they can prosecute a vessel not registered with the State for salmon fishing in the EEZ to understand the risks of removing Cook Inlet waters from the FMP.

Response: The Council and NMFS did not rely on assurances of successful prosecutions by the State as their basis for assessing the risk of unregulated fishing in the net fishing areas. The Council and NMFS relied on information that demonstrates the significant challenges associated with any attempt to successfully conduct unregulated fishing in the net fishing areas. The practical limitations identified in the EA indicate that unregulated fishing in the net fishing areas is unlikely to occur. The EA does not indicate that unregulated fishing is likely to occur, but can be successfully prosecuted by the State.

As explained in the response to comment 16, EA section 2.5.2 contained information on the risk of unregulated

fishing in the net fishing areas if they are removed from the FMP. The Council and NMFS reviewed this information, considered the geographic scope of the EEZ accessible by vessels not registered by the State, the inherent risks of fishing countered by the inability of such vessels to enter Alaskan ports, the potential amount of salmon fishery resources that may be accessible to make such an endeavor profitable, and the need to shed all State permits and licenses. Based on this information, the Council and NMFS concluded that there was a negligible risk that unregistered vessels would prosecute a directed salmon fishery within this limited area, and that this negligible level of risk did not warrant retaining the net fishing areas in the FMP.

Comment 19: Removing these areas from the FMP opens the door to unregulated fishing by vessels not registered in the State of Alaska. Should unregulated fishing occur, NMFS will be unable to implement emergency measures to regulate commercial fishing in these areas, because this scenario has been publicly debated and considered by the Council. Likely, any amendment that opens the door to unregulated fishing would be found inconsistent with the Magnuson-Stevens Act, and would be sent back for review by a Federal court.

Response: The response to comment 16 explains why the Council and NMFS determined that unregulated fishing in the net fishing areas is unlikely to occur and why Amendment 12 does not open the door to unregulated fishing in the net fishing areas.

As explained in the response to comment 17, in the unlikely event that unregulated fishing does occur in the net fishing areas, the Council and NMFS could take action under the Magnuson-Stevens Act to regulate salmon fishing in these areas. However, in order to take emergency action under the Magnuson-Stevens Act (16 U.S.C. 1855(c)), the Council must find that an emergency exists. NMFS guidelines provide that an emergency is a situation that: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process (62 FR 44421, August 21, 1997).

The commenter concludes that because the risk of unregulated fishing in the net fishing areas has been publicly debated and considered by the Council, unregulated fishing would not meet the emergency criterion that an event be unforeseen. It is premature to determine whether unregulated fishing in the net fishing areas would or would not meet the emergency criteria. However, as explained in the response to comment 18, the Council and NMFS have determined, based on the best information available, that unregulated fishing is unlikely to occur. If unregulated fishing does occur, an argument may exist that it was unforeseen. If the best information available had indicated that unregulated fishing in the net fishing areas was likely and the Council still chose to remove these areas from the FMP, it would be more difficult to conclude that future unregulated fishing in the net fishing areas is an unforeseen event.

Comment 20: The Council has no legal authority to carve out part of the EEZ from the scope of its jurisdiction or to develop an FMP for only a certain geographic range of a stock.

Response: Amendment 12 does not remove the net fishing areas from the Council's jurisdiction under the Magnuson-Stevens Act. The Council continues to have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska (16 U.S.C. 1852(a)(1)(G)). In adopting Amendment 12, the Council chose not to exercise this authority for salmon fisheries occurring in the net fishing areas. The Magnuson-Stevens Act provides the Council with broad discretion in determining whether a fishery is in need of conservation and management. As explained in the response to comment 15, National Standard 3 guidelines provide councils and NMFS with discretion to determine the appropriate management unit for a stock or stock complex under an FMP and clearly contemplate that the selected management unit may not encompass all Federal waters if complementary management exists for a separate geographic area (50 CFR 600.320). Additionally, National Standard 7 guidelines provide the criteria for determining whether a fishery needs management and state that councils should prepare FMPs only for fisheries where regulation would serve some useful purpose and where present or future benefits of regulation would justify the costs (50 CFR 600.340). Under the Magnuson-Stevens Act and National Standards 3 and 7, the Council has the authority to develop an FMP that includes a geographic management unit for a fishery that is less than the entire EEZ if the Council can provide a reasonable explanation as to why that management unit is the appropriate management unit. The Council's rationale for Amendment 12 is provided throughout this preamble and in the EA prepared for Amendment 12.

Comment 21: Having an FMP with clearly defined management objectives, operating in a transparent process with Secretarial oversight of the Board, would lessen the user group conflicts in Cook Inlet. While the FMP would only apply to EEZ waters, it would have to consider all salmon removals and would provide a forum to ensure that the State manages salmon resources in a manner consistent with the Magnuson-Stevens Act.

Response: NMFS does not share the commenter's opinion that FMP management of the Cook Inlet Area would reduce the user group conflicts in Cook Inlet. Conflicts among different user groups exist in federally managed fisheries, as well. Federal management may change the forum for user group conflicts in Cook Inlet from the Board to the Council, but would not, in and of itself, lessen the conflicts inherent in the difficult task of allocating salmon, a finite resource, to the multiple user groups—subsistence, sport, personal use, and different commercial gear types—that harvest Cook Inlet salmon from EEZ waters through to the headwaters of Alaska streams and rivers. Amendment 12 limits user group conflicts by prohibiting commercial salmon fishing in the West Area, which encompasses the vast majority of the EEZ. The prohibition enables salmon from different regions to return to their natal region and be available for harvest by various user groups in those areas. Again, this position recognizes that salmon are best harvested relatively nearshore, where competing interests and conflicts among user groups can be resolved by the government entity with management authority to regulate harvest by all the user groups. The Fishery Impact Statement in EA Chapter 4 describes the multiple salmon fisheries managed by the State. Federal fishery management under the FMP would only apply in the EEZ, where the commercial fishery is the predominant user group. The FMP would have no authority over the harvest of salmon within State waters by various other user groups, but would have to account for removals within State waters in determining the appropriate level of harvest in Federal waters.

The Council and NMFS determined that the State has clearly defined management objectives for Cook Inlet salmon and that its management process is transparent. In approving

Amendment 12, the Council and NMFS determined that Secretarial oversight of the Board is not necessary for the conservation and management of salmon in the net fishing areas.

Comment 22: The EA fails to address the impacts on salmon resources caused by the unrestricted growth of personal use fisheries on the Kenai River. A significant percentage of salmon released by personal use fishermen do not survive to spawn and represent unaccounted-for removals. This practice is reasonably likely to continue and must be considered in the EA.

Response: Contrary to the commenter's assertion, the EA does examine the impacts on salmon caused by all salmon fisheries, including the personal use fishery in Cook Inlet. The personal use fishery is a consumptive use fishery, which means people harvest salmon for food and not for recreation or sport. It occurs entirely within State waters and is managed by the State. Generally, fish may be taken for personal use purposes only under the authority of a permit issued by ADF&G. ADF&G limits the amount and type of gear that can be used to reduce the likelihood that Chinook salmon will be gilled and sustain mortal injuries. Given that the personal use fishery is for food, it is unlikely that any Chinook salmon caught are released in the Kenai River personal use fishery. The contention that personal use fishermen release Chinook salmon that have been gilled is unfounded.

The Kenai River personal use fishery has grown as the population of Anchorage, the Matanuska-Susitna Valley, and surrounding areas has grown. ADF&G estimates that the annual average harvest of Chinook salmon in the Kenai River dip net fishery was 816 for the years 1996 through 2011, and 1,200 for the more recent years 2006 through 2011. The annual average number of Upper Cook Inlet personal use salmon fishery permits fished was 17,748 permits for the years 1996 through 2011, and 22,423 permits for the more recent years 2006 through 2011. Each holder of an Upper Cook Inlet personal use salmon fishery permit is allowed to harvest one Chinook salmon, so the potential harvest is much greater than what is actually being taken.

The EA considers the harvest of salmon that occurs in all salmon fisheries, including commercial, personal use, sport, and subsistence fisheries. In the cumulative effects analysis, the EA explains that the State's first priority for management is to meet spawning escapement goals to sustain salmon resources for future generations. The State carefully monitors the status of salmon stocks returning to Alaska streams and controls fishing pressure on these stocks. Subsistence use is the highest priority use under both State and Federal law. Surplus fish, or fish in excess of the fish needed for escapement and subsistence use, are made available for other uses, such as commercial and sport harvests. The Board allocates surplus fish among user groups according to Board policy and applicable State law, as described in the Fishery Impact Statement (EA Chapter 4). The EA recognizes that other salmon fisheries have the most substantial impacts on the salmon fisheries that occur in the EEZ because the State comprehensively manages salmon stocks and considers each fishery that targets specific stocks or stock groupings.

Comment 23: Having an FMP for the Cook Inlet Area would help assess and halt current trends towards diminishing harvests by providing clear management goals and objectives and restoring science-based management to the fishery.

Response: Salmon returns are cyclical and harvest data do not support the conclusion that there is a trend towards diminishing harvests. Salmon that return to Cook Inlet are subject to harvest by numerous commercial and non-commercial fisheries in marine waters and harvest by subsistence, sport, and personal use fishermen in rivers and streams. While the non-commercial fisheries have grown over time as the population of southcentral Alaska has grown, the claim that this growth has disadvantaged the commercial sector is not supported by available information. The 2010 estimate for commercial salmon fishery gross earnings was well above average, and only exceeded by the earnings reported in 1992, 1993, and 1994. The 2011 commercial harvest of 5.3 million salmon ranks as the fourth largest overall harvest in the past 20 years. The commercial ex-vessel value of approximately $51.6 million was the fifth highest value since 1960, and represented the highest ex-vessel value since 1992.

In 2011, the bulk of the sockeye salmon run came in compacted and above forecast. Compact runs are, in general, very difficult to manage. The 2011 sockeye salmon run was dynamic in that the run materialized in days, not weeks. Catch per unit effort went from a near historic low on July 9 to just below a near record high in 5 days, and the record harvests soon after. Processors limited deliveries for a period of time until they were able to catch up with processing all of the salmon harvested.

Even if the FMP included the Cook Inlet Area, the FMP would be limited to allocating the harvestable surplus of salmon among users within the EEZ. As explained in EA section 2.2, under the Magnuson-Stevens Act, an FMP only has authority to manage the fisheries that occur in the EEZ. The Magnuson-Stevens Act is clear that nothing in it shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. Absent formal preemption in accordance with Magnuson-Stevens Act (16 U.S.C. 1856(b)), the Magnuson-Stevens Act does not provide authority for the Council to manage fisheries in state waters, which would be required for the Council to change escapement goals or to allocate more salmon to a specific user group, or to direct the Board to make these types of changes.

In other instances where a fishery occurs in both state and Federal waters, Federal management of the Federal portion of the fishery is responsive to state management of the portion in state waters. An example of this occurs in the Pacific cod fisheries in the Gulf of Alaska and Aleutian Islands. The Federal Pacific cod total allowable catch is reduced to account for the State guideline harvest level so that total catch does not exceed the Pacific cod annual catch limit.

Comment 24: The State's erratic management decisions in Cook Inlet have made Cook Inlet a difficult commercial environment. Federal oversight with a stable FMP and management objectives could return a sense of order and predictability to the fishery.

Response: The Council and NMFS are aware of user group conflicts in the Cook Inlet salmon fisheries. However, NMFS does not share the commenter's opinion that FMP management of the Cook Inlet Area would reduce the user group conflicts or create the order and predictability the commenter seeks. The comment provides no examples for the type of Federal oversight that would change the commercial environment. As explained in the response to comment 23, the Council's and NMFS' authority to change State management of salmon fisheries within State waters is limited. While the complexities associated with salmon management and fluctuations in salmon abundance can make it difficult to create a stable and predictable commercial environment, the response to comment 23 demonstrates that commercial salmon fisheries in Cook Inlet continue to have successful seasons.

Comment 25: The Council claims the salmon fisheries in the EEZ are fully developed. However, there is a hugely underutilized chum and pink fishery in Cook Inlet. The State has been largely unwilling to allow the harvest of these fish. An FMP could help develop these fisheries in a manner consistent with the national standards.

Response: As explained in EA section 5.1, the State does not fully utilize pink and chum salmon in Upper Cook Inlet, in part, due to the State's efforts to conserve coho salmon and to provide for sport fisheries on coho salmon. Coho salmon are caught in the commercial fisheries directed at pink and chum salmon. Coho salmon are important to sport fishermen in Cook Inlet. Consideration of sport fishing opportunities is consistent with National Standard 1. It would be difficult to harvest additional pink and chum salmon without harvesting additional coho salmon that have been allocated to sport fisheries by the Board.

Comment 26: NMFS agrees that Cook Inlet salmon need Federal management, as supported by the critical habitat designation for Cook Inlet beluga whales under the authority of the Endangered Species Act (ESA) and the Cook Inlet Habitat Conservation Strategy. The Council failed to consider the impacts of State management decisions on salmon essential fish habitat (EFH). The EA fails to address the impacts of current and reasonably foreseeable projects in Cook Inlet affecting salmon habitat, including those identified by the Cook Inlet Habitat Conservation Strategy.

Response: NMFS does not agree with the assertions made in the comment. The commenter is concerned that by removing the Cook Inlet Area from the FMP, NMFS will neglect impacts to Cook Inlet salmon and salmon habitat even though NMFS has acknowledged the importance of Cook Inlet salmon and salmon habitat in the documents identified by the commenter. While the commenter brings up a number of habitat-related issues, none of them are germane to the Council's and NMFS' decision on the appropriate scope of the management unit within the FMP. Under the Magnuson-Stevens Act, fishery management plans manage fisheries in Federal waters. NMFS protection or management of Cook Inlet beluga whales and habitat under the ESA occurs regardless of the FMP's scope.

As explained in EA Chapter 5, NMFS manages specific marine mammal species under the ESA, and that management is not contingent on the existence of a fishery management plan. NMFS has identified more than one third of Cook Inlet as critical habitat for the Cook Inlet beluga whale (76 FR 20180, April 11, 2011). Pacific salmon constitute one of the primary constituent elements for the Cook Inlet beluga whale's critical habitat. When designating critical habitat under the ESA, NMFS is required to identify specific areas, within the geographical area occupied by the species, on which are found those physical or biological features (1) essential to the conservation of the species, and (2) which may require special management considerations or protection. As a primary constituent element, NMFS concluded that salmon are essential to the conservation of the Cook Inlet beluga whale and may require special management considerations or protection in the future. The term ''special'' does not necessarily mean ''beyond existing.'' The conclusion that Cook Inlet salmon may require special management considerations or protection in the future does not mean that salmon are presently impaired or that existing laws and regulations managing salmon are not sufficient. NMFS continues to work with the State to ensure that Cook Inlet beluga whales are considered in salmon management planning for Cook Inlet.

EFH designations are done through a prescribed process, and EFH can be designated in both Federal and state waters depending on the habitat (water) needs for each life history stage of each FMP species. Because of habitat characteristics, Alaska salmon EFH is (1) all Federal and state waters (0–200nm) covering juvenile and adult maturing life history stages and ranges from Dixon Entrance to Demarcation Bay (Arctic), and (2) all freshwaters listed as anadromous for mature, juvenile, and egg stages of the five salmon species. Amendment 12 does not change the EFH designation for salmon or any of the current EFH provisions or NMFS' role in coordination and consultation on EFH. Amendment 11 updates the FMP's essential fish habitat provisions based upon the best scientific information available. A description of the changes made by Amendment 11 is provided in the Notice of Availability for Amendments 10, 11, and 12 (77 FR 19605, April 2, 2012) and is not repeated here.

As explained in EA Chapter 5, a number of ongoing and future actions impact salmon spawning habitat, including in-river fisheries, development, and pollution. A complete discussion of fishing and non-fishing impacts to salmon habitat is contained in FMP Appendix A. The FMP incorporates the new information from NMFS' report ''Impacts to Essential Fish Habitat from Non-fishing Activities in Alaska.'' The waters and substrates that comprise salmon EFH are susceptible to a wide array of human activities unrelated to fishing. Broad categories of such activities include mining, dredging, fill, impoundment, discharge, water diversions, thermal additions, actions that contribute to nonpoint source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. For each of these activity categories, known and potential adverse impacts to EFH are described in the NMFS report. Mechanisms or processes that may cause adverse effects and how these may affect habitat function also are described in the NMFS report.

Additionally, coordination and consultation on EFH is required by the Magnuson-Stevens Act (16 U.S.C. 1855(b)). However, this consultation does not supersede the regulations, rights, interests, or jurisdictions of other Federal or state agencies. The NMFS report also contains non-binding recommendations for reasonable steps that could be taken to avoid or minimize adverse effects of non-fishing activities on EFH.

As the EA points out, non-fishing activities discussed in the NMFS report are subject to a variety of regulations and restrictions designed to limit environmental impacts under Federal, state, and local laws. Any future activity that potentially impacts salmon spawning habitat would be subject to these regulations and the Magnuson-Stevens Act's EFH consultation requirements. Amendment 12 does not remove or in any way diminish these regulations and restrictions or the Magnuson-Stevens Act requirements for salmon EFH.

NMFS had proposed the Cook Inlet Habitat Conservation Strategy as part of NOAA's national habitat blueprint project. While the NOAA Habitat Blueprint starts with increasing efficiencies within NOAA and across its programs and offices, it is also designed to foster collaboration across Federal, state, and local levels. NMFS has determined that Cook Inlet is not the optimum focus area in the Alaska Region for this particular initiative at this time. NMFS is working cooperatively with the State to identify additional opportunities to partner on common actions in priority areas, improve delivery of habitat science, and

encourage complementary habitat conservation actions.

Comment 27: The State fails to make allowances for the safety of life at sea as required by National Standard 10.

Response: National Standard 10, which applies to Federal fisheries management under the Magnuson-Stevens Act, states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea (16 U.S.C. 1851(a)(10)).

Although the State is not required to be consistent with National Standard 10 when managing State fisheries within State waters, as discussed in EA section 4.6, the State promotes the safety of human life at sea. Through its public process, the Board addresses specific fishery safety issues as they arise and works to modify its regulations, as necessary, in order to increase safety and minimize risk of injury or death for all fishery participants. ADF&G promotes safety, whenever possible, in its salmon fisheries through management practices, support in the regulation formation process, and through assistance to enforcement agencies.

Examples of safety supported through management practices include: using emergency orders for daytime openings of salmon fisheries to allow fishermen to harvest and deliver fish during daylight hours; delaying the opening of weekly fishing periods when severe weather is forecasted; and extending fishing time after severe weather to encourage fishermen to seek shelter from severe weather because they will be able to fish when the weather moderates. An example of safety supported through regulation is a limit on the length and size of salmon nets that can be used, which moderates harvest levels to manageable quantities that fishermen are able to handle more safely. Additionally, ADF&G promotes safety through direct assistance to enforcement agencies. ADF&G provides information on harvest patterns and fishing effort as well as lists of registered vessels to the Alaska Wildlife Troopers, NMFS, and the United States Coast Guard. This information allows these enforcement agencies to focus efforts in areas where the fishing fleets are concentrated, providing on-scene presence of enforcement personnel, vessels, aircraft, and expedited reaction times when accidents occur.

Comment 28: The EEZ portion of Cook Inlet is essential to properly managing the sockeye fishery to provide an orderly fishery and prevent over-escapement.

Response: It is difficult to understand the point being made by the comment in relation to the provisions of Amendment 12. However, this point is repeated in comment 42 as one example of how the Cook Inlet Area salmon fisheries differ from the Prince William Sound Area and the Alaska Peninsula Area salmon fisheries. Because comment 42 provides further context for responding to this point, NMFS responds to this comment in its response to comment 42.

Comment 29: The EA overlooks current problems with State management of the Cook Inlet salmon fisheries and the State's efforts to ''terminalize'' the Cook Inlet fisheries. Since 1990, the State has progressively shifted fishing efforts out of the EEZ in favor of nearshore, or terminal, fishing. This practice ignores the timing requirements of the Cook Inlet salmon fishery that occurs in the EEZ and results in the loss of quality and loss of harvest opportunities. This process has had negative impacts on (1) The health of the stocks, by fostering an environment for over-escapement and thus lost future yields; (2) the ability to manage the fishery to meet OY; and (3) the value of the fish harvested for the fishermen, the processors, and the community. These efforts to ''terminalize'' the fishery are ongoing and are reasonably likely to continue as a result of the Council's removal of the Cook Inlet Area from the Salmon FMP.

Response: According to information in EA sections 4.3.1 and 5.1, the majority of the commercial salmon fisheries in Cook Inlet are mixed stock fisheries, including the drift gillnet fishery, which is the only commercial salmon fishery currently allowed in the EEZ. Following its Mixed Stock Salmon Fisheries Policy, the State has discouraged the development or expansion of mixed stock fisheries when the fish that comprise those stocks can be harvested after they have separated into more discrete stocks. Mixed stocks separate into discrete stocks as they migrate towards their rivers of origin. Therefore, as a general principle, terminal fisheries harvest discrete stocks and off-shore fisheries harvest mixed stocks.

The State's policy for managing mixed stock salmon fisheries is consistent with sustained yield of wild fish stocks. As described in EA section 3.4, the Council and NMFS have determined that the State's sustained yield principle is equivalent to the Magnuson-Stevens Act's principle for OY. Salmon fisheries in Upper Cook Inlet are complex, mixed stock fisheries with many divergent users. It is difficult to manage salmon fisheries for MSY on all stocks and all salmon species in circumstances where the composition, abundance, and productivity of the salmon stocks and species in those fisheries vary substantially. The State has attempted to ensure the conservation of the resources and allocate the harvest of the resources in a manner consistent with the goal of maximizing the benefits.

Available information suggests that the Mixed Stock Salmon Fisheries Policy does not have negative impacts on the value of the fish harvested for the fishermen, the processors, and the community. It is difficult to assess the impacts of State management policy on the Cook Inlet commercial fishery due to shifting market demands, fluctuations in international currency exchange rates, and the inherent variability in salmon run strength. However, as shown in EA Chapter 4, the recent total Cook Inlet estimated gross earnings and the estimated gross earnings of the Cook Inlet drift gillnet fleet do not show a negative trend in earnings from 1991 to 2010. With the exception of the late 1980's, there has been a trend of increasing prices for sockeye salmon in recent years. In fact, the 2010 estimated gross earnings were the highest since 1994, and higher than the average annual earnings from 1991 to 2012. Additionally, in 2011 the average price per pound for Cook Inlet commercial fishermen was the second highest since 1992. The 2011 overall ex-vessel value was the highest since 1992. The ex-vessel value in 2011 was also the 5th highest since 1960 with the drift fleet harvesting 61 percent of those fish, 13 percent above average and the highest percent since 1992.

Comment 30: The strongest part of Amendment 12 is the provision for ACLs and AMs, because fishermen will be prevented from overfishing, and this provision will allow the salmon to maintain a steady population. The use of escapement as opposed to rigid numerical catch limits provides for the naturally occurring fluctuation in population.

Response: NMFS acknowledges the comment.

Comment 31: The Council did not comply with the ACL and AM requirement for Cook Inlet fisheries. Instead of setting ACLs and AMs, the Council removed the fisheries from the FMP, which is arbitrary and capricious.

Response: The decision to remove the net fishing areas from the FMP was made considering a number of factors. The predominant factors were the Council's salmon management policy, the recognition that the State is the appropriate authority for managing

salmon, and the determination that the State is adequately managing salmon in the net fishing areas consistent with the policies and standards of the Magnuson-Stevens Act. The FMP prohibits commercial fishing in the West Area so that the State can continue to manage the salmon fisheries in waters adjacent to the West Area, including the Cook Inlet Area, Prince William Sound Area, and the Alaska Peninsula Area. The Council determined that Federal conservation and management are not required for the fisheries that occur in the Cook Inlet Area because overfishing is prevented by the State's management program.

The Council and NMFS determined that the State manages Alaska salmon stocks according to the best scientific information available to achieve sustainable yield. Information provided in EA Chapter 4 and section 5.1 demonstrates that salmon are targeted throughout their adult life by a variety of fisheries from commercial mixed stock ocean fisheries to terminal net fisheries, sport fisheries, subsistence fisheries, and personal use fisheries. Escapement-based management, with real-time monitoring of run strength, inherently accounts for fishery catch and natural mortality. The State monitors catch in all of the salmon fisheries and manages salmon holistically by incorporating all the sources of fishing mortality on a particular stock or stock complex in calculating the escapement goal range. As explained in EA section 3.3, overfishing is prevented by in-season monitoring and data collection that indicates when an escapement goal is not being met. When the data indicate low run strength due to natural fluctuations in salmon abundance, ADF&G closes the fishery to ensure the escapement goal range is reached. This may result in low catches for the target fisheries, but it prevents overfishing and ensures sustained yield over the long term.

Comment 32: The Council should not adopt the State's escapement goals as a proxy for the ACL requirements, but should engage the Council's Scientific and Statistical Committee (SSC) and other experts including ADF&G to transparently develop statistically and scientifically defensible escapement goals for Alaska's salmon fisheries.

Response: The State's salmon management program is based on scientifically defensible escapement goals and inseason management measures to prevent overfishing. The State's process for establishing escapement goals is described in EA section 3.3 and in EA Appendix 1. During the development of Amendment 12, NMFS and the Council engaged the SSC and ADF&G in determining the best approach for addressing the ACL requirement for Alaska salmon. Through that process, and as documented in EA section 3.3, the Council and NMFS determined that Amendment 12 implements the best approach for addressing the ACL requirement for Alaska salmon.

Amendment 12 does not establish ACLs or AMs in the West Area because no commercial salmon fisheries are authorized in the West Area. The mechanism to establish ACLs and AMs for the East Area commercial troll fishery builds on the FMP's existing framework for establishing status determination criteria. Amendment 12 does not establish a mechanism for specifying ACLs and AMs for Chinook salmon because the Magnuson-Stevens Act exempts stocks managed under an international fisheries agreement in which the United States participates from the ACL requirement (16 U.S.C. 1853 note). Under Amendment 12, the mechanisms for specifying ACLs for Tier 2 (coho salmon) and Tier 3 (coho, pink, chum, and sockeye salmon stocks managed as mixed-species complexes) salmon stocks are established using the State's scientifically-based management measures to control catch and prevent overfishing. This approach represents an alternative approach to the methods prescribed in NMFS' National Standard 1 Guidelines (50 CFR 600.310) for specifying ACLs. The Council recommended and NMFS approved an alternative approach because the State's escapement-based management system is a more effective management system for preventing overfishing of Alaska salmon than a system that places rigid numeric limits on the number of fish that may be caught. Escapement is defined as the annual estimated size of the spawning salmon stock in a given river, stream, or watershed.

Comment 33: The Council should not replace the SSC with the State's peer review process because the State's process is subject to significant political influence.

Response: NMFS does not agree with the commenter's assertion that the State's process is subject to significant political influence.

As part of Amendment 12, the Council established a peer review process in the FMP that utilizes the State's existing salmon expertise and processes for developing escapement goals as fishing level recommendations. The Council and NMFS carefully reviewed the State's process for establishing escapement goals, as described in EA section 3.3 and in EA Appendix 1. They chose to establish a peer review process in the FMP that utilizes existing State salmon expertise and review processes for the scientific information used to advise the Council about the conservation and management of the salmon fisheries in the EEZ. Using the State's process as the peer-review process helps to recognize the limited role and expertise of NMFS and the Council in salmon fishery management, as well as the State's existing expertise and infrastructure. The State, as the peer review body, will work with the Council to implement the provisions of the Magnuson-Stevens Act for the fisheries managed under the FMP. This peer review process requires the State to annually prepare a stock assessment report, using the best available scientific information, for the salmon caught in the Southeast Alaska troll fishery and provide the stock assessment report to the Council. The peer review process is discussed in detail in section 3.5 of the EA (see **ADDRESSES**).

Comment 34: The EA states that its purpose is to decide whether there is a need to supplement the Environmental Impact Statement (EIS) for the proposed action, but it is not clear what this means or which EIS should be supplemented. The draft EA is rooted in the fundamentally false premise that NMFS need only review the previously issued ''Final Programmatic Environmental Impact Statement for the Pacific Salmon Fisheries Management off the Coasts of Alaska, Washington, Oregon, and California'' (Salmon PSEIS) and then decide whether it should be supplemented. Indeed, it is not clear that NMFS has ever addressed its decision to defer management in Cook Inlet to the State.

Response: The EA states that ''This environmental assessment (EA) analyzes the impacts of the proposed action to revise the Salmon FMP and the alternative management approaches considered.'' The EA summarizes previous National Environmental Policy Act (NEPA) documents for context and background. The EA considers whether the Salmon PEIS needs to be supplemented for the East Area because Amendment 12 maintains the action that was analyzed in that PEIS. It also analyzes the impacts of the alternatives on the resource components—salmon stocks, ESA-listed Pacific salmon, marine mammals, and seabirds—for all four salmon fisheries that occur in the EEZ. For the West Area, the EA examines the impacts of status quo management and the ongoing fisheries on the resources components. The EA

provides the best available information on these interactions between the salmon fisheries in the EEZ and these resources. See response to comment 35.

As explained in response to comment 36 and EA section 2.1, prior to approval of Amendment 12, the FMP was vague as to the deferral of management authority to the State in the Cook Inlet Area and included no explicit language that the Council and NMFS had delegated management in the net fishing areas to the State. As stated in the EA, the Council and NMFS' proposed action was to revise and update the FMP to reflect the Council's policy for managing salmon fisheries and to comply with the Magnuson-Stevens Act. The EA examined four alternatives for determining the future scope of the FMP and where Federal conservation and management is required: (1) No action; (2) maintain the existing geographic scope of the FMP and update the FMP; (3) maintain the FMP in the East Area and, in the West Area, modify the FMP to specifically exclude the net fishing areas and the sport fishery from the FMP and update the FMP; and (4) maintain the FMP in the East Area only and update the FMP. Applicable to Alternatives 2, 3 and 4 was the Council's position that in areas where the FMP applies, management would be delegated to the State. The EA presents the impacts that would occur under all the alternatives, including Alternative 2, which includes the Cook Inlet Area in the FMP and delegates management of the salmon fisheries that occur there to the State.

Amendment 12 does not delegate management of the salmon fisheries in the Cook Inlet Area to the State. Instead of imposing Federal management of the salmon fisheries in the West Area and delegating management to the State, Amendment 12 removes this area and the fisheries that occur within it from fishery management under the FMP. The Magnuson-Stevens Act, at 16 U.S.C. 1856(a)(3)(A)(i), provides that a state may regulate a fishing vessel outside the boundaries of the state if the fishing vessel is registered under the law of that state and there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating. Under Amendment 12, the State can manage vessels operating in the Cook Inlet Area when those vessels are registered with the State.

Comment 35: A supplemental EIS is required because the physical environment of Cook Inlet and the fisheries themselves are drastically different in 2012 than they were 22 or 34 years ago.

Response: While NMFS agrees that the Cook Inlet salmon fisheries differ today from when the FMP was originally implemented in 1979 or when the FMP was comprehensively amended in 1990 under Amendment 3, NMFS disagrees that these changes require the preparation of a supplemental EIS. A supplemental EIS would be required if NMFS makes substantial changes in the proposed action that are relevant to environmental concerns or significant new circumstances or information exist relevant to environmental concerns and bear on the proposed action or its impacts (40 CFR 1502.9(c)(1)).

NMFS determined that Amendment 12 is not a substantial change in the proposed action, as it maintains the existing salmon management structure. Amendment 12 updates the FMP to comply with the current Magnuson-Stevens Act requirements, and amends the FMP to more clearly reflect the Council's policy with regard to the State's continued management authority over commercial fisheries in the net fishing areas, the Southeast Alaska commercial troll fishery, and the sport fishery. These changes improve the FMP but they do not result in any substantive changes to the management of the salmon fisheries that occur in these areas.

NMFS prepared an EA to determine whether the proposed action had the potential to cause significant environmental effects. The EA analyzed whether there were significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. In addition, the EA addressed all beneficial and adverse impacts of the proposed action to reach the conclusion of no significant impacts. The information and analysis contained in the EA demonstrates that Amendment 12 will not significantly impact the quality of the human environment. Based on the EA, NMFS prepared a FONSI that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment (see **ADDRESSES**). Based on this FONSI, NMFS determined that an EA is the appropriate NEPA analysis for this action and preparation of a supplemental EIS is not warranted.

Comment 36: The consequences of deferring Cook Inlet salmon management to the State and of removing the Cook Inlet Area from the FMP were not contemplated in the prior EIS and are not properly discussed in the current EA.

Response: NMFS assumes the commenter is referring to the EIS prepared in 1978 for the original FMP, because the 2003 EIS prepared for the Pacific salmon fisheries management off the coasts of Southeast Alaska, Washington, Oregon, and California, and in the Columbia River Basin does not apply to salmon fisheries occurring in Cook Inlet.

The impacts associated with State management of salmon fisheries occurring in the net fishing areas were examined in the 1978 EIS. When the 1978 EIS was prepared, the State had been managing the salmon fisheries in the Cook Inlet Area, Prince William Sound Area, and the Alaska Peninsula Area in accordance with the North Pacific Fisheries Act of 1954. Federal regulations at 50 CFR 210 set the outside fishing boundaries for salmon net fishing in Alaska as those set forth under State regulations and provided that any fishing conducted within these fishing boundaries shall be conducted under fishing regulations promulgated by the State.

When the Council comprehensively revised the FMP in 1990, the FMP continued to broadly define the fishery management unit as the entire EEZ, including the net fishing areas. However, the FMP continued to recognize Federal law that stated fishing conducted within the net fishing areas was governed by the State. The FMP did not explicitly delegate management of the salmon fisheries that occur in the net fishing areas to the State.

Federal law mandating State management of the net fishing areas changed with the repeal of the North Pacific Fisheries Act of 1954 and the enactment of the North Pacific Anadromous Stocks Act of 1992. In 1995, as a result of this change in Federal law, NMFS repealed the fishing boundary regulations at 50 CFR part 210 because they were without statutory basis. At that time, the Council and NMFS did not amend the FMP to specifically delegate salmon management to the State under the FMP; the State continued to manage the salmon fisheries in the net fishing areas.

Amendment 12 clarifies the FMP with respect to fishery management in light of these changes to Federal law, and does so in a way that does not change how the salmon fisheries occurring in the net fishing areas have been managed for decades. Amendment 12 maintains the authority and practice of State management of the salmon fisheries occurring in these areas. While Amendment 12 modifies the FMP, it does not modify the way in which the salmon fisheries within the net fishing areas have been managed for many years. The EA analyzes the impacts of removing the Cook Inlet Area, the

Prince William Sound Area, and the Alaska Peninsula Area from the FMP, and provides a detailed discussion of salmon management in EA Chapter 4 and the salmon resources in EA Chapter 5. As explained in the response to comment 35, the EA prepared for Amendment 12 thoroughly analyzes the impacts of the proposed action on the human environment, including the impacts resulting from the removal of the Cook Inlet Area from the FMP.

Comment 37: The EA fails to discuss the environmental impact of removing any requirement for the State to comply with the Magnuson-Stevens Act.

Response: NMFS disagrees. EA Chapter 5 analyzes the environmental impacts of current salmon fisheries management (status quo) and the impacts of the alternatives relative to status quo.

Comment 38: The Secretary of Commerce (Secretary) should send this proposed rule back to the Council and NMFS to properly include the three net fishing areas in the FMP. These net fishing areas were excluded from the FMP in order to prevent stakeholders in these fisheries from exercising Federal review of State management measures that discriminate against nonresidents of the State.

Response: NMFS, under authority delegated to it by the Secretary, approved Amendment 12 on June 29, 2012. NMFS determined that Amendment 12, including its removal of the net fishing areas from the FMP, is consistent with the FMP, the provisions of the Magnuson-Stevens Act, and other applicable Federal law.

The Council and NMFS did not remove the net fishing areas from the FMP to prevent stakeholders from exercising Federal review of State management measures. The Council recommended and NMFS approved removal of these areas from the FMP because Federal conservation and management is not necessary for the fisheries that occur in these areas. The Council's and NMFS' rationale for removing these areas from the FMP is explained in detail in EA section 2.5 and is summarized in the response to comment 4. The three net areas were excluded from the FMP because Federal conservation and management is not necessary for the fisheries that occur there. The Council determined that excluding these areas and the sport fishery from the FMP allows the State to manage Alaska salmon stocks as seamlessly as practicable throughout their range, rather than imposing dual State and Federal management.

The Council meets regularly throughout the year and stakeholders in the net fishing areas can present issues to the Council if the need arises. Whether the Council chooses to act depends on a number of factors, but stakeholders in the net fishing areas can participate in the Federal forum of the Council even though the net fishing areas are not part of the FMP.

State management of the commercial fisheries in the Cook Inlet Area does not discriminate against residents of other states. Alaska residency is not a requirement for holding the limited entry permit necessary to participate in the commercial fishery and is not a factor in any aspect of the management of the commercial fisheries in Federal waters.

Comment 39: The State's trajectory in Cook Inlet in recent years—with seven stocks of concern, the extirpation of several sockeye runs, and continued reduced returns—points to serious consequences of staying the course under State management. Not only are these concerns not properly addressed in the EA, but individually and collectively they raise substantial questions as to whether Amendment 12 will have significant environmental effects thereby warranting preparation of a full EIS.

Response: The conclusions in the comment concerning adverse impacts to Cook Inlet salmon stocks due to State management are not supported by available information. The EA section 5.1 analyzes the best available information on Cook Inlet salmon stocks. As shown in section 5.1, salmon abundance fluctuates dramatically between years. Exact causes for poor salmon returns are unknown, but may involve a variety of factors outside the control of fishery managers to mitigate, including unfavorable ocean conditions, freshwater environmental factors, disease, or other likely factors on which data are limited or nonexistent. The ocean and freshwater environments are changing, and the impacts of those changes on salmon abundance are difficult to forecast because they, in turn, depend on somewhat uncertain forecasts of global climate. Therefore, NMFS concludes that State salmon management does not cause low salmon returns.

Because the Council and NMFS determined that the State is adequately managing salmon stocks consistent with the policies and standards of the Magnuson-Stevens Act, the Council and NMFS determined that Amendment 12 will not significantly impact the quality of the human environment. In addition, the EA addressed all beneficial and adverse impacts of the proposed action to reach the finding of no significant impacts. Based on the EA, NMFS prepared a FONSI that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment (see **ADDRESSES**). Based on this FONSI, an EA is the appropriate NEPA analysis for this action and preparation of an EIS is not warranted.

Comment 40: The EA fails to demonstrate any economic impacts or impacts to the fishery resource that have been occurring under State management and that are likely to continue or get worse in light of Amendment 12. The economic losses associated with the decline in Chinook, sockeye, chum, and pink harvests are in the hundreds of millions of dollars over the past half century. This type of economic analysis was glossed over by the rush to revise the Salmon FMP with Amendment 12.

Response: EA Chapter 4 provides detailed information and analysis of the economic impacts that have been occurring under State management and that are likely to continue under Amendment 12. The information and analysis represents the best economic information available. The conclusions in the comment about economic losses are not supported by the available information. See response to comment 23.

Comment 41: All the stakeholders testified that they wished to retain Federal oversight and remain under the FMP. Currently, the Cook Inlet stakeholders face pressures on their fishery that are not encountered in other areas of Alaska. Urbanization of the Cook Inlet basin and State regulations that permit resident-only dipnet fishing threaten the economic viability of the commercial fishery. Listing of the Cook Inlet beluga whale will have unknown consequences on the fishery. Also, Federal subsistence users in Cook Inlet rely on salmon for subsistence needs. Removing the Cook Inlet Area from the FMP will leave the stakeholders without a voice during interagency consultation regarding State management, habitat preservation, endangered species interactions, and subsistence needs.

Response: The Council and NMFS considered the public testimony received on Amendment 12, including testimony from Cook Inlet commercial salmon fishermen asking that the Cook Inlet Area remain in the FMP and that the Council and NMFS provide oversight of State management of salmon fisheries in Cook Inlet. As explained in the responses to comments 6 and 54, the Council and NMFS cannot adopt an FMP that only imposes Federal fishery management oversight over fisheries occurring in an area but that

does not include provisions that address all of the measures for fishery management plans required by the Magnuson-Stevens Act. The Council and NMFS explained that the limited type of oversight expressed in public comment is not possible under the Magnuson-Stevens Act.

Removal of the Cook Inlet Area from the FMP does not limit the public's ability to participate in NMFS' management of ESA-listed species and designated critical habitat, or the U.S. Fish and Wildlife Service's management of subsistence fisheries on Federal lands. The ESA and Federal laws administered by the U.S. Fish and Wildlife Service contain specific provisions for public participation that the FMP need not duplicate. See the response to comment 26.

Additionally, as explained in the response to comments 4 and 23, NMFS has limited ability to change any actions taken by the State within State waters.

Comment 42: The EA unreasonably fails to consider the alternative of treating Cook Inlet differently from other parts of the West Area. The EA rejects that alternative because there is no distinction between these areas relative to the National Standards and the criteria for determining where Federal conservation and management are required. This statement could not be further from the truth. Cook Inlet is different, and here are some of the ways:

- Some of the nation's largest wild runs of Chinook, sockeye, coho, pink, chum, and steelhead salmon return through the EEZ portion of Cook Inlet.
- Two-thirds of the State's population lives in the Cook Inlet area, creating habitat and resource competition issues unique in Alaska.
- NMFS has identified Cook Inlet as a priority for habitat issues in its Habitat Blueprint strategy.
- There are seven stocks of concern in Cook Inlet (versus none in the other two net fishing areas in the West Area).
- Total harvests in Cook Inlet have steadily declined in recent years, unlike other areas in Alaska.
- The EEZ portion of Cook Inlet is an ideal fishing location (it is the preferred location of the drift fleet) where significant portions of the run can be harvested and is an ideal target for unregulated fishing by out-of-state vessels.
- The EEZ portion of Cook Inlet is essential to properly managing the sockeye fishery to provide an orderly fishery and prevent over escapement.

None of these factors are necessarily present in the other EEZ fisheries in the West Area. In light of these clear differences, it was arbitrary for the EA to not consider an alternative that treats Cook Inlet differently.

Response: The Council considered whether to manage the three areas separately but found that there is no distinction between these areas relative to the National Standards and the criteria for determining where Federal conservation and management are required. The Council recognized that Cook Inlet is different from Prince William Sound and the Alaska Peninsula, as described in the EA. However, none of the differences highlighted in the comment or in the EA changes whether the areas require management under a fishery management plan. The primary factor in the Council's decision to address these three areas together was that the salmon fisheries in each area are managed by the State's salmon management program.

Comment 43: The petition process in the FMP is inadequate and makes no provisions for when (1) A third party proposes, and the Board adopts a proposal that is adverse; (2) the Board generates and adopts its own proposal, (3) the Board makes emergency or out of cycle changes impacting the fishery; or (4) ADF&G makes emergency in season changes.

Response: Section 9.3 of the FMP, as amended by Amendment 12, provides a member of the public with an opportunity to petition NMFS to conduct a consistency review of any State management measure that applies to salmon fishing in the East Area if that person believes the management measure is inconsistent with the provisions of the FMP, the Magnuson-Stevens Act, or other applicable federal law. Prior to submitting a petition requesting a consistency review to NMFS, section 9.3 requires a person to exhaust available administrative regulatory procedures with the State. Section 9.3 provides two ways in which persons can demonstrate exhaustion of State administrative regulatory procedures. First, NMFS will conclude that a person has exhausted available State administrative regulatory procedures if the person can demonstrate that he or she: (1) submitted one or more proposals for regulatory changes to the Board during a Call of Proposals consistent with 5 Alaska Administrative Code (AAC) 96.610, and (2) received an adverse decision from the Board on the proposal(s). Second, section 9.3 recognizes that there could be circumstances that may require regulatory changes outside the regular process set forth in 5 AAC 96.610, or circumstances when the process set forth in 5 AAC 96.610 is unavailable due to the timing of the action requested. Under these unusual circumstances, NMFS will conclude that a person has exhausted State administrative regulatory procedures if the person can demonstrate that he or she: (1) Could not have followed the regular Call of Proposals requirements at 5 AAC 96.610, (2) submitted an emergency petition to the Board or ADF&G consistent with 5 AAC 96.625 or submitted an agenda change request to the Board consistent with 5 AAC 39.999, and (3) received an adverse decision from the Board or ADF&G on the emergency petition or agenda change request.

The commenter appears to be concerned that a person would be unable to demonstrate exhaustion of State administrative regulatory procedures, and therefore unable to obtain NMFS review of his or her petition, even when the situations highlighted in the comment have occurred. However, these situations appear to be covered by the second method of exhaustion when unusual circumstances, such as the ones highlighted in the comment, have occurred.

The FMP requires exhaustion of available State administrative regulatory procedures before petitioning NMFS for a consistency review for several reasons. The Council and NMFS delegated regulation of the commercial and sport salmon fisheries in the East Area to the State in recognition of its expertise, and because the State is in the best position to consider challenges and make changes to its management measures. The Council and NMFS also recognize the importance of public participation during the development of State fishery management measures, and exhaustion encourages the public to actively participate in and try to effectuate fishery management change through the State process. Finally, by requiring a person to exhaust the State's administrative regulatory procedures before petitioning NMFS, the State is presented with an opportunity to hear the challenge and take corrective action if the State finds merit in the challenge before federal resources are expended. The Council and NMFS have determined that the petition process set forth in Chapter 9 of the FMP, as amended, is adequate and addresses the situations raised by the commenter.

Comment 44: The Council did not consider whether Federal loan and grant funds will remain available for investment in the Cook Inlet salmon industry, habitat restoration, and if necessary, failed run disaster assistance.

Response: The geographic scope of the FMP has no effect on the availability of Federal loans and grant funds for Cook Inlet salmon fishery participants, habitat restoration, or assistance in the case of a commercial fishery failure due to a natural resource disaster. Therefore, the Council did not need to consider the availability of funding in the areas identified by the commenter when it determined the appropriate scope of the FMP.

Several recent examples demonstrate the lack of any connection between the availability of Federal loans and grant funds and the Council and NMFS' decision to remove the Cook Inlet Area from the FMP. NMFS is implementing a buyback program for the participants in the Southeast Alaska purse seine salmon fishery, which includes a fishing capacity reduction loan of approximately $23.5 million to finance the purchase of State limited entry permits. This fishery occurs within State waters and is not managed by the FMP. NMFS' administration of this program is irrespective of the scope of the FMP. For more information on this program, please see NMFS Financial Services' Web site at *http://www.nmfs.noaa.gov/mb/financial_services/southeast_alaska_purse_seine_salmon_buyback.html.*

Additionally, under the Magnuson-Stevens Act, at 16 U.S.C. 1861a(a), the Secretary can determine a commercial fishery failure due to a fishery resource disaster for any commercial fishery regardless of whether the fishery occurs in Federal waters or is managed under a Federal fishery management plan. For example, in 2010 the Secretary determined that a commercial fishery failure due to a fishery resource disaster occurred for the Yukon River Chinook salmon fishery in 2008 and 2009. This fishery is managed by the State and is not under a Federal fishery management plan. In the summer of 2012, Alaska State Governor Sean Parnell requested that the Secretary determine a commercial fishery failure due to a fishery resource disaster for the Chinook salmon fisheries on the Yukon and Kuskokwim rivers and in Cook Inlet. The Secretary's review of this request, and the supporting information provided by the State, and the Secretary's subsequent determination, were irrespective of a Federal fishery management plan.

Comment 45: We support the revised regulations at § 679.7(h) to prohibit commercial fishing for salmon using any gear except troll gear in the East Area as it is consistent with State regulations.

Response: NMFS acknowledges the comment.

Comment 46: Unfairly limiting Alaska salmon trolling permits to fish only from the Canadian border to Cape Suckling is a political move initiated and perpetuated in the special interest of other gear groups. Trollers are small operations that are efficient at targeting specific species, unlike the vessels that are now allowed to operate west of Cape Suckling that have large bycatch wastage, decimating prime fisheries. Allowing smaller salmon troll vessels in State waters would create jobs, encourage small business, and efficiently use existing salmon resources.

Response: To the extent the commenter is referring to fishing for salmon with troll gear in the West Area, such fishing has been prohibited since 1973 under State management. The FMP has prohibited commercial fishing with all gear types in the West Area since 1979, and the Council continued this prohibition with Amendment 12. The Council and NMFS' rationale for continuing this prohibition is provided in EA section 2.5. To the extent the commenter is referring to fishing for salmon with troll gear in State waters, the Council and NMFS do not have the authority to open or close State waters to troll vessels. The commenter should direct this comment to the State, which has the authority to open or close State waters to troll vessels.

Comment 47: The State is doing little or nothing to address the introduction and spread of northern pike, a harmful invasive species, in Cook Inlet. The EA fails to discuss the critical problems related to northern pike in Cook Inlet. Given the State's failure to take action, further northern pike infestations are reasonably likely as a result of the Council's action.

Response: NMFS disagrees with the commenter's conclusion that the State is doing little to nothing to address the introduction and spread of northern pike in Cook Inlet. NMFS has no authority under the Magnuson-Stevens Act to manage northern pike in Alaska lakes under a Federal fishery management plan. The State has extensive projects and partnerships to control and eradicate northern pike in Southcentral Alaska. In 2007, ADF&G developed the Alaska Northern Pike Management Plan and identified northern pike as the highest invasive species threat in Southcentral Alaska. In the past five years, the State has eliminated northern pike populations from four lakes systems in Southcentral Alaska, and has initiated large-scale control efforts in Alexander Creek, a tributary of the Susitna River, where a reduction in salmon abundance has been observed. ADF&G plans to continue to investigate options to control or eradicate northern pike in lake and river systems that support valuable commercial, subsistence, and sport fisheries in the Cook Inlet watershed, and to implement options as feasible.

The State's past and ongoing efforts to eradicate or control northern pike in Southcentral Alaska are not connected to the FMP or the Council's and NMFS' action on Amendment 12, because the FMP was and is not the catalyst for the State's efforts. However, NMFS has added an analysis of the northern pike control and eradication projects to the cumulative effects analysis in EA section 5.7.6 because ADF&G's projects and partnerships to control and eradicate northern pike are a reasonably foreseeable future action that will mitigate the negative impacts of pike predation on salmon abundance in freshwater lakes and rivers. The analysis indicates that these actions will reduce the potential for pike to move into estuarine waters of Cook Inlet.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendments 10, 11, and 12 and this final rule are consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration at the proposed stage that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Factual Basis for Certification was provided in the Classification section of the preamble to the proposed rule (77 FR 21716, April 11, 2012). NMFS received no comments on the Factual Basis for Certification.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, Performing the Functions and Duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.,* and Pub. L. 108–447.

■ 2. In § 679.1, revise paragraph (i) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(i) *Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP)*—(1) Regulations in this part govern commercial fishing for salmon by fishing vessels of the United States in the West Area of the Salmon Management Area.

(2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are commercial and sport fishing for salmon in the East Area of the Salmon Management Area.

* * * * *

■ 3. In § 679.2, revise the definition for ''Salmon Management Area'' to read as follows:

§ 679.2 Definitions.

* * * * *

Salmon Management Area means those waters of the EEZ off Alaska (see Figure 23 to part 679) under the authority of the Salmon FMP. The Salmon Management Area is divided into a West Area and an East Area with the border between the two at the longitude of Cape Suckling (143° 53.6′ W):

(1) *The East Area* means the area of the EEZ in the Gulf of Alaska east of the longitude of Cape Suckling (143° 53.6′ W).

(2) *The West Area* means the area of the EEZ off Alaska in the Bering Sea, Chukchi Sea, Beaufort Sea, and the Gulf of Alaska west of the longitude of Cape Suckling (143° 53.6′ W) but excludes the Cook Inlet Area, the Prince William Sound Area, and the Alaska Peninsula Area, shown in Figure 23 and described as:

(i) the Cook Inlet Area which means the EEZ waters north of a line at 59° 46.15′ N;

(ii) the Prince William Sound Area which means the EEZ waters shoreward of a line that starts at 60° 16.8′ N and 146° 15.24′ W and extends southeast to 59° 42.66′ N and 144° 36.20′ W and a line that starts at 59° 43.28′ N and 144° 31.50′ W and extends northeast to 59° 56.4′ N and 143° 53.6′ W.

(iii) the Alaska Peninsula Area which means the EEZ waters shoreward of a line at 54° 22.5′ N from 164° 27.1′ W to 163° 1.2′ W and a line at 162° 24.05′ W from 54° 30.1′ N to 54° 27.75′ N.

* * * * *

■ 4. In § 679.3, revise paragraph (f) to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(f) *Domestic fishing for salmon.* Management of the salmon commercial troll fishery and sport fishery in the East Area of the Salmon Management Area, defined at § 679.2, is delegated to the State of Alaska.

* * * * *

§ 679.4 [Amended]

■ 5. In § 679.4, remove and reserve paragraphs (a)(1)(v) and (h).

■ 6. In § 679.7, revise paragraph (h) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(h) *Salmon fisheries.* (1) Engage in commercial fishing for salmon using any gear except troll gear, defined at § 679.2, in the East Area of the Salmon Management Area, defined at § 679.2 and Figure 23 to this part.

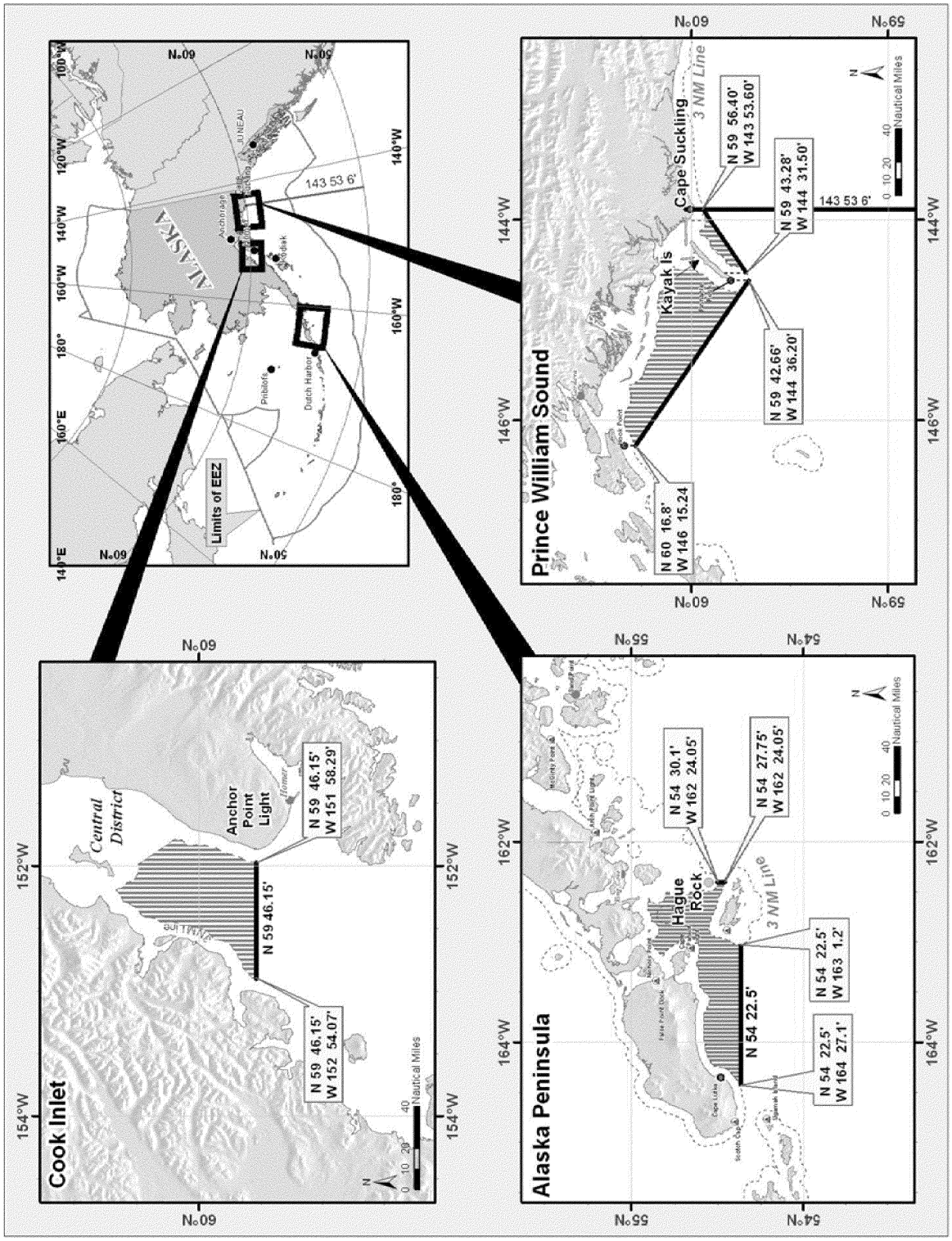
(2) Engage in commercial fishing for salmon in the West Area of the Salmon Management Area, defined at § 679.2 and Figure 23 to this part.

* * * * *

■ 7. Revise Figure 23 to part 679 to read as follows:

BILLING CODE 3510–22–P

Figure 23 to part 679. Salmon Management Area



[FR Doc. 2012–30839 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 77, No. 246
Friday, December 21, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM75

Prevailing Rate Systems; Redefinition of the Minneapolis-St. Paul, MN, and Southwestern Wisconsin Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing a proposed rule that would redefine the geographic boundaries of the Minneapolis-St. Paul, MN, and Southwestern Wisconsin appropriated fund Federal Wage System wage areas. The proposed rule would redefine Wabasha County, MN, from the Southwestern Wisconsin wage area to the Minneapolis-St. Paul wage area. This change is based on a recent consensus recommendation of the Federal Prevailing Rate Advisory Committee to best match Wabasha County to a nearby FWS survey area.

DATES: We must receive comments on or before January 22, 2013.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; email *pay-leave-policy@opm.gov;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-leave-policy@opm.gov;* or Fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule that would redefine the geographic boundaries of the Minneapolis-St. Paul, MN, and Southwestern Wisconsin appropriated fund Federal Wage System wage areas. The proposed rule would redefine Wabasha County, MN, from the Southwestern Wisconsin wage area to the Minneapolis-St. Paul wage area.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Dodge, Olmsted, and Wabasha Counties, MN, comprise the Rochester, MN Metropolitan Statistical Area (MSA). The Rochester MSA is split between the Minneapolis-St. Paul, MN, and Southwestern Wisconsin wage areas. Dodge and Olmsted Counties are part of the area of application of the Minneapolis-St. Paul wage area and Wabasha County is part of the area of application of the Southwestern Wisconsin wage area.

Based on an analysis of the regulatory criteria for Olmsted County, the core county in the Rochester MSA, the entire Rochester MSA would be defined to the Minneapolis-St. Paul wage area. When measuring to cities, the distance criterion does not favor one wage area more than another. Since the percentage difference between the city of Rochester and the closest cities in Minneapolis-St. Paul and Southwestern Wisconsin survey areas is less than 10 percent, distance to the closest cities is not a definitive determining factor. However, when measuring to host installations, the distance criterion favors the Minneapolis-St. Paul wage area more than the Southwestern Wisconsin wage area. The commuting patterns criterion does not favor one wage area more than another. The difference between the resident workforce commuting to work in the Minneapolis-St. Paul and Southwestern Wisconsin survey areas is insignificant; however, marginally more people commute into the Minneapolis-St. Paul survey area (1.07 percent) than into the Southwestern Wisconsin survey area (0.05 percent). The overall population and employment and the kinds and sizes of private industrial establishments criterion does not favor one wage area more than another.

Based on this analysis, we believe Olmsted County is appropriately defined to the Minneapolis-St. Paul wage area. OPM regulations at 5 CFR 532.211 permit splitting MSAs only in very unusual circumstances. There appear to be no unusual circumstances that would permit splitting the Rochester MSA. To comply with OPM regulations not to split MSAs, Wabasha County would be redefined to the Minneapolis-St. Paul wage area. The remaining county in the Rochester MSA, Dodge County, is already defined to the Minneapolis-St. Paul wage area. There are currently no FWS employees working in Wabasha County.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by consensus. This change would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations. FPRAC recommended no other changes in the geographic definitions of the Minneapolis-St. Paul and Southwestern Wisconsin wage areas.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

2. Appendix C to subpart B is amended by revising the wage area listings for the Minneapolis-St. Paul,

MN, and Southwestern Wisconsin wage areas to read as follows:

* * * * *

MINNESOTA

* * * * *

Minneapolis-St. Paul
Survey Area

Minnesota:
Anoka
Carver
Chisago
Dakota
Hennepin
Ramsey
Scott
Washington
Wright
Wisconsin:
St. Croix
Area of Application. Survey Area Plus:
Minnesota:
Benton
Big Stone
Blue Earth
Brown
Chippewa
Cottonwood
Dodge
Douglas
Faribault
Freeborn
Goodhue
Grant
Isanti
Kanabec
Kandiyohi
Lac Qui Parle
Le Sueur
McLeod
Martin
Meeker
Mille Lacs
Morrison
Mower
Nicollet
Olmsted
Pope
Redwood
Renville
Rice
Sherburne
Sibley
Stearns
Steele
Stevens
Swift
Todd
Traverse
Wabasha
Wadena
Waseca
Watonwan
Yellow Medicine
Wisconsin:
Pierce
Polk

* * * * *

WISCONSIN
Southwestern Wisconsin
Survey Area

Wisconsin:
Chippewa
Eau Claire
Monroe
Trempealeau
Area of Application. Survey Area Plus:
Minnesota:
Fillmore
Houston
Winona
Wisconsin:
Barron
Buffalo
Clark
Crawford
Dunn
Florence
Forest
Jackson
Juneau
Langlade
Lincoln
Marathon
Marinette
Menominee
Oneida
Pepin
Portage
Price
Richland
Rusk
Shawano
Taylor
Vernon
Vilas
Waupaca
Wood

* * * * *

[FR Doc. 2012–30805 Filed 12–20–12; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1330; Directorate Identifier 2012–CE–006–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 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 Cessna Aircraft Company (Cessna) (previously COLUMBIA or LANCAIR) Models LC40–550FG, LC41–550FG, and LC42–550FG airplanes. This proposed AD was prompted by reports that during maximum braking, if the brakes lock up and a skid occurs, a severe oscillatory yawing motion or ''wheel walk'' may develop, which could result in further significant structural damage to the airplane. This proposed AD would require insertions into the pilot's operating handbook (POH) and the airplane maintenance manuals (AMM) regarding proper use of the brakes and inspection of the aft fuselage. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 4, 2013.

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

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

For service information identified in this proposed AD, contact Cessna Aircraft Company, Customer Service, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax (316) 517–7271; Internet: *www.cessnasupport.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gary Park, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4123; fax: (316) 946–4107; email: *gary.park@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to

an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1330; Directorate Identifier 2012–CE–006–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received several reports of structural damage to Cessna Models LC41–550FG and LC42–550FG airplanes due to ''wheel walking'' anomalies. These incidents were all precipitated by pilots applying maximum braking at high speeds, leading to locked wheels and prolonged tire skidding. The main landing gear struts developed a severe oscillatory yawing motion or ''wheel walking'' as the airplane decelerated.

This ''wheel walking'' motion resulted in significant structural damage to the aft fuselage skin, affecting the inside skin and adjacent structure near the leading edge of the horizontal stabilizer. This condition, if not corrected, could result in further significant structural damage to the airplane.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require insertions into the pilot's operating handbook (POH) and the airplane maintenance manuals (AMM) regarding proper use of the brakes and inspection of the aft fuselage.

Costs of Compliance

We estimate that this proposed AD affects 726 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Insertion of manuals and inspection of aft fuselage.	4.5 work-hours × $85 per hour = $382.50	Not applicable	$382.50	$277,695

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.

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 airworthiness directive (AD):

Cessna Aircraft Company: Docket No. FAA–2012–1330; Directorate Identifier 2012–CE–006–AD.

(a) Comments Due Date

We must receive comments by February 4, 2013.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to the following Cessna Aircraft Company (previously COLUMBIA or LANCAIR) Models LC40–550FG, LC41–550FG, and LC42–550FG airplanes that are certificated in any category:

(i) LC40–550FG (Model 300), serial numbers 40001 through 40079;

(ii) LC41–550FG (Model 400), serial numbers 41001 through 41108, 41501 through 41533, 41563 through 41800, and 411001 through 411161; and

(iii) LC42–550FG (Model 350), serial numbers 42001 through 42084, 42501 through 42569, and 421001 through 421020.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5300, Fuselage Structure (General).

(e) Unsafe Condition

This AD was prompted by reports that during maximum braking, if the brakes lock up and a skid occurs, a severe oscillatory yawing motion or ''wheel walk'' may develop, which could result in significant structural damage to the airplane. We are proposing this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Required Actions

(1) Within the next 50 hours time-in-service (TIS) after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, incorporate figure 1 of paragraph (g) of this AD into the applicable Pilot's Operating Handbook (POH)/FAA-approved Airplane Flight Manual (AFM), Section 2, Limitations (Other Limitations). This may also be done by inserting a copy of this AD into the POH/AFM.

AFT FUSELAGE INSPECTION

If tire skidding occurs and a severe oscillatory yawing motion, "wheel walking" occurs, an Aft Fuselage Inspection must be performed in accordance with the airplane maintenance manual by an appropriately rated mechanic prior to further flight.

Figure 1 of paragraph (g)

(2) Within the next 50 hours TIS after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, incorporate figure 2 of paragraph (g) of this AD into the applicable POH/AFM at the end of each of the following sections:

(i) Section 4, Normal Procedures (Amplified Procedures): Landings, Normal Landings; and

(ii) Section 4, end of paragraph: Short Field Landings.

This may also be done by inserting a copy of this AD into the POH/AFM.

WARNING

IF TIRE SKIDDING OCCURS, IMMEDIATELY REDUCE BRAKE PEDAL PRESSURE. IF TIRE SKIDDING IS ALLOWED TO CONTINUE, A SEVERE OSCILLATORY YAWING MOTION, "WHEEL WALKING," COULD DEVELOP. IF THIS SEVERE OSCILLATORY YAWING MOTION OCCURS, AN AFT FUSELAGE INSPECTION MUST BE PERFORMED IN ACCORDANCE WITH THE AIRPLANE MAINTENANCE MANUAL BY AN APPROPRIATELY RATED MECHANIC PRIOR TO FURTHER FLIGHT.

Figure 2 of paragraph (g)

(3) Within the next 50 hours TIS after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, incorporate the Cessna maintenance manual revisions for the appropriate airplane from the following list:

(i) Model LC40–550FG, Cessna Maintenance Manual 300MM02, Revision 2, Chapter 20–95–00, section titled "Tap Testing—Description and Operation"; Chapter 20–95–02, section titled "Structural Inspections—Description and Operation"; and Chapter 53–70–00, section titled "Fuselage Components—Adjustment/Test"; all dated July 1, 2012.

(ii) Model LC41–550FG/T240, Cessna Maintenance Manual 400MM02, Revision 2, dated July 1, 2012, Chapter 20–90–00, section titled "Tap Testing—Description and Operation"; Chapter 20–95–00, section titled "Structural Inspections—Description and Operation"; and Chapter 53–70–00, section titled "Fuselage Components—Adjustment/Test"; all dated July 1, 2012.

(iii) Model LC42–550FG, Cessna Maintenance Manual 350MM02, Revision 2, dated July 1, 2012, Chapter 20–95–00, section titled "Tap Testing—Description and Operation"; Chapter 20–95–02, section titled "Structural Inspections—Description and Operation"; and Chapter 53–70–00, section titled "Fuselage Components—Adjustment/Test"; all dated July 1, 2012.

Note for paragraph (g)(3) of this AD: We recommend you replace your current maintenance manual in its entirety with the appropriate Cessna Maintenance Manual 300MM02, 350MM02, or 400MM02, all Revision 2, all dated July 1, 2012, that would apply to your airplane.

(4) The actions required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)-(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(5) At the next annual inspection after the effective date of this AD or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, and prior to further flight if a severe oscillatory yawing motion as described in figure 1 of paragraph (g)(1) of this AD has occurred, inspect the aft fuselage following the aft fuselage inspection procedures for the appropriate model of airplane as follows:

(i) LC40–550FG (Model 300), Cessna Maintenance Manual 300MM02, Revision 2, dated July 1, 2012:

(a) Tap Testing: Chapter 20–95–00, section titled ''Tap Testing—Description and Operation'';

(b) Visual Testing: Chapter 20–95–02, section titled ''Structural Inspections—Description and Operation''; and/or

(c) Fuselage: Chapter 53–70–00, section titled ''Fuselage Components—Adjustment/Test.''

(ii) Model LC41–550FG/T240, Cessna Maintenance Manual 400MM02, Revision 2, dated July 1, 2012:

(a) Tap Testing: Chapter 20–90–00, section titled ''Tap Testing—Description and Operation'';

(b) Visual Testing: Chapter 20–95–00, section titled ''Structural Inspections—Description and Operation''; and/or

(c) Fuselage: Chapter 53–70–00, section titled ''Fuselage Components—Adjustment/Test.''

(iii) Model LC42–550FG, Cessna Maintenance Manual 350MM02, Revision 2, dated July 1, 2012:

(a) Tap Testing: Chapter 20–95–00, section titled ''Tap Testing—Description and Operation'';

(b) Visual Testing: Chapter 20–95–02, section titled ''Structural Inspections—Description and Operation''; and/or

(c) Fuselage: Chapter 53–70–00, section titled ''Fuselage Components—Adjustment/Test.''

(6) If any damaged or suspect areas are found during any aft fuselage inspection required by paragraph (g)(5) of this AD, before further flight, contact Cessna Customer Service by phone at (316) 517–5800 or fax at (316) 517–7271 for an FAA-approved repair and perform the repair.

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

Cessna Aircraft Company released the following POH/AFM Temporary Revisions via Cessna Service Bulletin SB 10–11–01, dated August 17, 2010. Incorporation of the applicable document below is considered compliance with the POH/AFM change requirements in paragraphs (g)(1) and (g)(2) of this AD. The affected POH/AFM Temporary Revisions are:

- Cessna Corvalis 300: RA050001–O TR03–06, dated August 13, 2010;
- Cessna Corvalis 350: RB050005–I TR08–11 (Garmin G1000-equipped) and RB050000–R TR02–05 (Avidyne Entegra-equipped), dated August 13, 2010; and
- Cessna Corvalis 400: RC050005–I TR10–13 (Garmin G1000-equipped) and RC050002–G TR02–05 (Avidyne Entegra-equipped), dated August 13, 2010.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Gary Park, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4123; fax: (316) 946–4107; email: *gary.park@faa.gov.*

Issued in Kansas City, Missouri, on December 17, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–30753 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1142; Airspace Docket No. 12–ANM–25]

Proposed Amendment of Class D and E Airspace; Portland-Hillsboro, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Portland-Hillsboro Airport, Portland, OR, to accommodate aircraft departing and arriving under Instrument Flight Rule (IFR) operations at the airport. This action also would make a minor adjustment to the airport's geographic coordinates listed in Class D and Class E airspace. This action, initiated by the biennial review of the Portland-Hillsboro airspace area, would enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before February 4, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–1142; Airspace Docket No. 12–ANM–25, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–1142 and Airspace Docket No. 12–ANM–25) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–1142 and Airspace Docket No. 12–ANM–25''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in

person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace designated as an extension to Class D surface area. The FAA proposes to reduce the size of the Class E airspace to the northwest, remove the Class E airspace to the south and create additional Class E airspace south southeast of the Portland-Hillsboro Airport. Also, the geographic coordinates of Portland-Hillsboro Airport, listed under Class D and Class E airspace, would be updated to coincide with the FAA's aeronautical database. This action was initiated by a biennial review of the airspace and is necessary for the safety and management of aircraft departing and arriving under IFR operations at the airport.

Class D airspace and Class E airspace designations are published in paragraph 5000, 6002 and 6004, respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Portland-Hillsboro Airport, Hillsboro, OR.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM OR D Portland-Hillsboro, OR [Modified]

Portland-Hillsboro Airport, OR
(Lat. 45°32′26″ N., long. 122°57′01″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Portland-Hillsboro Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM OR E2 Portland-Hillsboro, OR [Modified]

Portland-Hillsboro Airport, OR
(Lat. 45°32′26″ N., long. 122°57′01″ W.)

That airspace extending upward from the surface within a 4.2-mile radius of Portland-Hillsboro Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.

* * * * *

ANM OR E4 Portland-Hillsboro, OR [Modified]

Portland-Hillsboro Airport, OR
(Lat. 45°32′26″ N., long. 122°57′01″ W.)

That airspace extending upward from the surface within 1 mile each side of the 144° bearing of the airport extending from the 4.2-mile radius to 5.5 miles southeast of the airport and within 1.5 miles each side of the 323° bearing of the airport extending from the 4.2-mile radius of the airport to 7 miles northwest of the airport.

Issued in Seattle, Washington, on November 13, 2012

Steven L. Vale,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–30787 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0852; Airspace Docket No. 12–AWP–5]

Proposed Amendment of Class E Airspace; Eureka, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Eureka, NV. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument

approach procedures at Eureka Airport, Eureka, NV. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before February 4, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0852; Airspace Docket No. 12–AWP–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0852 and Airspace Docket No. 12–AWP–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0852 and Airspace Docket No. 12–AWP–5''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Eureka Airport, Eureka, NV. Controlled airspace is necessary to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at Eureka Airport. Additional controlled airspace extending upward from 1,200 feet above the surface would be established to the northeast of the airport to contain the MINES (RNAV) ONE departure. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Eureka Airport, Eureka, NV.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Eureka, NV [Modify]

Eureka Airport, NV
(Lat. 39°36′14″ N., long. 116°00′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Eureka Airport; and within 1.5 miles either side of the 011° bearing of the airport extending from the 6.6-mile radius to 10 miles north of Eureka airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 40°35′00″ N., long. 115°57′00″ W.; to lat. 40°28′06″ N., long. 115°29′19″ W.; to lat. 40°11′24″ N., long. 115°19′00″ W.; to lat. 39°58′00″ N., long. 115°51′00″ W.; to lat. 39°30′00″ N., long. 115°51′00″ W.; to lat. 39°19′00″ N., long. 115°47′00″ W.; to lat. 39°18′00″ N., long. 115°36′00″ W.; to lat. 39°20′00″ N., long. 115°14′00″ W.; to lat. 39°08′00″ N., long. 115°10′00″ W.; to lat. 39°06′00″ N., long. 115°57′00″ W.; to lat. 39°16′00″ N., long. 116°05′00″ W.; to lat. 39°22′00″ N., long. 116°12′00″ W.; to lat. 39°43′00″ N., long. 116°08′00″ W.; to lat. 40°08′00″ N., long. 116°02′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on November 13, 2012.

Steven L. Vale,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–30796 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0835; Airspace Docket No. 12–ANE–15]

Proposed Amendment of Class E Airspace; Morrisville, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Morrisville, VT, as the Morrisville-Stowe Non-Directional Radio Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Morrisville-Stowe State Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 4, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–0835; Airspace Docket No. 12–ANE–15, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–0835; Airspace Docket No. 12–ANE–15) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–0835; Airspace Docket No. 12–ANE–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new Standard Instrument Approach Procedures developed at Morrisville-Stowe State Airport, Morrisville, VT. Airspace reconfiguration is necessary due to the decommissioning of the Morrisville-Stowe NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. Accordingly, the extension of Class E airspace to the northeast of the airport based on the cancelled NDB will be eliminated and the basic radius of controlled airspace extending from 700 feet above the surface upward is extended from 4 miles to 14.8 miles. The expanded radius is necessary due to the elevation surrounding the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Morrisville-Stowe State Airport, Morrisville, VT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment:

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE VT E5 Morrisville, VT [Amended]

Morrisville-Stowe State Airport
(Lat. 44°32′04″ N., long. 72°36′50″ W.)

That airspace extending upward from 700 feet above the surface within a 14.8-mile radius of Morrisville-Stowe State Airport.

Issued in College Park, Georgia, on November 6, 2012.

Barry A. Knight,

Manager, Operation Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–30788 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0768; Airspace Docket No. 12–ANM–22]

Proposed Establishment of Class E Airspace; Wilbur, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Wilbur Airport, Wilbur, WA. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Wilbur Airport, Wilbur, WA. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 4, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0768; Airspace Docket No. 12–ANM–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0768 and Airspace Docket No. 12–ANM–22) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0768 and Airspace Docket No. 12–ANM–22''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and

phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace at Wilbur Airport, Wilbur, WA, to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Wilbur Airport. Controlled airspace extending upward form 700 feet above the surface would be established within a 4 mile radius of the airport, with a 6-mile extension southwest of the 4-mile radius of the airport for the safe operation of IFR aircraft to/from the en route environment.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Wilbur Airport, Wilbur, WA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Wilbur, WA [New]

Wilbur Airport, WA
(Lat.47°45′12″ N., long.118°44′38″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Wilbur Airport and within 4 miles each side of the 216° bearing of Wilbur Airport extending from the 4-mile radius to 6 miles southwest of the airport.

Issued in Seattle, Washington, on November 8, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–30786 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1185; Airspace Docket No. 12–AAL–8]

Proposed Establishment of Class E Airspace; White Mountain, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at White Mountain Airport, White Mountain, AK, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at White Mountain Airport.

DATES: Comments must be received on or before February 4, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–1185; Airspace Docket No. 12–AAL–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–1185 and Airspace Docket No. 12–AAL–8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–1185 and Airspace Docket No. 12–AAL–8''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at White Mountain Airport, White Mountain, AK. Controlled airspace within a 6.3-mile radius of the airport, with extensions to the northwest and southeast, is necessary to accommodate aircraft using new RNAV (GPS) standard instrument approach procedures to/from the en route environment at White Mountain Airport. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at White Mountain Airport, White Mountain, AK.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 White Mountain, AK [New]

White Mountain Airport, AK
(Lat. 64°41′21″ N., long. 163°24′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the White Mountain Airport, and within1 mile either side of the 344° bearing of the airport extending from the 6.3-radius to 11 miles northwest of the airport, and within 1 mile either side of the 164° bearing of the airport extending from the 6.3-radius to 11 miles southeast of the airport.

Issued in Seattle, Washington, on November 13, 2012.

Steven L. Vale,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–30801 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. FAA–2012–0953]

Policy Statement on Occupational Safety and Health Standards for Aircraft Cabin Crewmembers; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; Extension of comment period.

SUMMARY: This action extends the comment period for a notice of availability that was published in the **Federal Register** on December 7, 2012. In that document, the FAA announced a proposed policy statement regarding the regulation of some occupational safety and health conditions affecting cabin crewmembers on aircraft by the Occupational Safety and Health Administration. The comment period is scheduled to close on January 7, 2013. Several airline associations have requested that the FAA extend the comment period for an additional 30 days to allow time for their members to evaluate the impacts and implications of the proposed policy and prepare comments.

DATES: The comment period for the Notice of availability published on December 7, 2012, was scheduled to close on January 7, 2013, and is extended until January 22, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2012–0953 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gene Kirkendall, Part 121 Air Carrier Operations Branch (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8166; email *Gene.Kirkendall@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this proposal and how the FAA will handle comments received.

Background

On November 29, 2012, the FAA issued a Notice entitled ''Policy Statement on Occupational Safety and Health Standards for Aircraft Cabin Crewmembers'' that published in the **Federal Register** on December 7, 2012 (77 FR 72998). Comments to that document were to be received on or before January 7, 2013.

By letter dated December 7, 2012, the Regional Airline Association (RAA), on behalf of its member airlines, requested that the FAA extend the comment period for a minimum of 30 days. The petitioner stated that the additional time is necessary so that their members can assess the extent of the proposed changes, as well as develop questions and comments.

By letter dated December 10, 2012, Airlines for America (A4A), the RAA, and the National Air Carrier Association (NACA) also requested an extension of the comment period, as the 30-day comment period over the holiday season will make it extremely difficult for their respective members to evaluate the impacts and implications of the proposed policy and provide meaningful input to the FAA.

While the FAA concurs with the petitioners' requests for an extension of the comment period, it does not support a 30-day extension. The FAA finds that providing additional time until January 22, 2013 is sufficient for these petitioners to analyze the proposed policy statement and provide meaningful comment.

Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this notice.

Extension of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by A4A, RAA, and NACA for extension of the comment period. These petitioners have shown a substantive interest in the proposed policy statement and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period is extended until January 22, 2013.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate by submitting written comments, data, or views on the policy statement. The most helpful comments reference a specific portion of the policy statement, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this notice. The FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Notice

An electronic copy of the notice may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*); or
2. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket of this notice.

All documents the FAA considered in developing this proposed policy statement, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, December 14, 2012.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2012–30701 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Boundary Expansion of Cordell Bank and Gulf of the Farallones National Marine Sanctuaries; Intent To Prepare Draft Environmental Impact Statement; Scoping Meetings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Intent to Consider Expanding Sanctuary Boundaries; Intent to Prepare Environmental Impact Statement; Scoping Meetings.

SUMMARY: With this notice, NOAA announces that it is considering whether to expand the boundaries of Cordell Bank and Gulf of the Farallones national marine sanctuaries. NOAA will conduct this review pursuant to section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1434(e)). As required by the NMSA, the review will include public processes outlined under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). NOAA anticipates that the review and potential expansion of existing sanctuary boundaries will be completed within 18 to 24 months.

DATES: Comments must be received by March 1, 2013. Dates for scoping meetings are:

(1) January 24 2013 at the Bodega Bay Grange Hall.

(2) February 12, 2013 at the Gualala Community Center.

(3) February 13, 2013 at the Point Arena High School.

ADDRESSES: You may submit comments on this document, identified by NOAA–NOS–2012–0228, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2012-0228,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Maria Brown, Sanctuary Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Maria Brown at *Maria.Brown@noaa.gov* or 415–561–6622; or Dan Howard at *Dan.Howard@noaa.gov* or 415–663–0314.

SUPPLEMENTARY INFORMATION:

Background Information

Gulf of the Farallones National Marine Sanctuary (GFNMS), designated in 1981, and Cordell Bank National Marine Sanctuary (CBNMS), designated in 1989, are federally protected marine areas along and offshore of California's north-central coast. Centered along an important upwelling area, the sanctuaries are able to support important commercial and recreational fisheries, tourism and recreation industries, and coastal economies and communities. Sanctuary personnel contribute greatly to ocean and coastal management by engaging in public outreach and education to promote stewardship, conducting scientific and applied research initiatives, and developing and supporting programs that strengthen resource protection for the long-term health of the region.

NOAA is considering expansion of GFNMS and CBNMS to an area north of the existing sanctuaries that extends from Bodega Bay in Sonoma County, to Alder Creek in Mendocino County, and west to the edge of the continental shelf. This area encompasses the Point Arena upwelling center that consistently produces the most intense upwelling in all of North America.

The nutrients brought to the surface during upwelling events at Point Arena are carried south into the sanctuaries by the prevailing California Current; these nutrients fuel an incredibly productive ocean area protected by GFNMS and CBNMS. The sanctuaries are destination feeding areas for endangered blue whales and humpback whales, sharks, salmon, and seabirds like albatrosses and shearwaters that travel tens of thousands of miles. Food that results from the Point Arena upwelling center also supports the largest assemblage of breeding seabirds in the contiguous United States on the Farallon Islands. Living reefs of corals, sponges and a myriad of other invertebrates cover hard bottom areas and these sessile invertebrate communities are washed with food rich water from the north. These invertebrate reefs also provide structure and habitat for many species of juvenile and adult rockfish that prosper in these productive waters. Sanctuary waters also support valuable commercial fisheries for salmon and Dungeness crab. Local ports and coastal communities all derive socioeconomic benefits from these healthy ocean habitats. The rich diversity and health of this thriving marine ecosystem depends on the cold nutrient rich source water originating from the Point Arena upwelling center.

In 2008, the joint management plan review for CBNMS and GFNMS determined that managers in these sanctuaries would facilitate a public process in the next five years to ensure that *''current boundaries were inclusive of the area's natural resource and ecological qualities, including the biogeographic representation of the area.''* Sanctuary advisory councils from both sites have regularly discussed the boundary expansion alternative and have expressed support for boundary expansion when proposed by local congressional members.

In accordance with Section 304(e) of the NMSA, NOAA is now initiating a review of the boundaries for CBNMS and GFNMS to evaluate and assess a proposed expansion of the sanctuaries. As noted above, NOAA is considering extending the boundaries of the two sanctuaries to add the northern area from Bodega Bay, Sonoma County to Alder Creek, Mendocino County, and west to the edge of the continental shelf

(for a map of the area considered and other relevant information, see *http://farallones.noaa.gov/manage/northern_area.html*). In doing so, NOAA is considering extending, and as necessary amending, the regulations and management plan for GFNMS and CBNMS to this area and is specifically requesting public comment on issues that would arise in doing so. This expansion would protect the upwelling source waters of the sanctuaries as well as nationally-significant seascapes, wildlife, and shipwrecks, and would promote ecotourism and sustainable fishing practices. Although no decision has been made yet regarding this possible action, expanded sanctuary boundaries could protect up to an additional 2,771 square statute miles.

Review Process

The review process for the proposed expansion of the sanctuary boundaries is composed of four stages:

1. Determine the scope of issues to be addressed and identify significant issues related to any proposed expansion;
2. Prepare and release a draft environmental impact statement (DEIS) that identifies boundary expansion alternatives, together with all other documents required by the NMSA including a resource assessment, revised management plans, and a notice of proposed rulemaking (NPRM) to amend the sanctuary regulations;
3. Allow public review and comment on the DEIS, NPRM, and related documents; and
4. Prepare and release a final environmental impact statement and related documents, including a response to public comments, with a final rule if appropriate.

NOAA anticipates that completing the review and process for potentially expanding sanctuary boundaries will take approximately 18–24 months.

At this time, NOAA is soliciting public comments to:

1. Gather information and comments from individuals, organizations, and government agencies on: (a) Whether NOAA should expand GFNMS and CBNMS boundaries; and (b) what, if any, potential effects might result from a boundary expansion; and
2. Help determine the scope of issues, including alternatives to be considered, in the preparation of an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*), if warranted.

Public Scoping Meetings: NOAA intends to conduct a series of public scoping meetings to collect public comments. These meetings will be held on the following dates and at the following locations and times:

1. Bodega Bay, CA

Date: January 24, 2013.
Location: Bodega Bay Grange Hall.
Address: 1370 Bodega Avenue, Bodega Bay, CA 94923.
Time: 6 p.m.

2. Gualala, CA

Date: February 12, 2013.
Location: Gualala Community Center.
Address: 47950 Center Street, Gualala, CA 95445
Time: 6 p.m.

3. Pt. Arena, CA

Date: February 13, 2013.
Location: Point Arena High School.
Address: 185 Lake Street, Point Arena, CA 95468.
Time: 6 p.m.

Authority: 16 U.S.C. 1431 *et seq.;* 16 U.S.C. 470.

Dated: December 12, 2012.

Daniel J. Basta,
Director for the Office of National Marine Sanctuaries.

[FR Doc. 2012–30581 Filed 12–20–12; 8:45 am]
BILLING CODE 3510–NK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1062]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Oak Island, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to extend the temporary safety zone established on the waters of the Atlantic Intracoastal Waterway at Oak Island, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The safety zone extension will temporarily restrict vessel movement within the designated area starting on February 14, 2013 through June 15, 2013.

DATES: Comments and related material must be received by the Coast Guard on or before January 7, 2013.

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

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*
(2) *Fax:* 202–493–2251.
(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–1062) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–1062) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

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

B. Regulatory History and Information

We note that this NPRM proposes an extension of an existing safety zone. This zone was originally established from September 12 through December 12, 2012 (See ''Safety Zone, Atlantic Intracoastal Waterway; Oak Island, NC,'' 77 FR 44466, July 30, 2012). It was subsequently extended through February 14, 2013 (See 77 FR 64720, October 23, 2012).

C. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The contract provides for replacing the fender system to commence on September 12, 2012 with a completion date of December 12, 2012. The contractor was granted an extension by North Carolina Department of Transportation until February 14, 2013. Due to the presence of rock on the sea bed, which will impact construction progress, NCDOT has granted an additional extension until June 15, 2013 to complete the bridge maintenance. The contractor will utilize a 140 foot deck barge with a 40 foot beam as a work platform and for equipment staging.

D. Discussion of Proposed Rule

The proposed temporary safety zone will encompass the waters directly under the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the work supervisor at the NC 133 Fixed Bridge while the safety zone is in effect. The initial safety zone is currently in effect until February 14, 2013. Here, the additional proposed extension will extend the end date from 8 p.m. February 14, 2013 to 8 p.m. June 15, 2013.

This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance. During this period the Coast Guard will require a one hour notification to the work supervisor at the NC 133 Fixed Bridge at the Atlantic Intracoastal Waterway crossing, mile 311.8, Oak Island, North Carolina. The notification requirement will apply during the maintenance period for vessels requiring a horizontal clearance of greater than 50 feet.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting through the noted portion of the Atlantic Intracoastal Waterway; it only imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 p.m. February 14, 2013 through 8 p.m. June 15, 2103.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see

ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T05–1062 to read as follows:

§ 165.T05–1062 Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC.

(a) Regulated Area. The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W).

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–1062. In addition the following regulations apply:

(1) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island,

North Carolina must contact the work supervisor on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions.

(1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) Work Supervisor means the contractors on site representative.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced from through 8 p.m. February 14, 2013 through 8 p.m. June 15, 2013, unless cancelled earlier by the Captain of the Port.

Dated: December 7, 2012.

A. Popiel,

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

[FR Doc. 2012–30755 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 77, No. 246

Friday, December 21, 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

Submission for OMB Review; Comment Request

December 18, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Assistant Secretary for Administration

Title: USDA/1994 Tribal Scholars Program.

OMB Control Number: 0503–0016.

Summary of Collection: The USDA/1994 Tribal Scholars Program, within the Office of the Assistant Secretary for Administration, Office of Advocacy and Outreach, is an annual human capital initiative supporting Executive Order 13592—Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities. The USDA/1994 Tribal Scholars Program is to assist USDA Agencies to meet critical human capital needs in rural, Tribal areas through qualified American Indian or Alaska Native students hired utilizing Indian Preference. This program offers a combination of paid work experience with the USDA sponsoring agency through the USDA Pathways Internship Program guidelines and the payment of a student's tuition, fees, and books. USDA Tribal Scholarship recipients are required to study in the food, and agricultural, and related sciences, as defined by the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(8)).

Need and Use of the Information: Information will be collected to determine the eligibility of applicants to the USDA Tribal Scholars Program. Each applicant to the program will be required to apply to an announced vacancy announcement through the USDA Pathways Internship Program and submit an application with required documentation. This will include: (1) A resume or OF–612 form; (2) Proof of acceptance or enrollment in school via transcript (mandatory for current students and recent graduates), or a letter of acceptance, or proof of registration, or letter from school official (on official letterhead); (3) Standing Register/Certificate of Eligibility; and (4) OF–306 Declaration for Federal Employment.

The collected information is used only to identify students for the USDA 1994 Tribal Scholarship Award.

Description of Respondents: Individuals or households.

Number of Respondents: 1,440.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5,040.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–30776 Filed 12–20–12; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–12–0054]

Renewal of the Plant Variety Protection Board Charter

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), this notice announces that the Secretary of Agriculture intends to renew the Plant Variety Protection Board (PVP Board) Charter.

FOR FURTHER INFORMATION CONTACT: Paul Zankowski, USDA, Agricultural Marketing Service (AMS), 1400 Independence Ave. SW.; Rm. 4512-South Bldg., Mail Stop 0274; Washington, DC 20250–0274 or by phone at (202) 720–1128 or by email: *Paul.Zankowski@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines.

The PVPA also provides for a statutory Board (7 U.S.C. 2327) to be appointed by the Secretary of Agriculture. The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the Act; (2) provide advisory counsel to the Secretary on appeals concerning

decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the Act, ''Public Interest in Wide Usage'' (7 U.S.C. 2404). Renewing the PVP Board Charter is necessary and in the public interest.

The PVPA provides that ''the Board shall consist of individuals who are experts in various areas of varietal development covered by this Act.'' The Board membership ''shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public.'' The Board consists of 14 members, each of whom is appointed for a 2-year period, with no member appointed for more than three 2-year periods. Nominations are made by farmers' associations, trade associations in the seed industry, professional associations representing expertise in seed technology, plant breeding, and variety development, public and private research and development institutions (13 members) and the USDA (one member).

Equal opportunity practices, in agreement with USDA nondiscrimination policies, will be followed in all membership appointments to the Board. To ensure that the suggestions of the Board have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The Charter for the PVP Board will be available on the Web site at: *http://www.ams.usda.gov/PVPO* or may be requested by contacting the individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Dated: December 17, 2012.

David Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–30745 Filed 12–18–12; 4:15 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–12–0056]

Plant Variety Protection Board; Soliciting Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Plant Variety Protection Office (PVPO) is seeking candidates for the Plant Variety Protection Board. We are asking for the submission of nomination packages (an Application for Committee Membership (AD–755) and resume) by January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Zankowski, USDA, Agricultural Marketing Service (AMS), Plant Variety Protection Office; 1400 Independence Avenue SW., Room 3543; Washington, DC 20250 or by phone at (202) 720–5231 or by email: *Paul.Zankowski@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines.

The PVPA also provides for a statutory Board to be appointed by the Secretary of Agriculture (7 U.S.C. 2327). The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the PVPA; (2) provide advisory counsel to the Secretary on all appeals from the Examiner; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the PVPA, ''Public Interest in Wide Usage'' (7 U.S.C. 2404). Reestablishing the PVP Board is necessary and in the public interest.

The PVPA provides that ''The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act.'' (7 U.S.C. 2327(a)). The Board membership ''shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public.'' (7 U.S.C. 2327(a)).

The PVP Board consists of 14 members, each of whom is appointed for a 2-year period, with no member appointed for more than three 2-year periods. The term of the present Board will expire in December 2012. The first meeting of the new Board will most likely be held in the spring/summer of 2013. In order to provide the Secretary of Agriculture with a broad choice from a diverse group of applicants, the PVPO is asking for nominated members to serve on the Board for 2 years from the date of appointment. PVP Board members will serve without compensation, except for standard government reimbursable expenses.

To ensure that the recommendations of the Board take into account the needs of the diverse groups served by the USDA (from research and production to trade, use, and consumption). The USDA is responsible for vetting every candidate who applies for membership to a USDA Research and Promotion Board and/or Federal Advisory Committee. Also, please note that federally registered lobbyists are prohibited from serving on advisory committees governed by the Federal Advisory Committee Act (FACA).

In order to be appointed by the Secretary of Agriculture to serve on a board or committee, each applicant must clear all stages of the vetting process. Vetting is a comprehensive personal and professional background investigation that specifically includes, but is not limited to, an analysis of each candidate's criminal history, bankruptcy filings, liens and judgments, affiliations and associations, lobbyist status, and prior involvement with USDA. This process is used to ensure that the finest candidates are selected to represent the interests of the United States Department of Agriculture.

Submit full nomination packages with completed AD 755 background information forms and resumes no later than January 7, 2013. Final selection of members will be made by the Secretary from nominations submitted. All nomination materials should be mailed in a single, complete package to: Paul Zankowski, Commissioner; Plant

Variety Protection Office; 1400 Independence Avenue SW., Room 3543; Washington, DC 20250.

Nomination packages can also be sent to Thomas J. Vilsack, Secretary, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250 outside of a formal call for nominations.

USDA has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on these advisory committees. We encourage and welcome nominations for female, minority, or disabled candidates.

Please see *http://www.ams.usda.gov/PVPO* and click on PVPO Board (under Resources on the right side) for information on the Charter, and AD–755 form. The AD–755 form can also be found on the USDA Advisory Committee Web site (*www.usda.gov/advisory_committees.xml*). The Charter for the PVP Board will be available on the Web site at: *http://www.fido.gov/facadatabase/docs_charters/1309_Charter_(2011-01-04-10-32-08).pdf* or may be requested by contacting the individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Dated: December 17, 2012.

David Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–30746 Filed 12–20–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests from the Public under the Textile and Apparel Safeguard Provision of the United States-Korea Free Trade Agreement.

OMB Control Number: None.

Type of Request: Regular submission (extension of a currently approved collection).

Burden Hours: 56.

Number of Respondents: 14.

Average Hours per Response: 4 hours for a Request; and 4 hours for a Comment.

Needs and Uses: Title III, Subtitle C, Section 331 through Section 338 of the United States-Korea Free Trade Agreement Implementation Act (the ''Act'') implements the textile and apparel safeguard provisions, provided for in Article 4.1 of the United States-Korea Free Trade Agreement (the ''Agreement''), which entered into force on March 15, 2012. This safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, a Korean textile or apparel article is being imported into the U.S. in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 4.1.1(b) permits the United States to (a) suspend any further reduction in the rate of duty provided for under Annex 2–B of the Agreement in the duty imposed on the article; or (b) increase duties on the imported article from Korea to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (''NTR'')/most-favored-nation (''MFN'') duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement enters into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under Section 332(a) of the Act, and for providing relief under Section 332(b) of the Act.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Korean, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry, subject to Section 332(b) of the Act.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante. (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 or via email at *JJessup@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.gov.*

Dated: December 17, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–30736 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Korea Free Trade Agreement.

OMB Control Number: 0625–0270.

Type of Request: Regular submission (extension of a currently approved collection).

Burden Hours: 89.

Number of Respondents: 16.

Average Hours per Response: 8 hours for Request for Commercial Availability Determination; 2 hours for Response to a Request; and 1 hour for Rebuttal.

Needs and Uses: The United States and Korea negotiated the U.S.-Korea Free Trade Agreement (the ''Agreement''), which entered into force on March 15, 2012. Subject to the rules of origin in Annex 4–A of the

Agreement, pursuant to the provisions of the Agreement, textile and apparel articles must contain fiber, yarn, and fabric produced in Korea or the United States to receive duty-free tariff treatment. Appendix 4–B–1 of the Agreement will contain a list of specific fiber, yarn, or fabric that either importing Party determined, based on information supplied by interested entities, that the fiber, yarn, or fabric is not available in commercial quantities in a timely manner in its territory, or if no interested entity objects to the request. Textile and apparel articles containing these fibers, yarns, or fabrics would also be entitled to duty-free or preferential duty treatment despite not being produced in Korea or the United States.

The list of commercially unavailable fibers, yarns, and fabrics may be changed pursuant to the commercial availability provision in Chapter 4, Annex 4–B, Paragraphs 1–13 of the Agreement. Under this provision, interested entities from the United States or Korea have the right to request that a specific fiber, yarn, or fabric be added to, or removed from, the list of commercially unavailable fibers, yarns, and fabrics in Appendix 4–B–1.

Section 202(o)(3) of the Act provides that the President may modify the list of fibers, yarns and fabrics in Appendix 4–B–1 by determining whether additional fibers, yarns, or fabrics are not available in commercial quantities in a timely manner in the United States, and that the President will issue procedures governing the submission of requests and providing an opportunity for interested entities to submit comments. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (CITA), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA).

CITA must collect information about fiber, yarn or fabric technical specifications and the production capabilities of U.S. textile producers to determine whether certain fibers, yarns, or fabrics are available in commercial quantities in a timely manner in the United States, subject to Section 202(o)(3) of the U.S.-Korea Free Trade Agreement Implementation Act.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Department Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 or via the Internet at *JJessup@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: December 17, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–30737 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1873]

Approval for Manufacturing Authority; Foreign-Trade Zone 277; Suntech Arizona, Inc. (Solar Panel Manufacturing); Goodyear, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Maricopa Foreign Trade Zone, Inc., grantee of FTZ 277, has requested manufacturing authority on behalf of Suntech Arizona, Inc., within FTZ 277, in Goodyear, Arizona (Doc. 26–2012, filed March 27, 2012);

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 20356, 4/4/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 277 on behalf of Suntech Arizona, Inc., as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 7th day of December 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–30844 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1865]

Grant of Authority; Establishment of a Foreign-Trade Zone Under the Alternative Site Framework; Genesee County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170–1173, 01/12/2009; (correction 74 FR 3987, 01/22/2009); 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Genesee Gateway Local Development Corporation (the Grantee) has made application to the Board (Docket 69–2011, filed 10/27/11) requesting the establishment of a foreign-trade zone under the ASF with a service area of Genesee County, New York, adjacent to the Rochester U.S. Customs and Border Protection port of entry, and proposed Sites 1 and 2 would be categorized as magnet sites;

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 67672, 11/02/11), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 284, as described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 1 if not activated within five years from the date of approval.

Signed at Washington, DC, this 4th day of December 2012.

Rebecca Blank,

Acting Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–30846 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–91–2012]

Foreign-Trade Zone 22—Chicago, IL, Notification of Proposed Production Activity, Abbott Laboratories, Inc., AbbVie, Inc. (Pharmaceutical Production), North Chicago, IL, Area

Abbott Laboratories, Inc. (Abbott) and AbbVie, Inc. (AbbVie) submitted a notification for expanded production authority within Subzones 22F and 22S, at sites located in the North Chicago and Lake County, Illinois, area. The facilities are used for the production of a wide variety of pharmaceutical and diagnostic products, medical devices and equipment. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on December 14, 2012.

Subzone 22F was approved by the Board in 1992 (Board Order 611, 12/14/1991, 57 FR 61045, 12/14/1992) and authority was later expanded in 1999 and 2009 (Board Order 1051, 8/30/1999, 64 FR 48578, 9/7/1999 and Board Order 1654, 12/18/2009, 75 FR 340–341, 1/5/2010). A minor boundary modification under 15 CFR 400.38 of the Board's regulations was approved, effective August 1, 2012, transferring two sites from SZ 22F at the Abbott facilities to AbbVie, now designated as Subzone 22S (S–66–2012).

Abbott and Abbvie are now requesting authority to use production inputs sourced from abroad that include: Peptones and their derivatives; other protein substances and their derivatives; and heterocyclic compounds, aromatic compounds, sulfanomides, and catalysts used in discovery, research and development (duty rates range from 3.7% to 6.5%).

Production under FTZ procedures could exempt Abbott/AbbVie from customs duty payments on the foreign status inputs used in export production for the additional activity proposed. On its domestic sales, for the foreign status inputs noted above, Abbott/AbbVie would be able to choose the duty rates during customs entry procedures that apply to the following additional pharmaceutical products that include active ingredients, placebo, and protein used in research and development: Placebo products intended for clinical trials; radioactive elements and isotopes and compounds other than those of subheadings 2844.10, 2844.20, and 2844.30; alloys; dispersions (including cermets); ceramic products and mixtures containing these elements; isotopes or compounds; radioactive residues; elements, isotopes and compounds with cobalt-60 radioactivity only; and other elements, isotopes and compounds: Americium-241, californium-252, curium-244, cesium-137, gadolinium-153, iridium-192, promethium-147, radium-266, selenium-75, or ytterbium-169; peptones and their derivatives; and other protein substances and their derivatives (duty free–6.4%). Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 30, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: December 14, 2012.

Executive Secretary.

[FR Doc. 2012–30848 Filed 12–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold an open meeting via teleconference on Thursday, January 10, 2013 from 1:00 p.m. to 3:00 p.m. Eastern Time. The primary purpose of this meeting is to review the Committee's draft letter report to the NIST Director. Any draft meeting materials will be posted prior to the meeting on the National Earthquake Hazards Reduction Program (NEHRP) Web site at *http://nehrp.gov/*. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The ACEHR will hold a meeting via teleconference on Thursday, January 10, 2013, from 1:00 p.m. until 3:00 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: Questions regarding the meeting should be sent to NEHRP Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Dr. Hayes' email address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 14 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory

Committee (SESAC) serves in an ex-officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities;
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ACEHR will hold an open meeting via teleconference on Thursday, January 10, 2013, from 1:00 p.m. until 3:00 p.m. Eastern Time. There will be no central meeting location. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number. The primary purpose of this meeting is to review the Committee's draft letter report to the NIST Director. Any draft meeting materials will be posted prior to the meeting on the NEHRP Web site at *http://nehrp.gov/.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request detailed instructions on how to dial in from a remote location to participate in the meeting by contacting Michelle Harman. Michelle Harman's email address is *michelle.harman@nist.gov*, and her phone number is 301–975–5324. Approximately 15 minutes will be reserved from 2:45 p.m.–3:00 p.m. Eastern Time for public comments; speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to the ACEHR, NIST, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, via fax at (301) 975–4032, or electronically by email to *info@nehrp.gov.*

All participants of the meeting are required to pre-register. Anyone wishing to participate must register by 5:00 p.m. Eastern Time, Monday, January 7, 2013, in order to be included. Please submit your full name, email address, and phone number to Michelle Harman. After registering, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Michelle Harman's email address is *michelle.harman@nist.gov*, and her phone number is (301) 975–5324.

Dated: December 17, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–30843 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 06048–XC401

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the joint resource management plan (RMP), represented by five Hatchery and Genetic Management Plans (HGMPs), submitted by the Lower Elwha Klallam Tribe and the Washington Department of Fish and Wildlife to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the ESA 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plans specify the propagation of five species of salmon and steelhead in the Elwha River of Washington state. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined pursuant to Limit 6 of the 4(d) rule for salmon and steelhead that implementing and enforcing the RMP will not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook salmon and Puget Sound steelhead.

DATES: The final determination on the take limit was made on December 10, 2012.

ADDRESSES: Written responses to the determination should be sent to the Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at (360) 753–9579 or email: *tim.tynan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, Puget Sound, naturally produced and artificially propagated.

Steelhead (*O. mykiss*): Threatened, Puget Sound, naturally produced and artificially propagated.

Background

The plans describe hatchery operations intended to protect five species of salmon and steelhead (two of them ESA-listed) during the removal of two dams on the Elwha River, and subsequent propagation intended to enhance the rebuilding of those salmonids species. Four of the plans are submitted by the Lower Elwha Klallam Tribe, and one by the Washington Department of Fish and Wildlife (WDFW); the plans were developed jointly by the Tribe and the WDFW. NMFS has determined that implementing and enforcing the RMP will not appreciably reduce the likelihood of survival and recovery of ESA-listed Puget Sound Chinook salmon or Puget Sound steelhead.

As required by § 223.203(b)(6) of the ESA 4(d) rule, NMFS must determine pursuant to 50 CFR 223.209 and pursuant to the government-to-government processes therein whether the RMP for Elwha River basin hatcheries would appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU or Puget Sound Steelhead DPS. NMFS must take comments on how the RMP addresses the criteria in § 223.203(b)(5) in making that determination.

Discussion of the Biological Analysis Underlying the Determination

The proposed hatchery activities described in the RMP are intended to conserve salmon and steelhead populations in the Elwha River basin during operations to remove two dams on the Elwha River, and for a period of time after the dams have been removed, as the environment improves. The RMP provides the framework through which the Tribal and the State of Washington can jointly manage Elwha River salmon and steelhead hatchery, monitoring, and evaluation activities while meeting requirements specified under the ESA. The proposed action covers continued operation of the five hatchery programs over the initial phases of fish restoration in the Elwha River—the preservation and recolonization phases—with transitions between phases gauged by

achievement of population viability parameters for listed Chinook salmon and steelhead. The programs would continue to be operated to minimize any impacts on genetic integrity of the natural salmon and steelhead populations while providing the intended benefits. The benefits include preserving and assisting in the recolonization of Elwha River salmon and steelhead during, and for a period following, dam removal when natural productivity conditions will be poor.

The hatchery programs would add marine-derived nutrients to the aquatic and terrestrial ecosystems above Glines Canyon Dam, which have been inaccessible to salmon and steelhead since the early 1900s. The programs would increase total and natural-origin abundance and spatial structure of the Chinook salmon population as hatchery-origin fish return to spawn naturally with wild fish and new habitat becomes available. The hatchery programs would protect the Elwha River salmon and steelhead populations when turbidity levels are high and detrimental to natural-origin fish survival due to dam removal activities. The proposed plans are interrelated and interdependent through shared population preservation and recolonization objectives and effects, broodstock collection locations and actions, fish rearing and release sites, monitoring and evaluation actions, and funding sources.

The RMP includes provisions for annual reports that will assess compliance with performance standards established through the RMP. Reporting and inclusion of new information derived from RMP research, monitoring, and evaluation activities provides assurance that performance standards will be achieved in future seasons. NMFS' evaluation is available on the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov.*

Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its proposed evaluation and pending determination on the RMP for public review and comment on October 16, 2012 (77 FR 63294). The proposed evaluation and pending determination and an associated draft environmental assessment were available for public review and comment for 30 days.

NMFS received four sets of comments: Three from Tribal organizations and one on behalf of several environmental groups. Several comments were addressed in NMFS' final Evaluation and Recommended Determination document, but no substantive changes to the RMP were required. A detailed summary of the comments and NMFS' responses is also available on the NMFS Northwest Region Web site. Based on its evaluation and recommended determination and taking into account the public comments, NMFS issued its final determination on the Elwha River basin salmon and steelhead hatchery RMP.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with an RMP developed jointly by the State of Washington and the Tribe and determined by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Dated: December 17, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–30834 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC407

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its *Monkfish* Advisory Panel on January 9, 2013, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 9, 2013 at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: In Amendment 6 to the *Monkfish* Fishery Management Plan, the New England and Mid-Atlantic Councils are considering a range of possible changes to the management system, including modifications to the current system, incorporation of *monkfish* into groundfish sectors and/or individually transferrable quotas (ITQs). The Advisory Panel will review the Amendment 6 draft document, focusing on the section pertaining to modifications to the current days-at-sea (DAS) trip limit management system, including alternatives for establishing a *monkfish* DAS leasing program. The recommendations of the Advisory Panel will be forwarded to the *Monkfish* Committee which will meet at a later date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: December 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–30708 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC408

Fisheries of the South Atlantic; Southeast Data, Assessment and Review (SEDAR); Assessment Process Webinars for Caribbean Blue Tang and Queen Triggerfish

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

ACTION: Notice of SEDAR 30 assessment webinar II for Caribbean blue tang and queen triggerfish.

SUMMARY: The SEDAR 30 assessments of the Caribbean blue tang and queen triggerfish will consist of a series of workshops and webinars: This notice is for a webinar associated with the Assessment portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 30 assessment webinar I will be held on January 10, 2013, from 10 a.m. to approximately 12 noon eastern time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustment may result in the meeting being extended from, or completed prior to, the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see Contact Information to request an invitation providing webinar access information).

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone (843) 571–4366. Email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) A Data Workshop; (2) an Assessment Process utilizing webinars and workshops; and (3) a Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species (HMS) Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 30 Assessment Webinar II

Participants of the webinar will have an opportunity to review and comment on the draft assessment report completed since the Assessment Workshop occurred.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least ten (10) business days prior to the meeting.

Dated: December 17, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries.

[FR Doc. 2012–30713 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC409

Fisheries of the South Atlantic; Southeast Data, Assessment and Review (SEDAR); Data Webinar for South Atlantic Gray Triggerfish (*Balistes capriscus*) and Blueline Tilefish (*Caulolatilus microps*)

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

ACTION: Notice of SEDAR 32 data webinar for South Atlantic gray triggerfish and blueline tilefish.

SUMMARY: The SEDAR 32 assessments of the South Atlantic stocks of gray triggerfish and blueline tilefish will consist of: A Data Workshop; a series of Assessment Webinars; and a Review Workshop. This notice is for a webinar associated with the Data portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 32 data Webinar will be held on January 16, 2013, from 1 p.m. until 5 p.m. The established time may be adjusted as necessary to accommodate the timely completion of discussion relevant to the data workshop process. Such adjustments may result in the meeting being extended from, or completed prior to, the time established by this notice.

ADDRESSES: The meeting will be held via Webinar. The Webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see Contact Information) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone (843) 571–4366. Email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) A Data Workshop; (2) an Assessment Process utilizing Webinars; and (3) a Review Workshop. The product of the Data Workshop is a data report which

compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species (HMS) Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 32 Data Webinar: Participants will present summary data, and discuss data needs and treatments.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least ten (10) business days prior to the meeting.

Dated: December 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–30727 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC411

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its *Herring* Advisory Panel on January 16, 2013 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 16, 2013 at 10 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisory Panel (AP) will discuss the development of Framework Adjustment 2 to the *Herring* Fishery Management Plan (FMP) and the 2013–2015 *Atlantic herring* fishery specifications; develop related AP recommendations for the committee and Council to consider. Framework 2 includes alternatives to modify the *herring* fishery specification process to allow for seasonal splitting of sub-ACLs (annual catch limits) in all four *herring* management areas, as well as annual carryover of un-utilized sub-ACL under certain conditions. The 2013–2015 *herring* fishery specifications include alternatives for 2013–2015 overfishing limit (OFL), acceptable biological catch (ABC) and ABC control rule, management uncertainty and a total annual catch limit (ACL), domestic annual harvesting (DAH), domestic annual processing (DAP), border transfer (BT), options for sub-ACLs (annual quotas) for four *herring* management areas, set-asides for research and fixed gear fisheries, and alternatives for accountability measures (AMs) in the *herring* fishery. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: December 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–30730 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC412

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a work session, which is open to the public.

DATES: The HMSMT work session will begin each day at 8:30 a.m. on Wednesday, January 23; Thursday, January 24; and Friday, January 25, 2013. On each day the meeting will continue until business is completed.

ADDRESSES: The work sessions will be held in the Large Conference Room, Torrey Pines Court, National Marine Fisheries Service Southwest Fisheries Science Center, 3333 North Torrey Pines Court, La Jolla, CA 92037; telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The HMSMT will work on an assignment for the March 2013 Council meeting in Tacoma, WA. The Council directed the HMSMT to determine if any changes can be made to the closure dates for, and/or the southern boundary of, the Pacific Leatherback Conservation Area (PLCA) in order to enhance fishing opportunity in the California drift

gillnet fishery. Since the PLCA was established to reduce the take of endangered leatherback sea turtles in this fishery, other mitigation measures may be considered to compensate for any additional fishing opportunity. Specifically, the HMSMT will consider a regulatory limit on the annual number of incidental take interactions allowed in the fishery. This regulatory approach has been used successfully in the Hawaii-based shallow-set pelagic longline fishery to limit takes of leatherback and loggerhead sea turtles.

The HMSMT will also begin work on the next Stock Assessment and Fishery Evaluation document, which is prepared annually, summarizing information from the previous year. Informational topics may also be discussed, time permitting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 18, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–30765 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC410

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its *Herring* Oversight Committee on January 17, 2013 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, January 17, 2013 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review/discuss alternatives under consideration in Framework Adjustment 2 to the Herring FMP and related *Herring* Advisory Panel (AP) recommendations as well as develop Committee recommendations regarding the final selection of measures for Framework 2. Framework 2 includes alternatives to modify the *herring* fishery specification process to allow for seasonal splitting of sub-ACLs (annual catch limits) in all four *herring* management areas, as well as annual carryover of un-utilized sub-ACLs under certain conditions. The committee will also review/discuss alternatives proposed in the 2013–2015 Atlantic *herring* fishery specifications and related AP recommendations and develop committee recommendations regarding the selection of final 2013–2015 fishery specifications. Fishery specifications for 2013–2015 include alternatives for 2013–2015 overfishing limit (OFL), acceptable biological catch (ABC) and ABC control rule, management uncertainty and a total annual catch limit (ACL), domestic annual harvesting (DAH), domestic annual processing (DAP), border transfer (BT), options for sub-ACLs (annual quotas) for four herring management areas, set-asides for research and fixed gear fisheries, and alternatives for accountability measures (AMs) in the *herring* fishery. The committee may discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: December 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–30728 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC413

New England Fishery Management Council (NEFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee (SSC) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 23, 2013 at 8 a.m.

ADDRESSES: The meeting will be held at the Westin Waterfront Hotel, 425 Summer Street, Boston, MA 02210; telephone: (617) 532–4600; fax: (617) 532–4650.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The NEFMC's Scientific and Statistical Committee will meet to review Gulf of Maine and Georges Bank cod stock

assessments from the Northeast Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC 55) and develop ABC recommendations for these stocks fishing years 2013 through 2015. The committee may not develop all the recommendations for these stocks at this meeting. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 18, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–30766 Filed 12–20–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions And Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product previously furnished by such agency.

DATES: *Comments Must Be Received on or Before:* 1/21/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7420–00–NIB–0023—Talking Calculator, 508 Compliant, 12 Digit, Portable, Desktop, Battery Operated
NPA: MidWest Enterprises for the Blind, Inc., Kalamazoo, MI
Contracting Activity: General Services Administration, New York, NY
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Blow-Molded Folding Tables

NSN: 7105–00–NIB–0064—Round Table, Folding Legs, 60'' x 29''
NSN: 7105–00–NIB–0065—Bi-fold Table, 60'' x 30''
NSN: 7105–00–NIB–0066—Personal Table, 30'' x 20''
NSN: 7105–00–NIB–0067—Folding Table with Heavy Duty Legs, 72'' x 30''
NSN: 7105–00–NIB–0068—Picnic Table, 72'' x 30''
NSN: 7105–00–NIB–0069—Utility Table, 60'' x 18''
NSN: 7105–00–NIB–0070—Utility Table, 72'' x 18''
NPA: MidWest Enterprises for the Blind, Inc., Kalamazoo, MI
Contracting Activity: General Services Administration, FSS Household and Industrial Furniture, Arlington, VA
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Grounds Maintenance Service, U.S. Coast Guard Facility, 9640 Clinton Drive, Houston, TX.
NPA: On Our Own Services, Inc., Houston, TX
Contracting Activity: Dept of Homeland Security, U.S. Coast Guard, Base New Orleans, New Orleans, LA
Service Type/Location: Grounds Maintenance Service, Joint Interagency Task Force South (JIATFS), Truman Annex, Key West, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL
Contracting Activity: Dept of the Army, W453 JIATFS, Key West, FL
Service Type/Location: Management of State Department Mobile Security Deployment (MSD) Kit, Department of State, (Offsite: Virginia Industries for the Blind, 1102 Monticello Rd, Charlottesville, VA), 2216 Gallows Road, Dunn Loring, VA.
NPA: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Department of State, Dunn Loring, VA
Service Type/Locations: IT Services, Defense Manpower Data Center (DMDC), Defense Human Resources Activity, 4800 Mark Center Drive, Alexandria, VA.
NPA: Lakeview Center, Inc., Pensacola, FL
Contracting Activity: Defense Human Resources Activity, Alexandria, VA

Deletion

The following product is proposed for deletion from the Procurement List:

Product

Bakery Mix, Biscuit Type

NSN: 8920–00–NSH–0001—Regular
NPA: Transylvania Vocational Services, Inc., Brevard, NC
Contracting Activities: Dept of Agriculture, Foreign Service Operations International Services Division, Washington, DC. Dept of Agriculture, Kansas City Acquisition Branch, Kansas City, MO

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–30798 Filed 12–20–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 1/21/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/12/2012 (77 FR 62219–62220), 10/19/2012 (77 FR 64326–64327) and 10/26/2012 (77 FR 65365), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.
2. The action will result in authorizing small entities to provide the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Recycling Services, Hart-Dole-Inouye Federal Center, 74 North Washington Avenue, Battle Creek, MI
NPA: Navigations, Inc., Battle Creek, MI
Contracting Activity: General Services Administration, Public Buildings Service, Property Management Service Center, Detroit, MI

Service Type/Location: Contract Closeout Service, Architect of the Capitol, Acquisitions & Material Mgmt. Div., Ford House Office Building, H2–263, Washington, DC
NPA: ServiceSource, Inc., Alexandria, VA
Contracting Activity: Architect of the Capitol, Washington, DC

Service Type/Location: Mess Attendant Services, 128th Air Refueling Wing, Wisconsin Air National Guard (WI ANG) Dining Facility, Bldg. 611, 1919 E Grange Ave., Milwaukee, WI
NPA: Easter Seals Southeast Wisconsin, Inc., South Milwaukee, WI
Contracting Activity: Dept of the Army, W7N8 USPFO Activity WI ARNG, Camp Douglas, WI

Service Type/Location: Custodial Service, U.S. Government Accountability Office (GAO) Field Office, 2196 D Street—Area B, Bldg. 39, Wright-Patterson AFB, Dayton, OH
NPA: Goodwill Easter Seals Miami Valley, Dayton, OH
Contracting Activity: U.S. Government Accountability Office (GAO), Except Comptroller General, GAO Acquisition Management, Washington, DC

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2012–30799 Filed 12–20–12; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–68]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

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 12–68 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 18, 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

DEC 10 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. 12-68, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $421 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,

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. 12–68

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:* Japan

(ii) *Total Estimated Value:*

Major Defense Equipment* ...	$ 0 million
Other	$421 million
Total	$421 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* For the upgrade of previously provided AEGIS Combat Systems as part of the modernization of two ATAGO Class Ships (DDG–177 ATAGO and DDG–178 ASHIGARA) with Integrated Air Missile Defense capability. The modifications/replacements consist of the following components: J6 AEGIS Weapon System Computer Program, 2 Multi-Mission Signal Processors for existing AN/SPY–1D(V) radar, 2 Common Processor Systems, 2 ship sets Common Display Systems (44 OJ–827(V)1 Tri Screen Display Consoles, 8 Display Processor Cabinets, 2 Video Wall Screen and Projector Systems, 46 Flat Panel Displays, and 2 Distributed Video Systems), 2 ship sets AN/SPQ–15 Digital Video Distribution Systems, 2 ship sets Operational Readiness Test Systems hosted in AEGIS Weapon Systems computing infrastructure, Ballistic Missile Defense (Mission Planner Blade server processors hosted in CPS, and 2 Kill Assessment Systems/

Weapon Data Recording Cabinets), Vertical Launching System MK41 upgrade to Baseline 7 (24 Motor Control Panels MK 448 Mod 1, 48 Programmable Power4 Supplies MK 179 Mod 0, and 24 Launch Sequencers MK 5 Mod 1, 4 Fiber Optic Distribution Boxes, and 24 Single Module Junction Boxes), 4 Launch Control Units MK 235 Mod 7 with Global Positioning System Integrator, 2 ship sets Gun Weapon Systems MK 34, and 2 ship sets MK 20 Electro-Optical Sensor Systems. Also included: Software updates, ordnance alterations and engineering changes, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (LYJ)

(v) *Prior Related Cases, if any:* FMS case LSU-$521M–22Jul02 FMS case LTS-$417M–14Aug03

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

* as defined in Section 47(6) of the Arms Export Control Act.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 10 Dec 2012

POLICY JUSTIFICATION

Japan—AEGIS WEAPON SYSTEM UPGRADE

The Government of Japan has requested a possible sale for the upgrade of previously provided AEGIS Combat Systems as part of the modernization of two ATAGO Class Ships (DDG–177 ATAGO and DDG–178 ASHIGARA) with Integrated Air Missile Defense capability. The modifications/replacements consist of the following components: J6 AEGIS Weapon System Computer Program, 2 Multi-Mission Signal Processors for existing AN/SPY–1D(V) radar, 2 Common Processor Systems, 2 ship sets Common Display Systems (44 OJ–827(V)1 Tri Screen Display Consoles, 8 Display Processor Cabinets, 2 Video Wall Screen and Projector Systems, 46 Flat Panel Displays, and 2 Distributed Video Systems), 2 ship sets AN/SPQ–15 Digital Video Distribution Systems, 2 ship sets Operational Readiness Test Systems hosted in AEGIS Weapon Systems computing infrastructure, Ballistic Missile Defense (Mission Planner Blade server processors hosted in CPS, and 2 Kill Assessment Systems/Weapon Data Recording Cabinets), Vertical Launching System MK41 upgrade to Baseline 7 (24 Motor Control Panels MK 448 Mod 1, 48 Programmable Power4 Supplies MK 179 Mod 0, and 24 Launch Sequencers MK 5 Mod 1, 4 Fiber Optic Distribution Boxes, and 24 Single Module Junction Boxes), 4 Launch Control Units MK 235 Mod 7 with Global Positioning System Integrator, 2 ship sets Gun Weapon Systems MK 34, and 2 ship sets MK 20 Electro-Optical Sensor Systems. Also included: Software updates, ordnance alterations and engineering changes, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $421 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of this region. The U.S. Government shares bases and facilities in Japan. This proposed sale is consistent with U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The proposed sale of AEGIS components to Japan will contribute to U.S. security objectives by providing a significantly improved Air Warfare capability. This sale will enhance Japan's Ballistic Missile Defense (BMD) capabilities by modernizing and upgrading the AEGIS technology on its two Atago-class destroyers. The Government of Japan can easily integrate the capabilities of these upgraded AEGIS Weapon Systems into its concept of operations. Japan will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin MS2 in Mooretown, New Jersey. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to Japan involving six U.S. Government and ten contractor representatives for technical reviews/support, programs management, and training over a period of three years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–68

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. AEGIS Weapon System (AWS) hardware is Unclassified. The software, documentation, combat system training, and technical services/documentation will be provided up to and including Secret. Access to the manuals and technical documents is limited to those for whom the manuals and documents are necessary for operational use and organizational maintenance. AWS Baseline 9 requires modernization of the installed AEGIS combat system hardware to include Common Display System, Common Processing System, and Multi-Mission Signal Processor and is Unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–30810 Filed 12–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0168]

Proposed Collection; Comment Request

AGENCY: Department of Defense (DoD), DoD Chief Information Officer (DoD CIO).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the DoD CIO announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are visited 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 19, 2013.

ADDRESSES: You may submit comments, identified by docket number DOD–2012–OS–0168 and title: DoD CIO IASP Information Collection, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Chief Information Officer, 4800 Mark Center Drive, East Tower, Suite 11E08, Alexandria, VA 22350–1900.

Title and OMB Number: Information Assurance Scholarship Program; OMB Control Number 0704–0486.

Needs and Uses: The National Security Agency (NSA) is the Executive Administrator of the DoD Information Assurance Scholarship Program (IASP), serving on behalf of DoD Chief Information Officer. Those who wish to participate in the DoD IASP Recruitment program must complete and submit an application package through their college or university to NSA. Centers of Academic Excellence in Information Assurance and Research (CAEs) interested in applying for capacity-building grants must complete and submit a written proposal, and all colleges and universities subsequently receiving grants must provide documentation on how the grant funding was utilized and the resulting accomplishments. Without this written documentation, the DoD has no means of judging the quality of applicants to the program or collecting information regarding program performance. In addition, the DoD IASP participants and their faculty advisors (Principal Investigators) are asked to complete annual program assessment surveys. These surveys are collectively reviewed to assess the program's effectiveness from the perspective of the students and Principal Investigators. The survey information is used to improve the program in subsequent years.

Affected Public: ''Individuals or households,'' specifically college students at institutions designated as CAEs who are interested in, and qualify to apply for a scholarship; CAEs interested in submitting proposals for capacity-building grants, and faculty advisors (Principal Investigators).

Application Process

Annual Burden Hours: 1,926 hours.
Number of Respondents: 337.
Responses per Respondent: 1.
Average Burden per Response: 5.715 hours.

Assessments

Annual Burden Hours: 37 hours.
Number of Respondents: 147.
Responses per Respondent: 1.
Average Burden per Response: 15 minutes.
Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents to the scholarship information collection are applicants who provide academic records and professional experience summaries to the NSA for the IASP scholar selection process. Respondents to the grants information collection are Principal Investigators at designated Centers of Academic Excellence (CAE) participating in the IASP who provide proposals for capacity building initiatives supporting the expansion of Information Assurance programs at the CAE and across the nation. The DoD IASP is designed to: Increase the number of new college graduate entrants to DoD who possess key cyber-security skill sets; serve as a tool to develop and retain well-educated military and civilian personnel who support the Department's cyberspace mission including cutting edge research and development; and serve as a mechanism to build the nation's cyber infrastructure through grants to colleges and universities designated as CAEs by the National Security Agency and the Department of Homeland Security. In addition, respondents to the annual program assessment survey provide feedback on the program, including suggestions for improvements and changes that can be incorporated to make the grants IASP information collection process stronger and more efficient.

Dated: December 18, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–30743 Filed 12–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–HA–0165]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the extension of an existing public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 19, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Health Affairs (OASD), TRICARE Operations Division, ATTN: Lt Col Kathleen Gates, 7700 Arlington Blvd., Suite 5101, Falls Church, VA 22042, or call TRICARE Operations Division, at 703–681–0039.

Title; Associated Form; and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0222.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 35,560.

Number of Respondents: 711,204.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical professionals who provide dental services. Members of the Armed Forces of the United States are the recipients of the dental examination. The Armed Forces Reserve component members must maintain their dental health at a predetermined level so problems do not occur when they are deployed to a military operation. Reserve component members usually receive their dental care from civilian dentists; therefore it would be civilian dentists who would complete the form. Following a routine dental examination, the dentist would review the categories listed on the form and circle the number corresponding to the condition that best describes the dental health of the patient. If dental problems can be identified, they are indicated on the form. Once the form is complete and the dentist signs it, the members take the form back to the organization to which they belong. The information on the form is logged into a database. The form is kept in the health record until no longer needed and then it is destroyed.

Dated: December 18, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–30742 Filed 12–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0162]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Contract Audit Agency is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on January 22, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before January 22, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastromichalis, DCAA FOIA/Privacy Act Management Analyst, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, Telephone number: (703) 767–1022.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 18, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 215.1

SYSTEM NAME:

Voluntary Leave Transfer Program (January 31, 1997, 62 FR 4731).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete and replace with ''DCAA government employees who have volunteered to participate in the leave transfer program as either a donor or a recipient.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with ''5 U.S.C. 6331 et seq., Leave; 10 U.S.C. 136, Assistant Secretaries of Defense; 5 CFR part 630, Absence and Leave; DoD Directive 5105.36, Defense Contract Audit Agency; E.O. 9397 (SSN), as amended.''

* * * * *

SAFEGUARDS:

Delete and replace with ''Electronic records are maintained in password-protected network and accessible only to DCAA personnel, management, and administrative support personnel on a need-to-know basis to perform their duties. Access to the network where records are maintained requires a valid Common Access Card (CAC). Paper records are secured in locked cabinets, offices, or buildings during non-duty hours. The same security standards currently applied to individually-issued CAC card are applicable to paper compilations.''

* * * * *

CONTESTING RECORD PROCEDURES:

Delete and replace with ''DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10;

32 CFR part 317; or may be obtained from the system manager.''

* * * * *

[FR Doc. 2012–30741 Filed 12–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for Development of a Long-Term Sediment Management Plan of the Mount St. Helens Sediment Retention Structure in the North Fork Toutle River

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Portland District, intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) to assess impacts associated with alternatives for the long-term management of the existing Mount St. Helens (MSH) Sediment Retention Structure (SRS) located at river mile 13.2 of the North Fork Toutle River. The MSH SRS is a single-purpose structure constructed in 1987–1989 to trap and control downstream movement of volcanic sediments eroding from the debris avalanche of Mount St. Helens. The purpose of the long-term management of the existing MSH SRS is to continue to provide flood damage reduction benefits to downstream communities along the Cowlitz River including Longview, Kelso, Castle Rock, and Lexington, Washington.

DATES: A Draft Supplemental Environmental Impact Statement is expected to be available for public review and comment in 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Kuhn, at the U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97204, by phone at 503–808–4752 or email: *Timothy.s.kuhn@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Announcement is made by the U.S. Army Corps of Engineers, Portland District (Corps), that a DSEIS will be developed to address environmental changes that have occurred since the original EIS was published in December 1984. The Water Resources Development Act of 2000, Section 339, authorized the Corps to maintain the flood damage reduction benefits through the end of the Mount St. Helens project planning period, which is 2035. The originally authorized work is described in the October 1985 report of the Chief of Engineers titled, *Mount St. Helens, Washington, Decision Document (Toutle, Cowlitz, and Columbia Rivers),* published as House Document No. 135, 99th Congress. Continued work on the Mount St. Helens project will be accomplished under the existing open construction project that was authorized in August 1985. The State of Washington is the non-federal sponsor of the project, and cost-sharing requirements are outlined in a 1986 Local Cooperation Agreement between the Department of the Army and State of Washington and Cowlitz County diking districts.

Scoping Process: a. The Corps of Engineers invites affected Federal, State, and local agencies, Native American tribes, and other interested organizations and individuals to participate in the development of the DSEIS. The Corps of Engineers anticipates conducting a public scoping meeting for this DSEIS in early 2013. The exact date, time, and location of this meeting have not yet been determined. This information will be publicized once the meeting arrangements have been made. The Corps will provide notice to the public of additional opportunities for public input on the SEIS during review periods for the draft and final SEIS.

b. Significant issues to be analyzed in depth in the DSEIS include alternatives for managing estimated volumes of sediment (sediment decay rate), potential impacts to fish and wildlife, and potential impacts to tributaries of the North Fork Toutle River, associated wetlands, and potential impacts to downstream waterways including the Cowlitz River.

c. The Corps will serve as the lead Federal agency in preparation of the DSEIS. The Corps intends to coordinate and/or consult with Federal and State agencies, as well as interested Native American Tribes during the scoping and preparation of the DSEIS. A decision will be made during the scoping process whether other agencies and/or Tribes will serve in an official role as Cooperating Agencies.

Dated: December 7, 2012.

John W. Eisenhauer,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 2012–30847 Filed 12–20–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent to Grant an Exclusive License of the United States; Patent No. 6,569,807

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of the following U.S. Patent No. 6,569,807, entitled ''Mycoherbicidal compositions and methods of preparing and using the same'', which issued on May 27, 2003, all reissues, reexaminations, and patent term extensions of this patent, and any international equivalents thereof to Marrone Bio Innovations, Inc.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: United States Army Engineer Research and Development Center, ATTN: CEERD–OT (Ms. Bea Shahin), 2902 Newmark Drive, Champaign, IL 6182–1076.

FOR FURTHER INFORMATION CONTACT: Ms. Bea Shahin (217) 373–7234, Fax (217) 373–7210, email: *Bea.S.Shahin@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Patent # 6,569,807 entitled ''Mycoherbicidal compositions and methods of preparing and using the same'' describes innovative techniques in the laboratory that induce a biocontrol fungus, *Mycoleptodiscus terrestris,* to produce survival propagules termed microsclerotia in fermentation broth culture. The microsclerotia are composed of melanaized fungal hyphae and can be dried to a moisture content of approximately 5% thus offering a shelf life to the intended product, a mycoherbicide. Upon rehydration the microsclerotia germinate hyphally within 24 hours and sprorogenically within 72 hours. The hyphae and the spores provide primary and secondary inoculum respective that can induce disease development in the nuisance aquatic species, *Hydrilla verticillata.* Although the original research intent was to develop a mycoherbicide that could be used to manage hydrilla, the patent as written is extremely broad and allows the Corps of Engineers exclusive rights to any fungus that produces

microsclerotia and can be used for aquatic plant control.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–30849 Filed 12–20–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Plains and Eastern Clean Line Transmission Project and Notice of Potential Floodplain and Wetland Involvement

AGENCY: Department of Energy.

ACTION: Notice of Intent (NOI) To Prepare an Environmental Impact Statement and Notice of Potential Floodplain and Wetland Involvement.

SUMMARY: The U.S. Department of Energy (DOE) intends to prepare an *Environmental Impact Statement for the Plains & Eastern Clean Line Transmission Project* (DOE/EIS–0486; Plains & Eastern EIS or EIS) to assess the potential environmental impacts of participating with Clean Line Energy Partners LLC (Clean Line) in the proposed Plains & Eastern Project (the proposed project). The proposed project would include an overhead ± 600 kilovolt (kV) high voltage direct current (HVDC) electric transmission system and associated facilities with the capacity to deliver approximately 3,500 megawatts (MW) primarily from renewable energy generation facilities in the Oklahoma Panhandle region to load-serving entities in the Mid-South and Southeast via an interconnection with the Tennessee Valley Authority (TVA). The proposed project would traverse Oklahoma, Arkansas, and Tennessee, a distance of approximately 700 miles between interconnection facilities in Texas County, Oklahoma, and Shelby County, Tennessee. The proposed project would require construction of a new alternating current (AC)/direct current (DC) converter station at each end of the transmission line.

Portions of the proposed project may affect floodplains and/or wetlands. This NOI, therefore, also serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements (10 CFR part 1022). The Plains & Eastern EIS will include a floodplain and wetland assessment. DOE plans to coordinate the National Environmental Policy Act (NEPA) review and the Section 106 compliance process under the National Historic Preservation Act (NHPA). DOE also intends to consult with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), as appropriate, pursuant to Section 7 of the Endangered Species Act.

DATES: DOE invites public comment on the scope of the Plains & Eastern EIS during a 90-day public scoping period beginning with publication of this notice and ending on March 21, 2013. See *Public Participation* in the **SUPPLEMENTARY INFORMATION** section for public scoping meeting dates and locations. DOE will consider all comments received or postmarked by the end of the scoping period and will consider comments received or postmarked after the ending date to the extent practicable.

ADDRESSES: Written comments on the scope of the Plains & Eastern EIS and requests to be added to the EIS distribution list may be submitted by any of the following methods:

- Electronic comments via the project Web site at *http://PlainsandEasternEIS.com.*
- Email to *info@PlainsandEasternEIS.com.*
- U.S. Mail to Plains & Eastern Clean Line EIS, 1099 18th Street, Suite 580, Denver, CO 80202.

For additions to the distribution list, please specify the format of the Plains & Eastern EIS that you would prefer to receive (printed copy, CD, or DVD) and a preference for either the complete EIS document or ''Summary Only.'' When completed, the EIS will be available for download at the project Web site (*http://PlainsandEasternEIS.com*) and at the DOE NEPA Web site (*http://energy.gov/nepa*).

FOR FURTHER INFORMATION CONTACT: For information on the Plains & Eastern EIS, contact Jane Summerson, Ph.D., DOE NEPA Document Manager, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, or email at *Jane.Summerson@ee.doe.gov.*

For general information about the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, or phone at (202) 586–4600, voicemail at (800) 472–2756, or email at *askNEPA@hq.doe.gov.* Additional information regarding DOE's NEPA activities is available on the DOE NEPA Web site at *http://energy.gov/nepa.*

SUPPLEMENTARY INFORMATION:

1. Background

Section 1222(b) of the Energy Policy Act of 2005 (EPAct) authorizes the Secretary of Energy, acting through and in consultation with the Administrator of the Southwestern Power Administration (Southwestern) to participate with other entities in designing, developing, constructing, operating, maintaining, or owning new electric power transmission facilities and related facilities located within any state in which Southwestern operates, provided the Secretary determines that certain conditions have been met. Southwestern is one of four Power Marketing Administrations that operates within DOE. Southwestern is chartered to market and deliver power in the southwestern United States, including Arkansas and Oklahoma, to rural electric cooperatives and municipal utilities.

On June 10, 2010, DOE issued a Request for Proposals (RFP) for new or upgraded transmission projects pursuant to Section 1222 (75 FR 32940). Clean Line Energy Partners LLC of Houston, Texas, the parent company of Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC (collectively referred to as Clean Line), responded to the RFP on July 6, 2010, providing a description of the proposed project and supporting information. Clean Line's original proposal included two HVDC lines, each rated at 3,500 MW, together with the capacity to deliver 7,000 MW. Since the original proposal was submitted, Clean Line has modified its Section 1222 proposal to a single HVDC line with the capacity to deliver 3,500 MW. More information on the proposed project, including updates, can be found at *http://PlainsandEasternEIS.com.* DOE has concluded that Clean Line's proposal complied with and was responsive to the RFP.

Prior to making a determination whether to participate in the proposed project, DOE must fully evaluate the proposed project, in consultation with Southwestern, including reviewing the potential environmental impacts pursuant to NEPA and the requirements of Section 1222(b). DOE is preparing the Plains & Eastern EIS pursuant to NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500 through 1508), and the DOE NEPA implementing regulations (10 CFR part 1021).

Portions of the proposed project may affect floodplains and/or wetlands. There are floodplains associated with the Cimarron River, North Canadian River, Arkansas River, White River,

Cache River, and Mississippi River, each of which would be crossed by the proposed transmission line, and potentially at other locations along the proposed routes. Similarly, wetlands could be present along the proposed routes, including near tributaries to rivers in the project area. This NOI, therefore, also serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements (10 CFR part 1022). The Plains & Eastern EIS will include a floodplain and wetland assessment. DOE plans to coordinate the NEPA review and the NHPA Section 106 compliance process. DOE also intends to initiate consultation with USFWS and NMFS, as appropriate, pursuant to Section 7 of the Endangered Species Act.

2. Purpose and Need for Agency Action

DOE's purpose and need for agency action is to implement Section 1222(b) of the EPAct. To that end, DOE needs to decide whether and under what conditions to participate in Clean Line's proposed Plains & Eastern Project.

3. Proposed Action and Alternatives

The proposed project would include an overhead ± 600kV HVDC electric transmission system with the capacity to deliver approximately 3,500 MW from the Oklahoma Panhandle region to load-serving entities in the Mid-South and Southeast. The proposed project would traverse Oklahoma, Arkansas, and Tennessee, a distance of approximately 700 miles. The western portion of the proposed project would interconnect to the transmission system operated by the Southwest Power Pool in Texas County, Oklahoma. The eastern portion of the proposed project would interconnect to the transmission system operated by TVA in Shelby County, Tennessee. TVA would make the necessary upgrades to its transmission system, which could include construction and operation of new transmission lines and substations and upgrades to existing transmission lines and substations.

A new AC/DC converter station would be built at each end of the transmission line. Each converter station would require the use of approximately 30 to 50 acres and would be located on private land. The converter stations are proposed to be located in Texas County, Oklahoma, and either Shelby County or Tipton County, Tennessee. The proposed project would include, in addition to the HVDC transmission line, four to six AC transmission lines of up to 345kV interconnecting the western converter station with new wind generation facilities that would be located in parts of the Oklahoma panhandle, southwest Kansas, and Texas panhandle within approximately 40 miles of the western converter station. Clean Line anticipates that electricity generated by these facilities would constitute the majority of the transmission capacity of the transmission line.

The proposed project would also include the following major facilities and improvements:

- Right-of-way easements for the transmission lines with a typical width of approximately 150 to 200 feet for the HVDC line and potentially narrower for the AC transmission lines.
- Tubular or lattice steel structures used to support the transmission lines. For the HVDC line, structures typically would be between 120 and 200 feet tall depending on site-specific conditions. Limited quantities of taller structures may be required in some locations to address engineering constraints. Structures for the AC transmission lines may be shorter.
- Access roads, including improvements to existing roads, new overland access, and new unpaved temporary roads to access the proposed project facilities and work areas during the construction and operation phases.
- Ancillary facilities, such as communications facilities for access control and protection.

DOE's proposed action is to participate with Clean Line in the proposed project. In the Plains & Eastern EIS, DOE will analyze the potential environmental impacts of a range of reasonable alternative routes that could comprise the proposed project. DOE will also identify possible mitigation strategies for potential environmental impacts.

Clean Line identified the proposed location for the western converter station based on the presence of both an excellent wind resource (as classified by the DOE National Renewable Energy Laboratory) and adequate electrical interconnection facilities, including planned upgrades to existing facilities. Clean Line identified the proposed location for the eastern converter station based on the presence of high-voltage transmission facilities capable of interconnection and delivery of up to 3,500 MW of energy to portions of the Mid-South and Southeast.

As part of its planning process, Clean Line first identified several corridors within a broad study area. Clean Line evaluated the corridors for engineering and environmental issues and subsequently refined the corridors using input from federal and state agencies, municipalities, non-governmental organizations, and various stakeholders. Clean Line then identified a study corridor approximately five to eight miles wide and held meetings with community leaders in counties intersected by the study corridor to solicit additional input. Clean Line then held open house meetings in fall 2012 to seek additional public input on potential routes. Using this information, Clean Line identified and submitted to DOE several potential routes.

In Oklahoma, the potential routes proposed by Clean Line begin in the central Oklahoma Panhandle and proceed in an east-southeasterly direction through generally rural areas between Oklahoma City and Tulsa, exiting the state in eastern Oklahoma near Sallisaw. The routes pass through the Central Flyway for migratory birds throughout Oklahoma. The proposed routes intersect the following counties in Oklahoma: Texas; Beaver; Harper; Woodward; Major; Garfield; Kingfisher; Logan; Payne; Lincoln; Creek; Okmulgee; Muskogee; and, Sequoyah. More specifically, from southern Texas County near Guymon, Oklahoma, to Harper County, routes are generally parallel to U.S. Highway 412 in an easterly direction through the Oklahoma Panhandle. They trend southeasterly in Woodward County, crossing the North Canadian River, and north of the city of Woodward and east of Boiling Springs State Park. From Woodward County, routes continue generally east and southeast in Major, Garfield, and Kingfisher counties, crossing the Cimarron River near Fairview and Glass Mountains State Park. In Payne County, routes cross the Cimarron River a second time and run near the Cushing Municipal Airport. The routes then trend in a southeasterly direction south of Cushing. The routes diverge around Bristow and run north of the city of Okmulgee. Routes continue a southeasterly trend in Muskogee County, crossing the Arkansas River at the Webbers Falls Reservoir near Gore. The routes then begin an easterly track, exiting Oklahoma northeast of Sallisaw in eastern Sequoyah County and entering Arkansas in western Crawford County.

In Arkansas, the routes proposed by Clean Line enter western Arkansas north of the city of Van Buren and proceed in an easterly direction through generally rural areas, exiting eastern Arkansas south of the city of Osceola, entering into Tennessee across the Mississippi River. The routes pass through the Mississippi Flyway for migratory birds throughout Arkansas

and Tennessee. The proposed routes intersect the following counties in Arkansas: Crawford; Franklin; Johnson; Pope; Conway; Van Buren; Faulkner; Cleburne; White; Jackson; Poinsett; and, Mississippi. More specifically, from Crawford County to eastern Pope County, the routes are south of the Ozark National Forest and generally follow the Arkansas River valley and Interstate Highway 40. Routes diverge around Alma and Dyer, but pass north of Ozark, Clarksville, and Dover, near the Cherokee Wildlife Management Area. In Conway County north of Morrilton, the routes continue in an easterly direction. The routes continue this easterly track north of Greenbrier, near Damascus and Quitman. North of Searcy, the routes turn northeast generally parallel to State Highway 67 north of Bradford, crossing the White River. The routes continue easterly along divergent paths across the Cache River and south of Marked Tree, cross Interstate Highway 55, to two proposed crossing locations of the Mississippi River. The proposed Mississippi River crossing locations are a north-south oriented crossing east of Wilson, Arkansas, at approximately river mile 768, and an east-west oriented crossing southeast of Joiner, Arkansas, at approximately river mile 762.

In Tennessee, the routes proposed by Clean Line enter western Tennessee from Arkansas at the two potential crossing locations described above and generally proceed in a southeasterly direction along separate paths through generally rural and suburban areas of Tipton County and Shelby County. The routes diverge around the community of Drummonds, with one route near Munford and Atoka and one route near Millington. The routes converge near the proposed interconnection point in Shelby County near Tipton, Tennessee.

DOE will analyze a range of reasonable alternatives. DOE has reviewed Clean Line's process and its proposed routes and determined that they provide a sufficient initial basis for the EIS. In addition, DOE will consider additional reasonable alternatives proposed in scoping comments and may expand or refine the range of alternatives based on those comments. Maps identifying the potential routes currently proposed for analysis are available on the EIS Web site at *http://PlainsandEasternEIS.com*. In addition to the facilities associated with the proposed project, the EIS will also analyze any facility additions and upgrades to third party systems to accommodate the proposed project.

The EIS also will analyze a No Action alternative, under which DOE would not participate with Clean Line in the proposed project. DOE assumes for analytical purposes that the Plains & Eastern Project would not move forward and none of the potential environmental impacts associated with the proposed project would occur.

4. Preliminary Identification of Environmental Issues

DOE proposes to analyze potential short-term environmental impacts, such as those from construction, and potential long-term environmental impacts of operating and maintaining the transmission line. DOE's guidance for the preparation of an EIS recommends the use of the sliding-scale approach when evaluating environmental impacts. This approach would focus the analysis and discussion of impacts on significant environmental issues in proportion to the significance of the potential impacts. DOE has identified the following preliminary list of impact areas for evaluation in the EIS:

- Land Use, Recreation, and Visual Resources
- Water Use and Water Quality
- Surface Water Features including Rivers, Floodplains, and Wetlands
- Fish, Wildlife, and Vegetation, including Critical Habitat
- Socioeconomics
- Environmental Justice
- Historic and Cultural Resources
- Geology, Soil, and Mineral Resources
- Human Health and Electric and Magnetic Fields
- Air Quality and Climate Change
- Construction-Related Impacts, including Road Clearing, Traffic, and Noise
- Accidents, Intentional Destructive Acts, and Hazards, including Air Space Management
- Waste Management

This list is not intended to be all-inclusive or to imply any predetermination of impacts. DOE invites interested parties to suggest specific issues, including possible mitigation measures, within these general categories, or other categories not included above, to be considered in the EIS.

5. Agency Responsibilities

5.1 Stakeholder Involvement and Cooperating Agencies

DOE will prepare the EIS and will coordinate with appropriate federal, state, and tribal governments; local agencies; and interested members of the public during the preparation of the EIS. DOE will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts on cultural resources, will be considered. DOE invites federal, state, tribal governments and local agencies with jurisdiction by law or with special expertise to be cooperating agencies on the EIS as defined in 40 CFR 1501.6. Such governments and/or agencies may also make a request to DOE to be a cooperating agency. As of this notice, TVA, and the Tulsa District and the Memphis District of the U.S. Army Corps of Engineers have committed to being cooperating agencies.

5.2 National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to consider the effects of an undertaking on historic properties—historic structures and historic artifacts—before authorizing an undertaking (36 CFR part 800). Federal agencies are encouraged to coordinate compliance with Section 106 of the NHPA with any steps taken to meet the requirements of NEPA (36 CFR 800.8). In the interest of being comprehensive and less duplicative, DOE plans to coordinate the NEPA review and Section 106 compliance process for the preparation of the Plains & Eastern EIS to the greatest extent practicable. Further, DOE plans to invite federal, state, tribal governments, and members of the public to participate in this NEPA process for the purpose of ensuring the standards in 36 CFR 800.8(c)(1) through 800.8(c)(5), ''Protection of Historic Properties,'' are met, including identifying mitigation actions that may be appropriate to address potential adverse effects that may result from implementing the proposed project.

5.3 Endangered Species Act

Section 7 of the Endangered Species Act requires an agency proposing to take an action to inquire of the USFWS and NMFS, as appropriate, whether any threatened or endangered species ''may be present'' in the area of the proposed action [see 16 U.S.C. 1536(c)(1)]. Accordingly, DOE intends to initiate consultation with these agencies.

6. Public Participation

The purpose of the scoping process is to identify alternatives and potential environmental impacts that DOE should analyze in the EIS. DOE will hold 12 public scoping meetings at the following locations and times in Oklahoma, Arkansas, and Tennessee to provide the public with an opportunity to present comments, ask questions, and discuss the scope of the Plains & Eastern EIS

with DOE and Clean Line representatives.

- January 22, 2013, 5:00–8:00 p.m. at Arkansas State University—Marked Tree Student Center, 33500 Highway 63 E, Marked Tree, AR 72365
- January 24, 2013, 5:00–8:00 p.m. at Gateway Baptist Church Center, 1915 Rosemark Road, Atoka, TN 38004
- January 28, 2013, 5:00–8:00 p.m. at Pickle Creek Center, 822 NE 6th Street, Guymon, OK 73942
- January 29, 2013, 5:00–8:00 p.m. at Beaver County Fairgrounds—Pavilion Building, 1107 Douglas Avenue, Beaver, OK 73932
- January 31, 2013, 5:00–8:00 p.m. at Woodward Convention Center—Meeting Room 1, 3401 Centennial Lane, Woodward, OK 73801
- February 4, 2013, 5:00–8:00 p.m. at Muskogee Civic Center Room D, 425 Boston Street, Muskogee, OK 74401
- February 5, 2013, 5:00–8:00 p.m. at Cushing Youth and Community Center, 700 South Little, Cushing, OK 74023
- February 7, 2013, 5:00–8:00 p.m. at Enid Convention Hall—Grand Ballroom, 301 South Independence, Enid, OK 73701
- February 11, 2013, 5:00–8:00 p.m. at Van Buren Public Library, 1409 Main Street, Van Buren, AR 72956
- February 12, 2013, 5:00–8:00 p.m. at Lake Point Conference Center—Event Center, 61 Lake Point Lane, Russellville, AR 72802
- February 19, 2013, 5:00–8:00 p.m. at Arkansas State University—Newport, Student Community Center—M&P I&I NEDC Room (First room on the left), 7648 Victory Boulevard, Newport, AR 72112
- February 21, 2013, 5:00–8:00 p.m. at Carmichael Community Center Auditorium, 801 S. Elm, Searcy, AR 72143

DOE will also announce the public scoping meetings via local news media, industry newsletters, and posting on the DOE NEPA Web site at *http://energy.gov/nepa/public-comment-opportunities* and on the Plains & Eastern EIS Web site at *http://PlainsandEasternEIS.com* at least 15 days prior to each meeting.

The scoping meetings will start with an informal open house to facilitate dialogue between project officials and the public. DOE will then provide an overview of the proposed project and lead a short, informal question-and-answer period to clarify the information presented and to answer questions about the NEPA process. The public will have an opportunity to view maps and project information and present comments on the scope of the Plains & Eastern EIS. Representatives from DOE, Clean Line, and involved agencies will be available to answer questions and provide additional information to meeting attendees. A court reporter will be available at each scoping meeting to record oral comments from meeting attendees.

In addition to providing comments at the public scoping meetings, DOE will accept written comments as described in the **ADDRESSES** section. DOE will consider all comments postmarked or received during a 90-day public scoping period beginning with publication of this notice and ending on March 21, 2013. DOE will consider comments postmarked or received after that date to the extent practicable.

DOE expects to publish the draft EIS in the fall of 2013. The U.S. Environmental Protection Agency will publish a Notice of Availability of the draft EIS in the **Federal Register**, which will begin a minimum public comment period of 45 days. DOE will announce how to comment on the draft EIS and will hold public hearings during the public comment period. People who would like to receive a copy of the draft EIS when it is issued should submit a request as provided in the **ADDRESSES** section and specify their format preference.

Issued in Washington, DC, on December 14, 2012.

Patricia Hoffman.

Assistant Secretary for Electricity Delivery and Energy Reliability.

[FR Doc. 2012–30833 Filed 12–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 10, 2013, 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of November Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Presentations
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on December 17, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2012–30779 Filed 12–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 16, 2013, 5:00 p.m.

ADDRESSES: National Atomic Testing Museum, 755 E. Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *NSSAB@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Fiscal Year 2015 Budget Prioritization Briefing—Work Plan Item #5
2. Discussion and recommendation development for Nye County Drilling Proposal—Work Plan Item #4
3. Discussion and recommendation development for Industrial Sites—Closing Use Restriction Sites—Work Plan Item #2

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx*.

Issued at Washington, DC, on December 18, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2012–30778 Filed 12–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–4–000]

Commission Information Collection Activities (FERC–538); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, Gas Pipeline Certificates: Section 7(a) Mandatory Initial Service.

DATES: Comments on the collection of information are due February 19, 2013.

ADDRESSES: You may submit comments (identified by Docket No. IC13–4–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–538: Gas Pipelines Certificates: Section 7(a) Mandatory Initial Service.

*OMB Control No.:*1902–0061.

Type of Request: Three-year extension of the FERC–538 information collection requirements with no changes to the current reporting requirements.

Abstract: Under sections 7(a), 10(a) and 16 of Natural Gas Act (NGA),[1] upon application by a person or municipality authorized to engage in the local distribution of natural gas, the Commission may order a natural gas company to extend or improve its transportation facilities, and sell natural gas to the municipality or person and, for such purpose, to extend its transportation facilities to communities immediately adjacent to such facilities or to territories served by the natural gas pipeline company. The Commission uses the application data in order to be fully informed concerning the applicant, and the service the applicant is requesting.

Type of Respondents: Persons or municipalities authorized to engage in the local distribution of natural gas.

Estimate of Annual Burden:[2] The Commission estimates the total Public Reporting Burden for this information collection as:

[1] 15 U.S.C. 717f–w

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–538 (IC13–4–000): GAS PIPELINES CERTIFICATES: SECTION 7(A) MANDATORY INITIAL SERVICE

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Gas Pipeline Certificates	1	1	1	240	240

The total estimated annual cost burden to respondents is $16,562 [240 hours ÷ 2080 hours/year [3] * $143,540/year [4] = $16,562].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost 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 collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30722 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

[3] 2080 hours = 52 weeks * 40 hours per week (i.e. 1 year of full-time employment).

[4] Average salary plus benefits per full-time equivalent employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2411–025]

STS Hydropower, Ltd., Dan River, Inc., and City of Danville, VA; Notice of Application for Partial Transfer of License, and Soliciting Comments and Motions To Intervene

On December 5, 2012, Jeoffrey L. Burtch, as Chapter 7 Bankruptcy Trustee for Dan River, Inc. and STS Hydropower, Ltd (co-licensees) transferors and the City of Danville, Virginia transferee filed an application for the partial transfer of the license for the Schoolfield Hydroelectric Project, FERC No. 2411, located on the Dan River in Pittsylvania County, Virginia.

Applicants seek Commission approval to partially transfer the license for the Schoolfield Hydroelectric Project from Dan River, Inc. and STS Hydropower, Ltd. to STS Hydropower, Ltd. and the City of Danville, Virginia, as co-licensees.

Applicants' Contact: For Chapter 7 Bankruptcy Trustee for Dan River, Inc.: Mr. Jeoffrey L. Burtch, Chapter 7 Bankruptcy Panel Trustee, P.O. Box 549, Wilmington, DE 19899–0549, Mr. Adam Singer, Esq., Cooch and Taylor, P.A., The Brandywine Building, 1000 West Street, 10th Floor, Wilmington, DE 19801, Phone (302) 984–3830. For City of Danville, Virginia: Mr. Joe King, City Manager and Mr. Clarke Whitfield, City Attorney, P.O. Box 3300, Danville, VA 24543, Phone (434) 799–5100 and (434) 799–5122, respectively.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: *15 days from the issuance of this notice by the Commission.* Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2411) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: December 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30721 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–005.
Applicants: Shell Energy North America (US), L.P.
Description: Shell Energy North America (US), L.P. submits Supplement to 10/31/2012 updated market power analysis for the Northeast region.
Filed Date: 12/10/12.
Accession Number: 20121210–5249.
Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: ER13–181–001.
Applicants: AEP Texas Central Company.
Description: AEP Texas Central Company submits tariff filing per 35.17(b): TCC-South Texas EC IA Amendment to be effective 9/24/2012.
Filed Date: 12/11/12.
Accession Number: 20121211–5155.
Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–546–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Amendment to LGIA for Silver State South Solar Project to be effective 11/16/2012.
Filed Date: 12/12/12.
Accession Number: 20121212–5000.
Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–547–000.
Applicants: California Independent System Operator Corporation.
Description: Petition for Distribution of Forfeited Funds Collected in Connection with Processing Generator Interconnection Requests of the California Independent System Operator Corporation.
Filed Date: 12/11/12.
Accession Number: 20121211–5188.
Comments Due: 5 p.m. ET 1/2/13.

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: December 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30707 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–381–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Devon 34694–44 Amendment to Neg Rate Agmt to be effective 12/18/2012.

Filed Date: 12/12/12.

Accession Number: 20121212–5024.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–382–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Tenaska Amendment to be effective 12/12/2012.

Filed Date: 12/12/12.

Accession Number: 20121212–5043.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–383–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Tenaska Amendment Filing to be effective 12/12/2012.

Filed Date: 12/12/12.

Accession Number: 20121212–5046.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–384–000.

Applicants: Questar Pipeline Company.

Description: Off-System Services Version 2.0.0 to be effective 1/12/2013.

Filed Date: 12/12/12.

Accession Number: 20121212–5095.

Comments Due: 5 p.m. ET 12/24/12.

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: RP13–116–001.

Applicants: MIGC LLC.

Description: Revised NAESB v2.0 Compliance Filing to be effective 12/1/2012.

Filed Date: 12/12/12.

Accession Number: 20121212–5073.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–39–002.

Applicants: CenterPoint Energy—Mississippi River T.

Description: Compliance Filing to Amend and Finalize 10/31/12 NAESB Compliance Filing to be effective 12/1/2012.

Filed Date: 12/12/12.

Accession Number: 20121212–5092.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–1–001.

Applicants: KO Transmission Company.

Description: KO Transmission Company submits tariff filing per 154.203: Compliance Filing in Docket No. RP13–1 to be effective 12/1/2012.

Filed Date: 12/13/12.

Accession Number: 20121213–5019.

Comments Due: 5 p.m. ET 12/26/12.

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: December 13, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary

[FR Doc. 2012–30706 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6059–001]

Pramaggiore, Anne R.; Notice of Filing

Take notice that on December 14, 2012, Anne R. Pramaggiore submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2000) and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 (2010).

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 January 4, 2013.

Dated: December 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30772 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14470–000]

New England Hydropower Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 7, 2012, the New England Hydropower Company, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Starr Mill Hydroelectric Project (Starr Mill Project or project) to be located on the Coginchaug River, near Middletown, Middlesex County, Connecticut. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 10-foot-high, 85-foot-long stone masonry dam; (2) an existing 8.32-acre impoundment with about 0.19 acres within the proposed project boundary; (3) an existing 12-foot-long, 6.6-foot-wide, 6.6-foot-deep head box and intake channel; (4) a new 3.3-foot-high, 7-foot-wide sluice gate equipped with a 6.6-foot-high, 12-foot-wide trashrack with 6-inch bar spacing; (5) a new 33-foot-long, 6.6-foot wide Archimedes screw generator unit with an installed capacity of 25 kilowatts; (6) a new 10-foot-high, 9.5-foot-long, 9.5-foot-wide powerhouse containing a new gearbox and electrical controls; (7) a new above ground 120-foot-long, 13.8-kilovolt transmission line connecting the powerhouse to an existing nearby distribution system pole; and (8) appurtenant facilities. The estimated annual generation of the proposed Starr Mill Project would be about 95 megawatt-hours. The existing Starr Mill Dam and appurtenant works, including a former powerhouse foundation and intake structures, are privately owned.

Applicant Contact: Mr. Michael C. Kerr, New England Hydropower Company, LLC, P.O. Box 5524, Beverly Farms, Massachusetts 01915; phone: (978) 360–2547.

FERC Contact: John Ramer; phone: (202) 502–8969 or email: *john.ramer@ferc.gov*.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*.Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*.You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*.Enter the docket number (P–14470) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30719 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.:

Joint Inter-Regional Planning Task Force/Electric System Planning Working Group December 20, 2012, 11:00 a.m. to 4:00 p.m., Local Time.

The above-referenced meeting is open to stakeholders and will be held at: NYISO's offices, Rensselaer, NY.

Further information may be found at *www.nyiso.com*.

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov*.

Dated: December 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30771 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the interregional transmission planning activities of the Southwest Power Pool (SPP):

SPP Seams Steering Committee Meeting—December 18, 2012.

The above-referenced meeting will be held at: AEP Offices, 1201 Elm Street, Dallas, TX 72501.

The above-referenced meeting is open to the public.

Further information may be found at *www.spp.org*.

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, Tallgrass Transmission, LLC
Docket No. ER09–36–001, Prairie Wind Transmission, LLC
Docket No. ER09–548–001, ITC Great Plains, LLC
Docket No. ER09–659–002, Southwest Power Pool, Inc.
Docket No. ER11–1419–000, et al., Southwest Power Pool, Inc.
Docket No. ER11–4105–000, Southwest Power Pool, Inc.
Docket No. EL11–34–001, Midwest Independent Transmission System Operator, Inc.
Docket No. ER12–1179, Southwest Power Pool, Inc.
Docket No. ER12–1401–000, Southwest Power Pool, Inc.
Docket No. ER12–1402–000, Southwest Power Pool, Inc.

Docket No. ER12–1415–000, Southwest Power Pool, Inc.
Docket No. ER12–1460–000, Southwest Power Pool, Inc.
Docket No. ER12–1586–000 et al., Southwest Power Pool, Inc.
Docket No. ER12–1610–000, Southwest Power Pool, Inc.
Docket No. ER12–1772–000, Southwest Power Pool, Inc.
Docket No. ER12–1779–000, Southwest Power Pool, Inc.
Docket No. ER12–2366–000, Southwest Power Pool, Inc.
Docket No. EL12–2–000, Southwest Power Pool, Inc.
Docket No. EL12–60–000, et al., Southwest Power Pool, Inc.
Docket No. ER12–2387–000 et al., Southwest Power Pool, Inc..
Docket No. ER13–366–000, Southwest Power Pool, Inc.
Docket No. ER13–367–000, Southwest Power Pool, Inc.
Docket No. ER13–406–000, Southwest Power Pool, Inc.
Docket No. ER13–476–000, Southwest Power Pool, Inc.

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 288–6738 or *Luciano.Lima@ferc.gov.*

Dated: December 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30720 Filed 12–20–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0748; FRL–9373–6]

Halofenozide; Cancellation Order for All Pesticide Registrations and Termination of All Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellation and termination of all uses, voluntarily requested by the registrants and accepted by the Agency, of products containing halofenozide, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a September 26, 2012 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel and terminate all uses of these product registrations. These are the last products containing this pesticide registered for use in the United States. In the September 26, 2012 notice, EPA indicated that it would issue an order implementing the cancellation and terminate all uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellation and use termination. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective December 21, 2012.

FOR FURTHER INFORMATION CONTACT: Kaitlin Keller, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; fax number: (703) 308–8005; email address: *keller.kaitlin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0748, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces the cancellation and termination of all uses, as requested by registrants, of products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—HALOFENOZIDE PRODUCT CANCELLATIONS

EPA Registration No.	Product name
038167–0029	Mach 2 1.5G.
062719–0470	Halofenozide Technical Insecticide.
062719–0471	Mach 2 2SC.
062719–0472	Mach 2 2.5% Granular Turf Insecticide.
062719–0473	Mach 2 1.5G Specialty Insecticide.
062719–0474	Mach 2 Plus Fertilizer 0.86% A.I.
062719–0475	Mach 2 Plus Fertilizer 0.57% A.I.
062719–0476	Mach 2 Manufacturing Use Concentrate.
062719–0489	Mach 2 Plus Fertilizer (1.0% A.I.).
062719–0490	Mach 2 Plus Fertilizer (1.33% A.I.).

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS

EPA Company No.	Company name and address
38167	Helena Chemical Company, d/b/a Setre Chemical Company, 225 Schilling Boulevard, Suite 300, Collierville, TN 38017.
62719	Dow AgroSciences LLC, 9330 Zionsville Road 308/2E, Indianapolis, IN 46268–1054.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the September 26, 2012 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellation and termination of all uses of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation and termination of all uses of halofenozide registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled and all uses of halofenozide are terminated. The effective date of the cancellations that are the subject of this notice is December 21, 2012. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on September 26, 2012 (77 FR 59190) (FRL–9362–9). The comment period closed on October 26, 2012.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 until December 23, 2013, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II., except for export in accordance with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests, halofenozide.

Dated: December 12, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–30692 Filed 12–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9006–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements.

Filed 12/10/2012 Through 12/14/2012

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html*.

SUPPLEMENTARY INFORMATION: As of October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA. While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—*https://cdx.epa.gov/epa_home.asp*.

EIS No. 20120387, Draft EIS, FHWA, VA, I–64 Hampton Roads Bridge-Tunnel, from I–664 in the City of Hampton to I–564 in the City of Norfolk, VA, Comment Period Ends: 02/13/2013, Contact: Marisel Lopez-Cruz 804–775–3376.

EIS No. 20120388, Draft EIS, USACE, CA, Elverta Specific Plan Project, Master Planned Community Development, Sacramento County, CA, Comment Period Ends: 02/04/2013, Contact: Marc A. Fugler 916–557–5255.

EIS No. 20120389, Final EIS, USFWS, WA, Malheur National Wildlife Refuge Comprehensive Conservation Plan, Harney County, WA, Review Period Ends: 01/22/2013, Contact: Tim Bodeen 541–493–2612.

EIS No. 20120390, Draft EIS, USFWS, AK, Shadura National Gas Development Project, Kenai National Wildlife Refuge and Kenai Peninsula Borough, AK, Comment Period Ends: 02/04/2013, Contact: Peter Wikoff 907–786–3357.

EIS No. 20120391, Final EIS, BLM, CA, McCoy Solar Energy Project, Proposed Plan Amendment, Riverside County, CA, Review Period Ends: 01/22/2013, Contact: Jeffery K. Childers 951–697–5308.

EIS No. 20120392, Draft EIS, USACE, 00, Lower Snake River Programmatic Sediment Management Plan, Washington and Idaho, Comment Period Ends: 02/08/2013, Contact: Sandra Shelin 509–527–7265.

EIS No. 20120393, Final EIS, WAPA, AZ, Quartzsite Solar Energy Project and Proposed Yuma Field Office Resource Management Plan Amendment, La Paz County, AZ, Review Period Ends: 01/22/2013, Contact: Matthew Blevins 720–962–7261.

Dated: December 18, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–30821 Filed 12–20–12; 8:45 am]

BILLING CODE 6560–50–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 January 7, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Trident SBI Holdings, LLC, Trident V, L.P., Trident V Parallel Fund, L.P., Trident V Professionals Fund, L.P., Trident Capital V, L.P., Trident Capital V–PF, L.P., Stone Point GP Ltd, CD Trident V, LLC, and Charles A. Davis,* all of Greenwich, Connecticut, as a group acting in concert, to acquire control of Standard Bancshares, Inc., and thereby indirectly acquire control of Standard Bank and Trust Company, both of Hickory Hills, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *James and Nita Wallenfelsz,* both of North Oaks, Minnesota, to acquire shares of N.A. Corporation, Roseville, Minnesota, and thereby indirectly acquire control of North American Banking Company, Roseville, Minnesota.

Board of Governors of the Federal Reserve System, December 17, 2012.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2012–30710 Filed 12–20–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Old Line Bancshares, Inc., Bowie, Maryland, to acquire 100 percent of the voting securities of WSB Holdings, Inc., Bowie, Maryland, and thereby indirectly acquire Washington Savings Bank, F.S.B., Bowie, Maryland, and engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 17, 2012.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2012–30711 Filed 12–20–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates:

8:00 a.m.–5:00 p.m., February 20, 2013 (Closed).

8:00 a.m.–5:00 p.m., February 21, 2013 (Closed).

8:00 a.m.–5:00 p.m., February 22, 2013 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: (703) 684–5900, Fax: (703) 684–0653.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, Ph.D., Health Scientist, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta, Georgia 30345, Telephone: (404) 498–2511, Fax: (404) 498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 12, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–30750 Filed 12–20–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10434]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed

information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection (request for a new OMB control number). *Title of Information Collection:* Medicaid and CHIP Program (MACPro). *Use:* Medicaid, authorized by Title XIX of the Social Security Act and, CHIP, reauthorized by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), play an important role in financing health care for approximately 48 million people throughout the country. By 2014, it is expected that an additional 16 million people will become eligible for Medicaid and CHIP as a result of the Affordable Care Act (Pub. L. 111–148). In order to implement the statute, CMS must provide a mechanism to ensure timely approval of Medicaid and CHIP state plans, waivers and demonstrations, and provide a repository for all Medicaid and CHIP program data that supplies data to populate Healthcare.gov and other required reports. Additionally, 42 CFR 430.12 sets forth the authority for the submittal and collection of state plans and plan amendment information. Pursuant to this requirement, CMS has created the MACPro system.

Generally, MACPro will be used by both state and CMS officials to: Improve the state application and federal review processes, improve federal program management of Medicaid programs and CHIP, and standardize Medicaid program data. More specifically, it will be used by state agencies to (among other things): (1) Submit and amend Medicaid state plans, CHIP state plans, and Information System Advanced Planning Documents, and (2) submit applications and amendments for state waivers, demonstration, and benchmark and grant programs. It will be used by CMS to (among other things): (1) Provide for the review and disposition of applications, and (2) monitor and track application activity.

A paper-based version of the MACPro instrument would be sizable and time consuming for interested parties to follow as a paper-based instrument. In our effort to provide the public with the most efficient means to make sense of the MACPro system, we held four webinars in lieu of including a paper-based version of MACPro. Those webinars were associated with our 60-day **Federal Register** notice (June 8, 2012; 77 FR 34046). The following changes have been made subsequent to the publication of that notice:

- MACPro will be used to create the data feed for updating Healthcare.gov based on changes from state plan and CHIP eligibility. This effort is in support of the Federally-facilitated Exchange (FFE) to conduct assessments of eligibility for state Medicaid and CHIP.
- Section 1115 Waiver Demonstration and Medicaid Eligibility authorities will no longer be part of the phase 1 release. They will be included in the subsequent releases of the system.

Consequently, this first phase will only include CHIP Eligibility and Alternative Benchmark Plans (ABP) portions/modules.

The webinar associated with this 30-day **Federal Register** notice will be made available for public review/comment at any time/date in this notice's public comment period. The webinar can be accessed on the Internet at: *http://www.medicaid.gov/State-Resource-Center/Medicaid-and-CHIP-Program-Portal/Medicaid-and-CHIP-Program-Portal.htm.* A login and password is not necessary. *Form Number:* CMS–10434 (OCN: 0938–New). *Frequency:* Annual and once. *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 56. *Total Annual Responses:* 411. *Total Annual Hours:* 10,490. (For policy questions regarding this collection contact Darlene Anderson at 410–786–9828. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on January 22, 2013.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, *Fax Number:* (202) 395–6974, *Email: OIRA_submission@omb.eop.gov.*

Dated: December 17, 2012.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–30748 Filed 12–20–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–906 and CMS–855B]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The Fiscal Soundness Reporting Requirements; Use: The Centers for Medicare and Medicaid Services (CMS) is assigned responsibility for overseeing the on-going financial performance for all Medicare Advantage Organizations (MAO), Prescription Drug Plan (PDP) sponsors and Program of All-Inclusive Care for the Elderly (PACE) organizations. Specifically, CMS needs the requested collection of information to establish that contracting entities within those programs maintain fiscally sound organizations. The revised fiscal soundness reporting form combines MAO, PDP, 1876 Cost Plans, Demonstration Plans and PACE organizations. Entities contracting in

these programs currently submit all documentation being requested. Specifically, all contracting organizations must submit annual independently audited financial statements one time per year. The MAOs with a net loss, a negative net worth or both must file three quarterly statements. Currently there are approximately 44 MAOs filing quarterly financial statements. The PDPs must also file three unaudited quarterly financial statements. The PACE organizations are required to file 3 quarterly financial statements for the first three years in the program. Additionally, PACE organizations with a net loss, a negative net worth or both must file statements as well.

The information collection request is being revised to include one additional data element for PACE organizations only, Total Subordinated Liabilities. The addition of the new data element will actually reduce the time to analyze the financial standing of PACE organizations because we will no longer have to contact the PACE organizations to establish whether or not the organization's total liabilities calculation includes subordinated debt. *Form Number:* CMS–906 (OCN: 0938–0469); *Frequency:* Annually, Quarterly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 648; *Total Annual Responses:* 1,281; *Total Annual Hours:* 428. (For policy questions regarding this collection contact Joe Esposito at 410–786–1129. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Enrollment Application for Clinics/Group Practice and Certain Other Suppliers; *Use:* The primary function of the CMS–855B enrollment application for Clinics, Group Practices and Certain Other Suppliers is to gather information from the organization that tells us what it is, whether it meets certain qualifications to be a health care supplier, where it renders services and information necessary to establish the correct claims payment. The goal of evaluating and revising the CMS–855B enrollment application is to simplify and clarify the information collection without jeopardizing our need to collect specific information. The majority of the revisions are very minor in nature such as spelling and formatting corrections, removal of duplicate fields and instruction clarification for the organization/group. The Sections and Sub-Sections within the form are also being re-numbered and re-sequenced to create a more logical flow of the data collection. In addition, CMS is adding a data collection for an address to mail the periodic request for the revalidation of enrollment information (only if it differs from other addresses currently collected). Other than the revalidation mailing address described above, new data being collected in this revision package is a checkbox indicating whether or not an organization is wholly owned or operated by a hospital, the inclusion of a new supplier type (Centralized Flu Biller) and information on, if applicable, where the supplier stores its patient records electronically. While the CMS–855B is not a new form, this is considered a new information collection request because we are submitting it to OMB for approval under its own OMB control number. *Form Number:* CMS–855B (OCN: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 31,000; *Total Annual Responses:* 31,000; *Total Annual Hours:* 103,000 (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on January 22, 2013.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, *Fax Number:* (202) 395–6974, *Email: OIRA_submission@omb.eop.gov.*

Dated: December 17, 2012.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–30749 Filed 12–20–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No.FDA–2012–N–1181]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medicated Feed Mill License Application; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension and to allow 60 days for public comment in response to the notice. This notice solicits comments on the medicated feed mill licensing system.

DATES: Submit written or electronic comments on the collection of information by February 19, 2013.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PIFO–410B, Rockville, MD 20850, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information,

including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medicated Feed Mill Licensing Application—21 CFR Part 515 (OMB Control Number 0910–0337)—Extension

The Animal Drug Availability Act (ADAA) of October 9, 1996, amended section 512 of the Federal Food, Drug, and Cosmetic Act to replace the system for the approval of specific medicated feed with a general licensing system for feed mills. Before passage of the ADAA, medicated feed manufacturers were required to obtain approval of Medicated Feed Applications (MFAs) in order to manufacture certain types of medicated feeds. An individual approved MFA was required for each and every applicable medicated feed. The ADAA streamlined the paperwork process for gaining approval to manufacture medicated feeds by replacing the MFA system with a facility license for each medicated feed manufacturing facility. Implementing regulations are at 21 CFR part 515.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section and activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Medicated Feed Mill License Application Using Form FDA 3448 (§ 515.10(b))	20	1	20	.25	5
Supplemental Feed Mill License Application Using Form FDA 3448 (§ 515.11(b))	40	1	40	.25	10
Voluntary Revocation of Medicated Feed Mill License (§ 515.23)	40	1	40	.25	10
Filing a Request for a Hearing on Medicated Feed Mill License (§ 515.30(c))	1	1	1	4	4
Total					29

[1] There are no capital costs or maintenance costs associated with this information collection.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of responses per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
Maintenance of Records for Approved Labeling for Each "Type B" and "Type C" Labeling (§ 510.305)	950	1	950	0.03	28.5

[1] There are no capital costs or maintenance costs associated with this information collection.

Estimated annual reporting burden on industry is 29 hours as shown in table 1. Industry estimates it takes about 15 minutes (.25) to submit the application. We estimate 100 original and supplemental applications, and voluntary revocations for a total of 25 hours (100 submissions × .25 (15 minutes)). An additional 4 hours is added for the rare notice of opportunity for a hearing to not approve or revoke an application. Finally, we estimate 28.5 hours for maintaining and retrieving labels as required by 21 CFR 510.305. We estimated .03 hours for each of approximately 950 licensees. Total burden for reporting and recordkeeping would be 57.5 hours.

Dated: December 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30738 Filed 12–20–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2002–N–0106 (formerly 2002N–0291)]

Baldev Raj Bhutani; Denial of Hearing on Application for Special Termination of Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Baldev Raj Bhutani's application for special termination of debarment under the Federal Food, Drug, and Cosmetic Act (FD&C Act). Mr. Bhutani has failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: This order is effective December 21, 2012.

ADDRESSES: Comments should reference Docket No. FDA–2002–N–0106 and be sent to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: G. Matthew Warren, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire

Ave., Silver Spring, MD 20993, 301–796–4613.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Bhutani is the former President and Treasurer of Alra Laboratories, Inc. (Alra), a drug company. On February 12, 1996, in the U.S. District Court for the Northern District of Illinois-Eastern Division, Mr. Bhutani was found guilty of one count of conspiracy, a Federal felony offense under 18 U.S.C. 371, and six other Federal felonies related to violations under sections 301(a), (e), and (k) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(a), (e), and (k) and 333(a)(2)). The basis for these convictions was Mr. Bhutani's conduct surrounding his company's manufacture and distribution of the drug products LACTULOSE Syrup and K + 10. According to the records of Mr. Bhutani's criminal proceedings, he and Alra violated the FD&C Act by, inter alia, including decomposed raw material in finished drug products and deviating from approved manufacturing procedures by adding an undocumented substance, sodium hydroxide, to drug products in an unapproved manner. On October 12, 1999, Mr. Bhutani also pled guilty to one count of wire fraud, a Federal felony under 18 U.S.C. 1343. On February 15, 2000, the district court sentenced Mr. Bhutani for his felony convictions. On December 2, 2004, pursuant to section 306(a)(2) of the FD&C Act (21 U.S.C. 335a(a)(2)), FDA permanently debarred Mr. Bhutani based on the foregoing Federal felony convictions (see 69 FR 70148 (Dec. 2, 2004)). As a result of his debarment, Mr. Bhutani may not provide services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262).

On August 18, 2010, Mr. Bhutani applied for special termination of debarment under section 306(d)(4) of the FD&C Act. Under sections 306(d)(4)(C) and (D) of the FD&C Act, FDA may limit the period of debarment of a permanently debarred individual if the Agency finds that: (1) The debarred individual has provided substantial assistance in the investigation or prosecution of offenses described in section 306(a) or (b) of the FD&C Act or relating to a matter under FDA's jurisdiction; (2) termination of the debarment serves the interest of justice; and (3) termination of the debarment does not threaten the integrity of the drug approval process.

By a letter dated March 2, 2011, the Director of the Office of Enforcement, Office of Regulatory Affairs (the Director) offered Mr. Bhutani an opportunity for a regulatory hearing under 21 CFR part 16 on a proposal to deny his application for special termination of debarment. In the letter, the Director set forth his determination that Mr. Bhutani's application did not demonstrate that he provided substantial assistance in investigations or prosecutions of any offenses related to any matter within the jurisdiction of FDA in accordance with section 306(d)(4)(C) of the FD&C Act. In a submission received April 7, 2011, Mr. Bhutani requested a hearing on the Director's proposed denial of his application.

Under § 16.26(a), FDA may deny a request for a hearing upon a determination that ''no genuine and substantial issue of fact has been raised by the material submitted.'' The Chief Scientist has reviewed Mr. Bhutani's request for a hearing, as well as the materials submitted in support of that request, and concludes that Mr. Bhutani's request for a hearing fails to raise any genuine and substantial issues of fact requiring a hearing and that his application for termination of debarment does not satisfy any of the statutory grounds for termination.

II. Arguments

In his application for termination of debarment, Mr. Bhutani argues that FDA should terminate his debarment under section 306(d)(4) of the FD&C Act for a number of reasons, including many focusing on the fairness of the criminal convictions underlying his permanent debarment under section 306(a)(2). Section 306(d) of the FD&C Act describes the circumstances under which FDA may terminate an individual's debarment. Under section 306(d)(3)(B)(i) of the FD&C Act, FDA must withdraw an order debarring an individual upon reversal of the criminal conviction or convictions forming the basis for his or her debarment. Section 306(d)(3)(B)(ii) of the FD&C Act provides that FDA must grant an application for termination of debarment submitted by an individual under 306(d)(1) ''if such termination serves the interests of justice and adequately protects the integrity of the drug approval process,'' but only if the individual was subjected to permissive debarment under section 306(b)(2)(B) or (b)(3). In fact, section 306(d)(1) of the FD&C Act specifies that an individual permanently debarred may not submit such an application. Finally, under section 306(d)(4) of the FD&C Act, FDA may grant an individual's application for special termination of debarment upon a finding that he or she ''has provided substantial assistance in the investigations or prosecutions of offenses which are described in [section 306(a) or (b)] or which relate to any matter under the jurisdiction of [FDA]'' (see section 306(d)(4)(C)).

Inasmuch as FDA permanently debarred Mr. Bhutani under section 306(a)(2) of the FD&C Act, based on his Federal felony convictions for conduct related to drug products, he is only eligible for termination of debarment if: (1) The convictions underlying his debarment were overturned (see section 306(d)(3)(B)(i)) or (2) he has provided substantial assistance in the investigations or prosecutions of offenses which are described in section 306(a) or (b) or which relate to a matter within FDA's jurisdiction (see section 306(d)(4)(C)). Mr. Bhutani has presented no reason to believe that a court has overturned the felony convictions on which his permanent debarment was based. If a court were to overturn his convictions based on the arguments Mr. Bhutani now makes with respect to the fairness and validity of those convictions, however, FDA would withdraw the order debarring him. The sole remaining issue is whether Mr. Bhutani is eligible for special termination of debarment under section 306(d)(4)(C) of the FD&C Act, and to be so eligible he must have provided substantial assistance in the sense contemplated by that provision.

In his application for termination of debarment and request for a hearing, Mr. Bhutani argues that his debarment should be terminated on the grounds that he provided substantial assistance and cooperated with FDA in related investigations regarding Alra's compliance with FDA's current good manufacturing practices (cGMP) regulations and offered his full support to bring his own company, Alra, into cGMP compliance. Mr. Bhutani asserts that he and Alra twice entered consent decrees with FDA, both in 1991 and 1999, that required the correction of many of the violations of the FD&C Act underlying his felony convictions. Mr. Bhutani contends that, in accordance with those consent decrees, he worked cooperatively with FDA to ensure that Alra was manufacturing and distributing drugs in compliance with the FD&C Act. He also claims that, in 1991, he provided some of the information to investigators that led to his own criminal convictions and the criminal investigation and prosecution of Alra and him.

Section 306(d)(4)(C) of the FD&C Act does not define ''substantial assistance.'' When FDA has granted requests for special termination of debarment, however, it has stated that the Agency ''considers a determination by the [United States] Department of Justice concerning the substantial assistance of a debarred individual conclusive in most cases'' (see, e.g., 68 FR 58352 (October 9, 2003)). The U.S. Department of Justice typically determines whether an individual has provided substantial assistance in accordance with section 5K1.1 of the U.S. Sentencing Guidelines (USSG) during the sentencing phase of a Federal criminal trial. Section 5K1.1 states, ''Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the [sentencing] guidelines.'' Rule 35(b) of the Federal Rules of Criminal Procedure and 18 U.S.C. 3553(e) also permit a court to depart from the guideline range or a statutory minimum sentence upon motion by the government if the defendant ''provided substantial assistance in investigating or prosecuting another person.'' The Generic Drug Enforcement Act (GDEA) amended the FD&C Act to provide FDA with debarment authority. The language in section 306(d)(4)(C) of the FD&C Act, which was included in the GDEA in response to a request from the U.S. Department of Justice (see 138 Cong. Rec. S5614 (April 10, 1992) (statement of Sen. Kennedy)), clearly mirrors the forgoing language applicable to Federal criminal defendants.

Much of the conduct to which Mr. Bhutani points as the basis for claiming that he has provided ''substantial assistance in investigations or prosecutions'' of offenses within the jurisdiction of FDA occurred before his sentencing in 2000. Mr. Bhutani, however, does not provide any evidence that the U.S. Department of Justice moved for a downward departure on the basis of a substantial assistance determination under USSG section 5K1.1 when he was sentenced for the convictions that triggered his permanent debarment. Furthermore, even assuming that FDA could grant special termination of an individual's debarment under section 306(d)(4)(C) of the FD&C Act if the government has never moved a court for downward departure on the basis of substantial assistance, the conduct described by Mr. Bhutani does not suffice to show substantial assistance in the sense contemplated by that statutory provision. Mr. Bhutani merely claims that he voluntarily provided some information about the offenses he and his own company, Alra, committed and that he cooperated with FDA in resolving outstanding civil matters involving Alra and him on two separate occasions.

Although section 306(d)(4)(C) of the FD&C Act does not explicitly specify that the substantial assistance must be for the investigation or prosecution of another person's offenses, the appropriate statutory interpretation should be consistent with ''substantial assistance'' when used as a ''term of art'' [1] in the context of criminal proceedings. (See *Sullivan* v. *Stroop,* 496 U.S. 478, 483 (1990) (holding that, ''where a phrase in a statute appears to have become a term of art, * * * any attempt to break down the term into its constituent words is not apt to illuminate its meaning'')). As noted above, USSG section 5K1.1, Rule 35(b) of the Federal Rules of Criminal Procedure and 18 U.S.C. 3553(e) permit a court to depart from the guideline range or a statutory minimum sentence upon motion by the government if the defendant ''provided substantial assistance in investigating or prosecuting another person.'' FDA therefore construes ''substantial assistance in the investigations or prosecutions of offenses'' to require that the assistance be provided with respect to another person's offenses.

As a result, under section 306(d)(4)(C) of the FD&C Act, the information provided by Mr. Bhutani about his own offenses, and those of his own company, very early in a criminal investigation does not qualify as substantial assistance. Likewise, Mr. Bhutani's assertions that he decided to resolve pending regulatory issues with FDA by entering into consent agreements that required him and his company to comply with the law do not show that he provided substantial assistance in the investigation or prosecution of offenses of another person. In fact, all Mr. Bhutani claims to have done was decide to take steps to comply with the law after he had violated it. Such steps clearly do not constitute substantial assistance in the investigation or prosecution of offenses.

III. Conclusion

Therefore, the Chief Scientist, under authority delegated to him, denies Mr. Bhutani's application for special termination of debarment under section 306(d)(4)(C) of the FD&C Act. A hearing on this request is not necessary because there are no genuine and substantial issues of fact (see 21 CFR 16.26(a)).

Any person with an approved or pending drug product application who knowingly uses the services of Mr. Bhutani, in any capacity during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Bhutani provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Bhutani during his period of debarment (section 306(c)(1)(B) of the FD&C Act (21 U.S.C. 335a(c)(1)(B))).

Dated: December 10, 2012.

Jesse L. Goodman,

Chief Scientist.

[FR Doc. 2012–30709 Filed 12–20–12; 8:45 am]

BILLING CODE 4160–01–P

[1] See *United States* v. *Ellis,* 527 F.3d. 203, 206 (1st Cir. 2008) (holding that ''substantial assistance,'' in the context of original sentencing, is a term of art and that the meaning of the term in USSG section 5K1.1 and Rule 35(b) is the same).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel: Stress, Pain and the Biologic Response to Surgery.

Date: January 17–18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20814.

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30716 Filed 12–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the NCI-Frederick Advisory Committee.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. The premature disclosure of information to be discussed during the meeting would significantly frustrate implementation of a proposed agency action.

Name of Committee: NCI-Frederick Advisory Committee.

Date: February 4, 2013.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: Discussion of Proposed Frederick National Laboratory for Cancer Research Strategic Plan.

Place: The Lawrence Berkeley National Laboratory—Department of Energy, Perseverance Hall, Building 54, Room 130A, 1 Cyclotron Road, Berkeley, CA 94720.

Contact Person: Thomas M. Vollberg, Sr., Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 7th Floor, Room 7142, Bethesda, MD 20892–8327, (301) 694–9582.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 14, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30715 Filed 12–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Trauma.

Date: January 4, 2013.

Time: 11:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C Edwards, Ph.D., I RG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30718 Filed 12–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: NHLBI Systems Biology.

Date: January 17–18, 2013.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vector and Eukaryotic Pathogens.

Date: January 22–23, 2013.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Integrative, Functional, and Cognitive Neuroscience: Member Conflicts: Cocaine, Alcohol and Reward.

Date: January 23–24, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Biochemistry and Biophysics of Membranes Study Section.

Date: January 23, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30717 Filed 12–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus Review.

Date: January 14, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health. 6116 Executive Boulevard. Room 8049. Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8049, Bethesda, MD 20892, 301–594–1224, *ss537t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 17, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30714 Filed 12–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0138]

Merchant Mariner Medical Advisory Committee: Intercessional Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Working Group Meeting.

SUMMARY: A working group of the Merchant Mariner Medical Advisory Committee (MEDMAC) will meet to discuss Task Statement 1, ''Revision of Navigation and Vessel Inspection Circular (NVIC) 04–08.'' The meeting will be open to the public.

DATES: The working group will meet Tuesday, January 8 and Wednesday, January 9, 2013, from 8:00 a.m. to 5:00 p.m. Please note that the meeting may close early if the working group has completed its business. Written comments to be distributed to working group members are due by December 28, 2012.

ADDRESSES: The working group will meet at the Simulation, Training, Assessment, and Research (STAR) Center, Room 217, 2 West Dixie Highway, Dania Beach, FL 33004. For further information about the STAR Center hotel facilities or services for individuals with disabilities or to request special assistance, contact Mr. Graeme Holman at (954) 921–7254 Ext. 7172. Please be advised that in order to gain access to the STAR Center, you must provide identification in the form of a government-issued picture identification card. If you plan to attend, please notify the individual listed in **FOR FURTHER INFORMATION CONTACT**, no later than December 28, 2012 so that administrative access into the STAR Center can be processed prior to arrival.

To facilitate public participation, we are inviting public comment on the issues to be considered by the working group as listed in the ''Agenda'' section below. Comments must be submitted in writing to the Coast Guard on or before December 28, 2012 and must be identified by USCG–2011–0138 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316). Please provide an electronic copy to the contact listed in **FOR FURTHER INFORMATION CONTACT** below no later than December 28, 2012. Your material will be placed on the MEDMAC Web site *https://homeport.uscg.mil* to be made available to the members of the working group and the public.

Docket: For access to the docket to read background documents or comments related to this notice, go to *http://www.regulations.gov.*

A public comment period will be held on January 8, 2013, 8:15 a.m.–8:30 a.m., and January 9, 2013 4:30 p.m.–4:45 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Additionally, public comment will be sought throughout the meeting as specific issues are discussed by the working group.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ashley Holm, the MEDMAC Alternate Designated Federal Officer (ADFO), at telephone 202–372–1128 or email *Ashley.e.holm@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The MEDMAC is authorized by 46 U.S.C. 7115 as amended by section 210 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111–281) and advises the Secretary

on matters related to (a) Medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

Agenda

Day 1

The agenda for the January 8, 2013, working group meeting is as follows:

(1) Opening comments by Working Group Chairman.

(2) Working Group addresses the following task statement:

Task Statement 1, Revision of Navigation and Vessel Inspection Circular (NVIC) 04–08. The NVIC can be found at *http://www.uscg.mil/hq/cg5/nvic/* Medical and Physical Guidelines for Merchant Mariner Credentials. The working group will continue to review Enclosures 6 (Medical Review Process, 4 (Medications), and 3 (Medical Conditions Subject to Further Review) of NVIC 04–08 with the goal to finish all work on the NVIC recommendations. The working group recommendations will be presented at the next full Committee meeting.

(3) Public comment period.

(4) Closing remarks.

Day 2

The agenda for the January 9, 2013, working group meeting is as follows:

(1) Continue work on Task Statement 1.

(2) Discuss and prepare final draft recommendations for the full committee to consider.

(3) Public comment period.

(4) Closing remarks/plans for next meeting.

Dated: December 14, 2012.

P.F. Thomas,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2012–30747 Filed 12–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–94]

Public Housing Operating Subsidy—Appeals

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Under the operating fund final rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the operating fund final rule. The final rule establishes five grounds for appeals in 24 CFR 990.245 and they are the: (a) Streamlined appeal; (b) appeal of formula income for economic hardship; (c) appeal for specific local conditions; (d) appeal for changing market conditions; and (e) appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of the permitted bases of appeal, PHAs submit an appeal request to HUD.

DATES: *Comments Due Date:* January 22, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0246) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Public Housing Operating Subsidy—Appeals.

OMB Approval Number: 2577–0246.

Form Numbers: None.

Description of the need for the information and proposed use: Under the operating fund final rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the operating fund final rule. The final rule establishes five grounds for appeals in 24 CFR 990.245 and they are the: (a) Streamlined appeal; (b) appeal of formula income for economic hardship; (c) appeal for specific local conditions; (d) appeal for changing market conditions; and (e) appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of the permitted bases of appeal, PHAs submit an appeal request to HUD.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	127	1		19.598		2,489

Total estimated burden hours: 2,489.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 18, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–30803 Filed 12–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–50]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Army:* Ms. Veronica Rines, Department of Army, Office of the Chief of Staff for Installation Management, 600 Army Pentagon, Room 5A128, Washington, DC, 20310, 571–256–8145; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark C. Price, Office of Engineering & Construction Management, OECM MA–50, 4B122, 1000 Independence Ave. NW., Washington, DC, 20585, (202) 586–5422; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084;

Dated: December 13, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/21/2012

Suitable/Available Properties

Building

Texas

Former Navy & Marine Corps Reserve Center
5301 Ave. South
Galveston TX 77551
Landholding Agency: GSA
Property Number: 54201240013
Status: Surplus
GSA Number: 7–D–TX–0549–9
Comments: 17,319 sf.; sits on 2.63 acres; Admin. office; fair conditions; eligible for Nat'l Register Historic Places; asbestos; access by appt. w/USACE

California

Bldg. 00352
Fort Irwin
Ft. Irwin CA 92310
Landholding Agency: Army
Property Number: 21200240031
Status: Unutilized
Comments: RE-DETERMINATION: 3,947 sf.; storage; very poor conditions; asbestos; restricted area; currently unavailable due to the fact that the building is currently being utilized by the Army

Georgia

Bldg. 77
Fort Benning
Ft. Benning GA 31905

Landholding Agency: Army
Property Number: 21199810028
Status: Excess
Directions:
Comments: RE-DETERMINATION: 998 sf.; heat plant; average conditions; currently unavailable due to the fact that the building is currently being utilized by the Army

Bldg. 249
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21199810030
Status: Excess
Directions:
Comments: RE-DETERMINATION: 2,750 sf.; vehicle. storage; average conditions; currently unavailable due to the fact that the building is currently being utilized by the Army

Bldg. 319
Fort Benning
Fort Benning GA 31905
Landholding Agency: Army
Property Number: 21199830073
Status: Excess
Directions:
Comments: RE-DETERMINATION: 919 sf.; storage; average conditions; currently unavailable due to the fact that the building is currently being utilized by the Army

Bldg. 09402
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200510003
Status: Excess
Comments: RE-DETERMINATION: 2,333 sf.; family housing; average conditions; currently unavailable due to the fact that the building is currently being utilized by the Army

Bldg. 8559
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200920032
Status: Excess
Comments: RE-DETERMINATION: 288 sf.; Sep Toil/Shower; average conditions; currently unavailable due to the fact that the building is currently being utilized by the Army

Unsuitable Properties

Building

California

10 Buildings
Fresno Yosemite Intern 'l
Fresno CA 93727
Landholding Agency: Air Force
Property Number: 18201240036
Status: Excess
Directions: 2202, 2203, 2204, 2206, 2207, 2208, 2217, 2219, 2221, 2223
Comments: Restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

New Mexico

54–0473
Los Alamos Nat'l Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201240002
Status: Excess
Comments: Located in highly secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Tennessee

Bldgs. 00873, 00875
Fort Campbell
Ft. Campbell TN 42223
Landholding Agency: Army
Property Number: 21200430052
Status: Unutilized
Comments: CHANGE IN UNSUITABILITY REASON: properties are located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security.
Reasons: Secured Area

Bldg. 05613
Fort Campbell
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200520061
Status: Unutilized
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security.
Reasons: Secured Area

Texas

Bldg. 801
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199730161
Status: Unutilized
Directions:
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

Bldg. 4
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199830161
Status: Unutilized
Directions:
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

Bldg. 1125
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199830163
Status: Unutilized
Directions:
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

Bldg. 2323
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199830168
Status: Unutilized
Directions:
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

Bldg. 3659
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199830173
Status: Unutilized
Directions:
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security.
Reasons: Secured Area

Bldg. 3664
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199830174
Status: Unutilized
Directions:
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

Bldg. 3698
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199830179
Status: Unutilized
Directions:
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

Bldg. 59
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200310044
Status: Unutilized
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

6 Bldgs.

Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200830031
Status: Unutilized
Directions: 1048, 1050, 1071, 1083, 1087, 1091
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

11 Bldgs.
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200930023
Status: Unutilized
Directions: 6901, 6906, 6907, 6908, 6909, 6912, 6914, 6915, 6917, 6918, 6919
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

6 Bldgs.
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200930024
Status: Unutilized
Directions: 6921, 6922, 6925, 6949, 6950, 6951, 6953
Comments: CHANGE IN UNSUITABILITY REASON: Located in a secured area; pre-9/11; where public access is denied and there is no alternative method to gain access without comprising national security
Reasons: Secured Area

Virginia

OO2 & OO3
4000 Coast Guard Blvd.
Portsmouth VA 23703
Landholding Agency: Coast Guard
Property Number: 88201240001
Status: Excess
Comments: Located on secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

[FR Doc. 2012–30489 Filed 12–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2012–N169; 1265–0000–10137–S3]

Malheur National Wildlife Refuge, Harney County, OR; Final Comprehensive Conservation Plan and Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan and environmental impact statement (CCP/EIS) for the Malheur National Wildlife Refuge (Refuge). In the final CCP/EIS, we describe alternatives, including our preferred alternative, for managing the Refuge for the next 15 years.

DATES: We will sign a record of decision no sooner than 30 days after publication of this notice.

ADDRESSES: You may download a copy of the final CCP/EIS, or contact us to request a printed or CD–ROM copy of the document, as follows.

Agency Web Site: Download the final CCP/EIS at *www.fws.gov/pacific/planning.*

Email: *FW1PlanningComments@fws.gov.* Include ''Malheur NWR CCP/EIS'' in the subject line of your request for a printed or CD–ROM copy of the final CCP/EIS.

Fax: Attn: Tim Bodeen, Project Leader, (541) 493–2405.

Mail: Tim Bodeen, Project Leader, Malheur National Wildlife Refuge, 36391 Sodhouse Lane, Princeton, OR 97221.

In-Person Viewing or Pickup: Schedule an appointment with Refuge staff to view or obtain a final CCP/EIS during regular business hours by calling (541) 493–2612.

Local Libraries: The final CCP/EIS is available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tim Bodeen, (541) 493–2612.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we announce the availability of the final CCP/EIS for the Refuge. We started this process through a notice in the **Federal Register** (74 FR 31046; June 29, 2009). We released the Draft CCP/EIS to the public, and requested comments on it in a notice of availability in the **Federal Register** (77 FR 13141, March 5, 2012).

The Refuge was established by President Theodore Roosevelt in 1908 as the Lake Malheur Bird Reservation, to prevent plume hunters from decimating colonial nesting bird populations. The Refuge protected unclaimed lands encompassed by Malheur, Mud, and Harney Lakes as a preserve and breeding ground for native birds. The Refuge was expanded to include the Blitzen Valley in 1935, and the Double-O Unit in 1941. The Refuge's establishing purposes include: ''A refuge and breeding ground for migratory birds and other wild life'' and ''for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.''

The Refuge consists of more than 187,000 acres of open water (marsh, river, and stream), wetlands, springs, riparian areas, irrigated meadows, grain fields, and shrub-steppe uplands. The Refuge's abundance of water in an otherwise arid landscape attracts a significant portion of the Pacific Flyway's migrating bird population during the spring. The large concentration of migrating birds is recognized in flyway and regional bird conservation plans, and BirdLife International designated the Refuge an Important Bird Area. Populations of breeding waterfowl and waterbirds on Malheur Lake and other Refuge wetlands have, however, dropped substantially from historic levels. This decline is widely attributed to high populations of nonnative common carp living in the lake and in adjacent water bodies. The bottom-feeding carp impacts bird populations by competing for insect and plant food sources, and uprooting vegetation and disturbing silt in ponds and lakebeds. The resulting silt plumes degrade aquatic habitat and interfere with plant and insect production.

We announce the availability of the Refuge's final CCP/EIS in accordance with National Environmental Policy Act (NEPA) 40 CFR 1506.6(b) requirements. We included a thorough analysis of impacts on the human environment in the final CCP/EIS.

The CCP will guide us in managing and administering the Refuge for the next 15 years. Alternative 2, as we described in the final CCP/EIS, is our preferred alternative, and the foundation of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. 668dd–668ee (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and

their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives, Including the Preferred Alternative

We evaluated three alternatives for managing the Refuge for the next 15 years in the final CCP/EIS. Based on our analysis, we identified Alternative 2 as our preferred alternative; it was modified in the final CCP/EIS to address the comments we received on the Draft CCP/EIS. Summaries of our alternatives follow.

Alternative 1 (No Action)

Under Alternative 1, the Refuge would continue current practices. Malheur, Harney, and Mud Lakes would remain largely unmanaged, flooding and retreating according to annual weather fluctuations, with nonnative carp populations continuing to degrade these habitats. Other lake and wetland habitats in the Blitzen Valley and Double-O Units would be managed using rotational flooding and dewatering, to enhance productivity for waterfowl and to control carp. The Blitzen River's six dams, fish screens, and ladders would remain in place. Existing river conditions would remain. Native fish passage structures, maintenance of existing carp barriers, and rehabilitation of riparian vegetation would continue. Additional riverine enhancement would consist of small-scale in-stream improvements, when resources are available. We would continue to focus on information gathering for carp control.

Current habitat management in meadows, marshes, and uplands would continue. We would continue to address the needs of various waterbirds, shorebirds, and waterfowl by providing meadow and marsh habitat conditions necessary for nesting, pairing, and migration. Flood irrigation on meadow habitats with diversions from the Blitzen River would continue March 1 through July 25. Plant litter, which becomes detrimental to some wildlife species over time, would continue to be reduced using prescribed burning, haying (on or after August 10), and rakebunch grazing (on or after September 1). Approximately 40 percent of Refuge meadows would continue to be hayed or grazed annually. Emergent vegetation encroachment into wet meadows would continue, because extended flood irrigation creates favorable conditions for cattails.

Public uses, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation, would continue using the current facilities. No new public use facilities would be developed. Areas not on the main roads closed to public access would remain closed to provide sanctuary for wildlife.

Cultural resources, specifically archaeological resources, would continue to be considered during Refuge project planning. Historic resources would continue to be stabilized and restored as funding becomes available. Paleontological resources would continue to be protected. Interpretation of archaeological and historic resources would remain the same under Alternative 1.

Alternative 2 (Preferred Alternative)

Under Alternative 2, our preferred alternative, our principal focus for habitat management would be to improve the aquatic health of lakes and wetlands, primarily by controlling nonnative common carp. As turbidity decreases and submergent vegetation and associated invertebrate species become more abundant, the productivity of Malheur Lake, Boca Lake, Warbler Pond, and other water bodies within the Refuge would increase for a variety of waterbirds, waterfowl, and shorebirds.

Based on site-specific science, a variety of assessment and control tools may be used with the aid of partners to reduce carp populations. Control strategies would include the application of piscicide, chemo-attractants, and chemo-repellants; barrier placements; commercial harvest; recreational angling; water manipulation; and other control methods. The need for continued amendments to and construction of strategically placed in-stream structures, such as traps, screens, and fish wheels that allow native fish passage and impede carp movement, would also be considered. We would initiate necessary assessments and actions to develop a riverine strategy as resources become available. If aquatic health and carp objectives are met and sustained, more staff time would be available for river related issues.

Wetlands and terrestrial habitats would be managed for the life history needs of focal species, with a strong emphasis on flexibility. Tools would include, but not be limited to, late summer haying and autumn/winter rakebunch grazing to meet the foraging needs of early arriving wildlife species. During periods of active plant growth, management tools would include highly prescriptive grazing, mowing, farming, and extended dewatering, to reclaim acres overrun with invasive common cattail and reed canarygrass plants, or to rehabilitate plant communities.

We would upgrade or develop overlooks, elevated viewing platforms, and photography blinds. We would maintain and replant cottonwood trees and other trees and shrubs at six historic sites, to provide rare and incidental passerine habitat and high-quality wildlife viewing experiences for birders. Trails would be built or upgraded to provide access for visitors with mobility impairments, in compliance with the Americans with Disabilities Act (ADA). Docent-led Refuge tours would occur approximately monthly at different locations, including guided kayak and canoe tours on Malheur Lake.

We would emphasize modern media for interpretation. The George Benson Memorial Museum would be enhanced, and additional outdoor interpretive panels would be placed. Special Refuge events and presentations would be expanded. Environmental education (EE) would be provided, and we would develop an outdoor EE shelter and learning area at Refuge Headquarters.

Increased vehicle access would be provided at three sites year round—Boat Landing Road near Refuge Headquarters, Krumbo Lane to Krumbo Reservoir, and the southern portion of East Canal Road north to the confluence of Bridge Creek. We would provide up to eight outdoor welcome and orientation panels to guide visitors. Visitor amenities, such as picnic tables, shelters, and vault toilets, would be upgraded and provided in new locations. We would develop an expanded visitor contact station and gift shop at Refuge Headquarters, and a seasonal contact station at the P Ranch Unit, to facilitate contact between visitors, Refuge staff, and volunteers.

The upland game hunt would open approximately three weeks earlier than it currently opens. The northern part of Malheur Lake and the Buena Vista Unit would remain open under existing regulations. Proposed waterfowl hunt areas would more than double the existing hunt area, by opening a new access point, a portion of the south-central area of Malheur Lake, and the Buena Vista Unit to waterfowl hunting. The hunting season in the new areas would begin on the fourth Saturday in October, and end on the last day of the State's waterfowl season. The existing youth hunt would be promoted, and access improvements would be made to Saddle Butte. In partnership with

potential users, the Refuge would also support adding ADA-compatible facilities for waterfowl hunters with mobility impairments in the Buena Vista Unit.

We would pursue a land exchange with BLM, transferring lands within the Boundary Unit west of State Highway 205 and other small parcels to BLM, in exchange for appropriate BLM lands. The land exchange would not affect hunting opportunities.

Fishing opportunities would continue at Krumbo Reservoir, along the upper Blitzen River, at the southern portion of East Canal, and at Mud and Bridge Creeks, and vehicle access to fishing sites would expand. In addition, the Refuge would develop a new pedestrian crossing at Bridge Creek, and provide a new late-summer bank-fishing opportunity on the Blitzen River, from Sodhouse Lane to the bridge on Boat Landing Road. Orientation and information would be added to fishing areas. Triploid rainbow trout stocking would continue at Krumbo Reservoir, and a genetic study of redband trout would be conducted.

Step-down management plans for historic, archaeological, and paleontological resources would be developed in cooperation with partners. Interpretation of historic sites would be expanded. Opportunities for American Indians to collect plant materials for traditional uses would be expanded. Monitoring and inventory of archaeological resources would increase. Step-down habitat and wildlife species inventory and monitoring plans would be developed, emphasizing focal species and national monitoring efforts. Plant community responses to meadow management strategies would be monitored through a third party scientific process. A database would be created to track data collected for all monitoring plans. We would continue to emphasize partnerships to maximize adaptive management.

Our volunteer program would continue, with an emphasis on increasing recruitment, retention, and return rates. Refuge staff would pursue sustainable practices to achieve energy independence and carbon negative Refuge management.

Alternative 3

Under Alternative 3, most of the habitat management practices under Alternative 2 would occur. The primary difference is that we would place equal emphasis on aquatic health (carp control) and developing a comprehensive riverine strategy. A detailed assessment of the geomorphology, ecology, hydrology, and management function of the Blitzen River would occur for the first 7 years. This site-specific scientific information will then form the basis for any needed pilot projects and implementation of a comprehensive management strategy.

Management under Alternative 3 for wildlife viewing, photography, and welcome and orientation would be similar to Alternative 2, but there would be less emphasis on developed facilities, and more emphasis on self-guided and off-trail experiences. To promote this, a variety of access changes would occur. The 42-mile Blitzen Valley auto tour route (Center Patrol Road) would be closed to vehicle access August 15 to the fourth Friday of October in the Buena Vista Unit, and August 15 to March 1 in the P Ranch Unit, and would be redesigned into two or three shorter, year-round, auto tour routes. Walk-in free-roam access along the closed portions of the Center Patrol Road, and on the dike tops in the Buena Vista and P Ranch Units, would be allowed during the periods listed above to provide opportunities for self-guided and off-trail experiences. This would provide 11 weeks of free-roam opportunities in the Buena Vista Unit, and 27 weeks in the P Ranch Unit. Vehicle access to Krumbo Reservoir would be permitted from the fourth Friday of November to April; walk-in access would be allowed at other times of the year. The southern portion of East Canal Road to the confluence of Bridge Creek at the East Canal would remain open to year-round walk-in access. Year-round vehicle access would be allowed on Boat Landing Road near Refuge Headquarters, to the Malheur Lake elevated viewing platform. Both spur and loop trails a mile or less in length would be developed, as would a number of viewing overlooks and platforms. Existing trails would be upgraded to ADA standards.

The historic Audubon photography blind at Refuge Headquarters Display Pond would be restored under Alternative 3. In free-roam areas, temporary photography blinds would be permitted. The Refuge would maintain and replant trees and shrubs at four historic sites to provide habitat for and viewing of rare and incidental passerines.

The upland game and waterfowl hunts would be managed similar to Alternative 2, except that a Buena Vista waterfowl hunt would not be permitted, and ADA facilities would not be developed. A youth hunt would be explored for the Double-O Unit on the State-designated weekend.

Fishing opportunities and management would be the same as Alternative 2, except that vehicle access to fishing areas would be less, which could limit the number of people fishing. Volunteer programs, EE and interpretation, docent-led tours, the land exchange with BLM, cultural and paleontological management, energy independence, and inventory and monitoring would be managed the same as under Alternative 2.

Comments

We solicited comments on the Draft CCP/EIS from March 5 to May 4, 2012 (77 FR 13139, March 5, 2012). We received comments from agencies, organizations, and individuals. To address the comments, minor changes and clarifications were made to the final CCP/EIS, and documented in Appendix N.

Public Availability of Documents

In addition to the information in **ADDRESSES**, printed copies of the document will be available for review at the following libraries: Harney County Library at 80 West ''D'' Street, Burns, OR 97720; and Bend Public Library, 601 NW., Wall Street, Bend, OR 97701.

Dated: December 13, 2012.

Hugh Morrison,

Acting Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2012–30852 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2012–N233; FF07R06000 FXRS12650700000] 123

Kenai National Wildlife Refuge, Soldotna, AK; Draft Environmental Impact Statement for the Shadura Natural Gas Development Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that the Draft Environmental Impact Statement (EIS) for the Shadura Natural Gas Development Project is available for public review and comment. The EIS was prepared pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); the National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act); and the National Environmental Policy Act of 1969 (NEPA). It describes five

alternatives for accessing the subsurface natural gas estate owned by Cook Inlet Region, Inc. (CIRI), and provides analysis of the effects of those alternatives. The Service does not have a preferred alternative.

DATES: Please provide any written comments or information on the EIS by February 19, 2013.

ADDRESSES: Additional information concerning the Project can be found at *http://alaska.fws.gov/nwr/planning/nepa.htm*.

Additional information concerning the Refuge may be found at *http://www.fws.gov/refuges/profiles/index.cfm?id=74525*.

Send your comments or requests for information by any one of the following methods:

- *Email: fw7_kenai_planning@fws.gov;*
- *Fax:* Attn: Peter Wikoff, (907) 786–3976;
- *U.S. Mail:* Peter Wikoff, Natural Resource Planner, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503

FOR FURTHER INFORMATION CONTACT: Peter Wikoff, Natural Resource Planner, U.S. Fish and Wildlife Service, at (907) 786–3357, or at the address above.

SUPPLEMENTARY INFORMATION: We have received an application for, and have prepared a draft Environmental Impact Statement (EIS) for, a proposed right-of-way within the Refuge. The right-of-way would be in compliance with the Alaska National Interests Lands Conservation Act (ANILCA) Section 1110(b) regarding access to inholdings, for the construction and operation of facilities associated with the exploration and production of natural gas from the subsurface estate within the Refuge. The United States owns the surface estate which is managed by the Service as part of the Kenai Refuge, and Cook Inlet Region, Inc. (CIRI), owns the subsurface estate of coal, oil, and gas in the project area. The Project would be in the northwestern portion of the Kenai Peninsula, approximately 4 miles southeast of the end of the road in Captain Cook State Recreation Area. The application is being made by NordAq Energy, Inc., the holder of the lease from CIRI for the area.

The EIS describes and evaluates a range of reasonable alternatives and the anticipated impacts of each. We are publishing this notice in compliance with the NEPA regulations (40 CFR 1501.7) to advise other agencies and the public that the EIS is available for public review and comment.

Alternatives Considered

Alternative 1—No Action

The No Action alternative is required by the NEPA to present the current situation for comparison with the other alternatives.

Action Alternatives (Alternatives 2–5)

Under any of the action alternatives (alternatives 2–5), the Shadura Natural Gas Development Project would be constructed, operated, maintained, decommissioned, and reclaimed. During the first stage of the project, a gravel road, gravel storage yards, and a minimal drilling/processing pad would be constructed. Then one natural gas well would be drilled and tested. If the results of this testing were unfavorable, all equipment and gravel would be removed and the affected areas would be restored to approximate preconstruction conditions. If the results of testing were favorable, the second stage would be constructed.

The second stage of construction would involve expanding the drilling/processing pad to its final size and configuration; drilling five additional natural gas wells, an industrial water well, and a Class II disposal well; and constructing production facilities.

Once constructed, the Project would operate for about 30 years. At the end of the Project's useful life, it would be decommissioned and the impacted areas reclaimed.

Alternative 2—Applicant's Proposed Action

The access road would extend from the North Kenai Spur Highway along the west and south sides of Salmo Lake to a drilling/processing pad. That portion of the access road outside the Refuge has already been permitted by the State of Alaska as part of another project.

The access road would be 4.3 miles long, about 2.7 miles of which would be on the Kenai NWR. The remaining1.6 miles are on State and other lands. Of that portion on the Kenai NWR, about 1.7 miles of the road would be constructed in upland areas and about 1 mile would be in wetlands. The metering pad, gathering lines, and communication cable would be located parallel to the access road.

Alternative 3—Natural Gas Development With Northern Access

Under this alternative, the access road would be constructed around the north and east sides of Salmo Lake. The access road would be 4.6 miles long, of which 2.2 miles would be constructed on State and other lands, and 2.4 miles would be on the Kenai NWR. About 3.7 miles would be in upland areas and about 0.9 mile would be in wetlands. The North Kenai Spur Highway would provide primary access to the project area. The metering pad, gathering lines, and communication cable would be located parallel to the access road.

Alternative 4—Natural Gas Development With Eastern Access

Under this alternative, the access road would be constructed from the east. The access road would be 3.3 miles long—all on the Kenai NWR. About 2.7 miles would be constructed in upland areas and about 0.5 mile would be in wetlands.

The metering pad, gathering lines, and communication cable would not follow the access road but be constructed in the same locations as for Alternative 2. They would be installed cross-country between the drilling/processing pad and the previously permitted road on State lands. The segment between the Kenai NWR boundary and metering pad would follow this previously permitted road. The North Kenai Spur Highway would provide primary access to the metering pad.

Alternative 5—Natural Gas Development With Southern Access

Under this alternative, an access road would be constructed from the southeast. The access road would be 5.5 miles long—all on the Kenai NWR. About 5.3 miles would be constructed in upland areas and about 0.2 mile would be in wetlands.

The metering pad, gathering lines, and communication cable would be constructed in the same locations as for Alternatives 2 and 4. They would be installed cross-country between the drilling/processing pad and the previously permitted road on State lands. The segment between the Kenai NWR boundary and metering pad would follow this previously permitted road. The North Kenai Spur Highway would provide primary access to the metering pad.

Public Input

Special mailings, newspaper advertisements, and other media announcements will inform the public of opportunities to provide written input throughout the planning process. The EIS and information pertaining to the right-of-way application for the project are available for viewing and downloading at *http://alaska.fws.gov/nwr/planning/nepa.htm*.

Refuge Information

The Refuge covers approximately 2 million acres on the Kenai Peninsula in south-central Alaska. It is readily accessible by road from the city of Anchorage, which is home to 41.5 percent of Alaska's population. The Refuge consists of the western slopes of the Kenai Mountains and forested lowlands bordering Cook Inlet. The Kenai Mountains, with their glaciers, rise to more than 6,500 feet. Treeless alpine and subalpine habitats are home to mountain goats, Dall sheep, caribou, wolverine, marmots, and ptarmigan. Boreal forests extend from sea level to 1,800 feet and are composed of spruce and birch forests, which on the Refuge are intermingled with hundreds of lakes. Boreal forests are home to moose, wolves, black and brown bears, lynx, snowshoe hares, and numerous species of Neotropical birds, such as olive-sided flycatchers, myrtle warblers, and ruby crowned kinglets. At sea level, the Refuge encompasses the last remaining pristine major saltwater estuary on the Kenai Peninsula, the Chickaloon River Flats. The Flats provide a major migratory staging area and nesting habitat for shorebirds and waterfowl throughout the spring, summer, and fall. The Flats are also used as a haul-out area by harbor seals. Thousands of salmon migrate up the Chickaloon River system each year to spawn.

While the United States owns the land surface within the Refuge, portions of the subsurface estate are owned by CIRI. CIRI is an Alaska Native regional corporation established under the Alaska Native Claims Settlement Act of 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*). CIRI received the subsurface oil, gas, and coal estate to nearly 200,000 acres within the Refuge as part of its ANCSA entitlement. The State of Alaska also owns lands adjacent to the Refuge (Captain Cook State Recreation Area). ANILCA Section 1110(b) requires that the Service provide adequate and feasible access to the CIRI-owned subsurface estate. CIRI has previously leased other portions of its subsurface estate within the Refuge. Oil and gas are currently being produced from other production units within the Refuge.

The ANILCA (Section 303[4]) established the Refuge from the Kenai Moose Range and other lands, and set forth the following major purposes for which the Refuge was to be managed:

(i) To conserve fish and wildlife populations and habitats in their natural diversity, including, but not limited to, moose, bear, mountain goats, Dall sheep, wolves, and other furbearers; salmonoids and other fish; waterfowl and other migratory and non-migratory birds;

(ii) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the Refuge;

(iv) To provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and

(v) To provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

Public Availability of Comments

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

Dated: December 17, 2012.

E. LaVerne Smith,

Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2012–30756 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–12–1020–JA–VEIS]

Notice of Intent To Prepare an Environmental Impact Statement To Evaluate the Use of Three New Herbicides on Public Lands in 17 Western States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM), Washington, DC, intends to prepare an Environmental Impact Statement (EIS) to evaluate the use of aminopyralid, fluroxypyr, and rimsulfuron herbicides as part of the its vegetation treatment programs on public lands in 17 Western States. By this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: Comments on issues may be submitted in writing until February 19, 2013. For inclusion in the Draft EIS, all comments must be received prior to the close of the scoping period, or 15 days after the last public meeting, whichever is later. The BLM will hold three public scoping meetings: On January 7, 2013, in Worland, Wyoming; January 9, 2013, in Reno, Nevada; and January 10, 2013, in Albuquerque, New Mexico. The times and locations of the meetings can be found in the **SUPPLEMENTARY INFORMATION** section below. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit scoping comments related to the EIS for the use of aminopyralid, fluroxypyr, and rimsulfuron on BLM Public Lands in 17 Western States by any of the following methods:

- *Web site: http://blm.gov/3vkd.*
- *Email: VegEIS@blm.gov.*
- *Fax:* 206–623–3793.
- *Mail:* AECOM, Attn. Stuart Paulus, 710 Second Avenue, Suite 1000, Seattle, WA 98104.

Documents pertinent to this proposal may be examined at the BLM Washington Office, 20 M Street SE., Room 2134, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Gina Ramos, Senior Weeds Specialist, telephone 202–912–7226 or Stuart Paulus, Project Manager, telephone 206–403–4287. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the referenced individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This national programmatic EIS proposes to add aminopyralid, fluroxypyr, and rimsulfuron to the BLM's approved list of herbicides for (1) Controlling noxious weeds and other invasive species; and (2) Conserving and restoring native vegetation, watersheds, and fish and wildlife habitat. The EIS will evaluate the use of the three new herbicides as part of the BLM's vegetation treatment programs on public lands in 17 Western States. The analysis area will include all surface estate public lands administered

by the BLM in the following Western States: Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, North and South Dakota, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming. The purpose of the proposed action is to expand the BLM's vegetation treatment program to allow herbicide treatments with aminopyralid, fluroxypyr, and rimsulfuron. This action would increase the number of active ingredients approved for use, and would give the BLM increased flexibility and options when designing herbicide treatments.

The BLM has initially identified the following issues for analysis in this programmatic EIS: Effects of herbicides and inert ingredients used in herbicide formulations on human, vegetation, fish and wildlife, livestock, and wild horse and burro health; water quality; Native American resources and resource use; and the cumulative use of these and other herbicides by the BLM and other landowners in the Western U.S.

The BLM will follow NEPA public participation requirements to assist the agency in satisfying public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d) (3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA. The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process. If eligible, you may request, or be requested by the BLM, to participate in the development of the environmental analysis as a cooperating agency.

The BLM will hold the following scoping meetings to seek public comments to identify any issues surrounding the agency's proposal to prepare the EIS:

January 7, 2013—7 p.m., Worland Community Center Complex, 1200 Culbertson Ave., Worland, Wyoming;

January 9, 2013—7 p.m., Hyatt Place, 1790 East Plumb Lane, Reno, Nevada; and

January 10, 2013—7 p.m., BLM Albuquerque District Office, 435 Montano Rd. NE., Albuquerque, New Mexico.

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 may request in your comment that your personal identifying information be withheld from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

Edwin Roberson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 2012–30838 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069000–L17110000–AL0000]

Establishment of Interim Final Supplementary Rules for Public Lands Managed by the Carrizo Plain National Monument in Kern and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The California State Director for the Bureau of Land Management (BLM) is establishing interim final supplementary rules and requests public comments. These interim final supplementary rules will become effective immediately upon their publication in the **Federal Register** and will apply to public lands within the Carrizo Plain National Monument in Kern and San Luis Obispo Counties, California (Monument). The BLM has determined that these interim final supplementary rules are necessary to promote the health and sustainability of the Carrizo Plain National Monument, while reducing the risks to the Monument's ecosystem that, if left unchecked, could cause undue ecological degradation. These rules are in accordance with the Approved Resource Management Plan and Record of Decision (RMP/ROD) for the Monument.

DATES: The interim final supplementary rules are effective immediately and remain in effect until modified or rescinded by the publication of final supplementary rules. The BLM invites comments until February 19, 2013. Comments received, postmarked, or electronically dated after that date will not necessarily be considered in the development of final supplementary rules.

ADDRESSES: Please mail or hand deliver all comments concerning the interim final supplementary rules to the Bureau of Land Management, Attention: Ryan Cooper, BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

FOR FURTHER INFORMATION CONTACT: Ryan Cooper, 3801 Pegasus Drive, Bakersfield, CA 93308, 661–391–6048 or *racooper@blm.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

The public is invited to provide comments on these interim final supplementary rules. See **DATES** and **ADDRESSES** for information on submitting comments. Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and explain the reason for any recommended change. Comments requesting changes to decisions in the RMP/ROD would be outside the scope of this rulemaking.

Where possible, comments should reference a specific provision of these interim final supplementary rules. The BLM need not consider or include in the Administrative Record: (a) Comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) Comments delivered to an address other than one of those listed above (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308 during regular business hours of 7:30 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. However, before including your address, telephone 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.

II. Background

The Carrizo Plain National Monument Presidential Proclamation (Monument Proclamation) of January 17, 2001, established the Monument in recognition of its exceptional objects of scientific and historic interest. Previously, the BLM had managed the area in accordance with the Carrizo Plain Natural Area Management Plan of 1996. Under the guidance of that plan, the State Director established supplementary rules for the Natural Area at 62 FR 54126 (Oct. 17, 1997). The RMP/ROD for the Monument, signed April 10, 2010, provides for those supplementary rules to remain in effect. The supplementary rules put in place by this notice are in addition to rules established in 1997.

The Monument comprises approximately 200,000 acres in Kern and San Luis Obispo counties of California. Maps identifying the management boundaries are included in the RMP/ROD.

Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732 and 1740) provide the overall authority for the BLM's management of the Monument. The BLM is establishing these interim final supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources.

These interim final supplementary rules are available for inspection in the BLM Bakersfield Field Office and on the Web site for the Monument: *http://www.blm.gov/ca/st/en/fo/bakersfield/Programs/carrizo.html*. Upon publication of these interim final supplementary rules, the BLM will send a news release to all newspapers of general circulation in the affected vicinity.

The supplementary rules outlined in this notice are designed to immediately and effectively address risks to the ecosystem of the Carrizo Plains National Monument, which include but are not limited to: Threats to the health and sustainability of majestic grasslands and native endangered, threatened and rare flora and wildlife species, and world class archaeological sites. Protecting these values remains the utmost concern and mission of the Monument.

During the planning process that led to the RMP/ROD, the BLM took the following steps to involve the public in developing the plan decisions that provided a basis for the interim final supplementary rules:

- The BLM held three scoping meetings for the Carrizo RMP between April and June of 2007 in the planning area. The BLM also met with the Native American Advisory Council for local Indian tribes and the Monument Advisory Committee (MAC).
- The Draft RMP/EIS, which included supplementary rules, was available for a 90-day public comment period beginning in January 2009. The BLM held three public meetings throughout the planning area and met with the MAC, which is composed of our managing partners, and the Native American Advisory Council during the development of this document.
- The BLM released the Proposed RMP and Final EIS, which included the supplemental rules, in November 2009 for a 30-day protest period.
- The MAC, with representatives from diverse interest groups, and members of the public participated throughout the planning process. The State of California determined that the Proposed RMP/Final EIS is consistent with State and local plans.
- The BLM summarized all public comments and addressed them in the Final EIS published April 2010. All decisions related to these interim final supplementary rules were analyzed in the Final EIS.

The following were among the resource protection concerns that were identified during this extensive public participation in the planning process:

- Incidents of vehicle use off designated routes;
- Poaching and misidentification of target species;
- Degradation of cultural sites; and
- Damage to natural resources, including threatened and endangered species.

The BLM therefore finds that prior notice and public comment are contrary to the public interest, and finds good cause to publish these supplementary rules on an interim final basis, effective immediately upon the date of publication.

III. Discussion of Interim Final Supplementary Rules

These interim final supplementary rules implement provisions for visitor use and resource protection identified in the RMP/ROD at Attachment 7, ''Supplementary Rules for Public Use.''

Prohibition Against Use of Replica Weapons

Any use of replica weapons (such as paintball, airsoft, or war game apparatus) is prohibited on the Monument. The use of these types of weapons leaves behind debris that could be harmful to plants and animals that are protected on the Monument. Also, these devices often are convincing reproductions that could be mistaken for real weapons by law enforcement officers.

Street-Legal Vehicles

Recently there has been a noticeable increase in Off-Highway Vehicle (OHV) use in the Monument. Monument resources, including the majestic grasslands that offer refuge for endangered, threatened, and rare plant and animal species, are highly susceptible to damage from OHV use. The significant fossil assemblages and cultural artifacts associated with the Monument are also susceptible to OHV damage. This led to the determination during the planning process that non-street-legal vehicles generally are not compatible with the Monument Proclamation.

Only street-legal vehicles, i.e. those licensed for use on public roads, are permitted on routes within the Monument, unless:

- The vehicle is a military, fire, emergency, or law enforcement vehicle being used for emergency purposes;
- The vehicle is expressly authorized by the BLM, or otherwise officially approved; or,
- The vehicle is being used on a portion of the Temblor Ridge Road from T31S, R21E, Section 23 to T11N, R24W, Section 7, allowing connectivity to the eastern slopes of the Temblors; is registered with the State off-highway vehicle program; and displays a red or green State-issued sticker. Staging and trailering of non-street-legal vehicles are prohibited activities along Temblor Ridge Road.

Control of Pets

In an area as well traveled and visited as the Monument, which has seen an increase in recent years in the numbers of visitors, pets escaping from owner control pose a very real liability to the sustainability and overall health of Carrizo Plain National Monument. Pets, if left unrestrained, may spread diseases and the seeds of noxious weeds, as well as kill or harm local wildlife and flora. These actions are in stark contrast with the Monument's mission of protecting and conserving native wildlife and landscapes. Therefore, to prevent wildlife depredation or other ecological damage, pets must be leashed or caged at all developed sites including visitor centers, interpretive overlooks, and camping areas. Pets include dogs, cats, and birds. In some areas, pets may be excluded completely.

Prohibition Against Commercial Still and Video Photography of Pictograph Images

These interim final supplementary rules prohibit still and video photography for commercial use of the pictograph and petroglyph images found within the Monument. Pictographs are images painted upon stone surfaces, and petroglyphs are images carved into the stone surfaces by Native American people. Due to the spiritual values associated with this imagery, contemporary Native American people view the commercial use of these images as exploitative and inappropriate.

More recent carving and writing on the rocks, since about 1900, is considered graffiti. Where the graffiti overlies or is immediately adjacent to the pictographs and petroglyphs, commercial photography of graffiti is also prohibited.

In these interim final supplementary rules, the term ''commercial use'' is defined as any pictures or film created for the purpose of financial gain. Photography for educational or scientific purposes may be allowed, subject to BLM review and authorization, in instances where financial gain is not the primary purpose, and where the BLM has authorized such activity in writing.

Release of Non-Native and Captive-Held Native Species

This interim final supplementary rule prohibits the release of non-native and captive-held native species on BLM lands within the boundaries of the Carrizo Plain National Monument, unless the BLM authorizes such release in writing. This provision is in accordance with Executive Order 13112 (Feb 3, 1999), which requires that a Federal agency not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere, unless the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species, and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

This provision is also in accordance with the recognition in the Monument Proclamation that the Monument offers refuge for many endangered, threatened, and rare species. The intentional or unintentional release of a non-native or captive-held native species into an ecosystem has the potential to cause environmental harm to native species and the Monument's ecosystem because these species compete for resources, have the potential to prey on certain endangered or threatened species, and may introduce disease and/or parasites. Any of these could have drastic and devastating effects to the Monument's ecological health and sustainability. For example, in 2003, Newcastle disease, a threat to domestic and wild bird populations in California, nearly reached the Monument. Captive-held native species, while native, may introduce genetic material detrimental to the overall populations that have evolved in the Monument. For these reasons, the release of non-native and captive-held native species is not compatible with the Monument's mission.

In accordance with Executive Order 13112 and the Monument Proclamation, this interim final supplementary rule generally prohibits the release of non-native and captive-held native species, unless the release is required to meet Monument objectives and is authorized by the BLM in writing. Examples of authorized releases include:

- Augmentation or re-establishment of an endangered or threatened species such as the Kern primrose sphinx moth;
- Re-establishment of the giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox, or San Joaquin antelope squirrel in core areas; or
- Release of pronghorn or elk if necessary to meet herd objectives.

Painted Rock Exclusion Zone

The Painted Rock Exclusion Zone is a component of the Carrizo Plain Rock Art Discontiguous District, which is listed on the National Register of Historic Places. In the RMP/ROD, the BLM determined that it is necessary to prohibit the following animals, objects, and activities within the Exclusion Zone, in order to prevent disturbances such as erosion and vandalism:

- Horses;
- Dogs;
- Motorized and non-motorized bicycles (except in the Painted Rock parking area);
- Outdoor sporting activities (known as ''geocaching'' and ''earth caching'') in which the participants use a Global Positioning System receiver, mobile device, and navigational techniques to hide and seek containers, called ''geocaches'' or ''caches;''
- Discharge of firearms; and
- Campfires (except for Native American ceremonial use in accordance with Executive Order 13007, *Indian Sacred Sites* (1996)).

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These interim final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These interim final supplementary rules will not have an annual effect of $100 million or more on the economy or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or Tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The interim final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligation of their recipients; nor do they raise novel legal or policy issues. They merely impose certain rules on recreational activities on a limited portion of the public lands in California in order to protect human health, safety, and the environment.

Clarity of the Interim Final Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the interim final supplementary rules clearly stated?

(2) Do the interim final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the interim final supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim final supplementary rules in the **SUPPLMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the interim final supplementary rules easier to understand?

Please send any comments you have on the clarity of the interim final

supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These interim final supplementary rules themselves comprise a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). See 40 CFR 1508.4; 43 CFR 46.210. Specifically, these interim final supplementary rules are categorically excluded from the requirements of NEPA because they comprise an action of an administrative, financial, legal, technical, or procedural nature within the meaning of 43 CFR 46.210(i), and none of the extraordinary circumstances listed at 43 CFR 46.215 would be applicable. Therefore, the BLM is not required to prepare an environmental assessment or an environmental impact statement for these interim final supplementary rules.

Moreover, these interim final supplementary rules are a component of a larger planning process for the Monument (i.e., the RMP/ROD), that itself was a major Federal action. In developing the Monument RMP/ROD, the BLM prepared a Draft and Final EIS, which include a complete analysis of each decision corresponding to the interim final supplementary rules. The Draft and Final EIS, the Proposed Resource Management Plan, and the RMP/ROD are on file and available to the public in the BLM administrative record at the address specified under **ADDRESSES**. The Proposed Resource Management Plan, Final EIS, and RMP/ROD are online at: *http://www.blm.gov/ca/st/en/fo/bakersfield/Programs/carrizo.html.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These interim final supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). These interim final supplementary rules generally contain rules of conduct for recreational use of certain public lands. While they prohibit photography of pictographs or petroglyphs for commercial use, that prohibition does not have an effect on business, commercial, or industrial use of the public lands that rises to any of the following thresholds specified in 5 U.S.C. 804(2):

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

These interim final supplementary rules do not impose an unfunded mandate on state, local or tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor do they have a significant or unique effect on small governments. These interim final supplementary rules do not require anything of state, local, or Tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The interim final supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not address property rights in any form and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that these interim final supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The interim final supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the BLM has determined that these interim final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these interim final supplementary rules will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Executive Order are met. The supplementary rules include rules of conduct and prohibited acts, but they are straightforward and not confusing.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

As discussed in the RMP/ROD, the BLM has been working with a Native American Advisory Committee for the Monument formed under a 1997 charter agreement. The Advisory Committee was formed to encourage the participation in Monument management of both federally recognized tribes and other Native Americans having ancestral cultural ties to the lands in the Monument. The Advisory Committee includes representatives of the Chumas, Yokuts, and Salinan people.

The Advisory Committee actively participated in the planning process that resulted in the 2010 RMP/ROD. The BLM also provided tribes in the vicinity of the Monument with copies of the draft RMP, and requested comments, but the tribes expressed no concerns about the RMP or the decisions related to these interim final supplementary rules. For these reasons, the BLM has determined that these interim final supplementary rules themselves do not include policies with tribal implications that have not already been considered in consultation and coordination with Indian tribal governments.

Information Quality Act

In developing these supplementary rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Public Law 106–554). In accordance with the Information Quality Act, the Department of the Interior has issued

guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at DOI's Web site at *http://www.doi.gov/ocio/iq.html.*

Executive Order 13211, Effects on the Nation's Energy Supply

These supplementary rules do not comprise a ''significant energy action,'' as defined in Executive Order 13211, since they are not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these interim final supplementary rules is Ryan Cooper, Recreation Planner, Carrizo Plain National Monument.

For the reasons stated in the preamble and under the authority for supplementary rules found in 43 CFR 8365.1–6, the BLM California State Director hereby establishes supplementary rules, effective on an interim final basis immediately after the date of publication in the **Federal Register**, for public lands managed by the BLM in the Carrizo Plain National Monument, to read as follows:

Interim Final Supplementary Rules for Public Lands Within the Jurisdiction of the Carrizo Plain National Monument

Definitions

Commercial use means any pictures or film created for the purpose of financial gain.

Painted Rock Exclusion Zone means lands within the Carrizo Plain National Monument indicated on Map 2–3 in the Carrizo Plain National Monument Approved Resource Management Plan, and with the following legal description: T32S, R20E, portions of sections 7, 8, 15, 16, 17, 18, MDM.

Pictographs means images painted upon stone surfaces by Native American people.

Petroglyphs means images carved into stone surfaces by Native American people.

Replica weapon means any imitation firearm, including paintball guns, air-soft guns, and war game apparatuses.

Street-legal vehicle means a vehicle, such as an automobile, motorcycle, or light truck, that is equipped and licensed for use on a public street and/or highway and that is subject to registration under the California Vehicle Code 4000(a)(1).

Rules

1. You must not use any replica weapons (such as paintball, airsoft, or war game apparatus) within the Carrizo Plain National Monument.

2. You must not drive, move, or leave standing a motor vehicle within the Carrizo Plain National Monument boundaries, unless it is a street-legal vehicle, or:

(a) The vehicle is a military, fire, emergency, or law enforcement vehicle being used for emergency purposes;

(b) The vehicle is expressly authorized by the authorized officer, or otherwise officially approved; or

(c) The vehicle is registered with the State off-highway vehicle program, and displays a red or green State-issued sticker, and is being used on a portion of the Temblor Ridge Road from T. 31 S., R. 21 E., Sec. 23 (Crocker Grade Road) to T. 11 N., R. 24 W., Sec. 7.

3. All pets must remain leashed or caged at all developed sites including visitor centers, interpretive overlooks, trail heads, and camping areas.

4. You must not take or ride any horse into the Painted Rock Exclusion Zone.

5. You must not take any dog into the Painted Rock Exclusion Zone.

6. You must not take or ride non-motorized bicycles into any part of the Painted Rock Exclusion Zone, except the Painted Rock parking area.

7. You must not engage in any cache-type activities (including geocaching and earth caching) in the Painted Rock Exclusion Zone.

8. You must not discharge any firearms in the Painted Rock Exclusion Zone, which is a pre-historic Native American site on the National Register of Historic Places.

9. You must not start any campfire in the Painted Rock Exclusion Zone, except for Native American ceremonial use, which is in accordance with Executive Order 13007, *Indian Sacred Sites* (1996).

10. You must not make, for commercial use, digital, photographic, print, or video images of any of the pictographs or petroglyphs, or any graffiti that overlies or is immediately adjacent to the pictographs and petroglyphs, located within the boundaries of the Carrizo Plain National Monument, unless:

(a) Making such images is for non-commercial scientific or educational purposes; and

(b) Is authorized in writing by the BLM.

11. You must not release non-native or captive-held native species on BLM lands within the boundaries of the Carrizo Plain National Monument unless authorized in writing by the BLM.

Penalties

Violations of any supplementary rules by a member of the public, may be subject to the penalties provided in 43 CFR 8365.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

James G. Kenna,

Bureau of Land Management, State Director, California State Office.

[FR Doc. 2012–30732 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA, the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will meet as indicated below.

DATES: On January 31, 2013, the Twin Falls District RAC members will meet at the Best Western Sawtooth Inn at 2653 S. Lincoln Street, Jerome, Idaho. The meeting will begin at 9:00 a.m. and end no later than 4:00 p.m. The public comment period for the RAC meeting will take place 9:10 a.m. to 9:40 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho, 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the January 31st meeting, there will be a new member orientation, Craters of the Moon National Monument Resource Management Plan (RMP) Amendment update, Milner Recreation Site overview and Environmental Impact Statement (EIS) updates for the Gateway West Transmission Project, as

well as the BLM's National Greater Sage-Grouse Planning Strategy.

Additional topics may be added and will be included in local media announcements. More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html* RAC meetings are open to the public. For further information about the meeting, please contact Heather Tiel-Nelson, Public Affairs Specialist for the Twin Falls District, BLM at (208) 736–2352.

Dated: December 11, 2012.

Mel M. Meier,

District Manager.

[FR Doc. 2012–30763 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069 L1711.0000 AL.0000 025B]

Nomination Period Extension for the Carrizo Plain National Monument Advisory Council, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is extending the period that it will accept nominations from the public to fill three positions on the Carrizo Plain National Monument Advisory Council (MAC) to December 31, 2012. MAC members provide advice and recommendations to the BLM on the management of public lands in the Carrizo Plain National Monument.

ADDRESSES: Nominations should be sent to Johna Hurl, Monument Manager, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

FOR FURTHER INFORMATION CONTACT: Johna Hurl, Monument Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, (661) 391–6093, *jhurl@blm.gov* or John Kelley, Carrizo Program Support Technician, at (661) 391–6088, *jtkelley@blm.gov.*

SUPPLEMENTARY INFORMATION: The MAC provides representative citizen counsel and advice to the Secretary of the Interior through the BLM with respect to the revision and implementation of the comprehensive plan for the Carrizo Plain National Monument. This notice constitutes an open call to the public to submit nomination applications for the following positions on the Monument Advisory Committee:

(1) A member of, or nominated by, the Carrizo Native American Advisory Council;

(2) A member representing individuals or companies authorized to graze livestock within the Monument; and

(3) One member with recognized backgrounds reflecting:

(i) The purposes for which the Monument was established; and

(ii) The interests of other stakeholders, including the general public, who are affected by or interested in the planning and management of the Monument.

Individuals may nominate themselves or others. Nominees must be residents of the counties or a neighboring county in which the MAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and their knowledge of the geographical resource. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils.

The following must accompany nominations received in this call for nominations:

○ Letters of reference from represented interests or organizations;

○ A completed background information nomination form; and

○ Any other information that speaks to the nominee's qualifications.

Nominations will be accepted through December 31, 2012. Nomination forms are available on the Web at *http://www.blm.gov/ca/st/en/info/rac/cpnmac.html.*

A. Este Stifel,

District Manager, Central California District.

[FR Doc. 2012–30757 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00000 LF20000000.JS0000 LFESGXW70000 4500036833]

Notice of Temporary Closures on Public Lands in Owyhee County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary road closure to motorized vehicle use and temporary area closure to all entry.

SUMMARY: Notice is hereby given that the Con Shea closures are in effect on public lands administered by the Owyhee Field Office, Bureau of Land Management (BLM) and Morley Nelson Snake River Birds of Prey National Conservation Area (NCA–BLM). Two roads will be closed to motorized vehicle traffic due to hazardous road conditions. One area closure will be designated and closed to all uses due to special resource concerns as a result of impacts from wildfire.

DATES: The closures will be in effect on the date this notice is published in the **Federal Register** and will remain in effect for a maximum of two years.

FOR FURTHER INFORMATION CONTACT: For temporary road closures contact Loretta Chandler, Owyhee Field Office Manager at 20 First Ave. West, Marsing, Idaho, 83639, via email at *lchandler@blm.gov*, or phone (208) 896–5912. For temporary area closures contact Patricia Roller, Morley Nelson Snake River Birds of Prey National Conservation Area Manager at 3948 Development Ave., Boise, Idaho, 83705, via email at *proller@blm.gov*, or phone (208) 384–3300. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Roads Closed to Motorized Vehicle Use

The Con Shea (#GXW7) fire closure affects roads crossing public lands located in Owyhee County, Idaho approximately 10 miles northeast of Murphy, which burned June 13–16, 2012. The roads affected by this closure are found in:

Boise Meridian, Idaho

T. 2 S., R. 1 W., secs. 4, 9–10, and
T. 2 S., secs. 24–25, and 36, and T. 2 S., R. 1 E., sec. 30.

Both roads are shown on the map named ''Con Shea Closures.''

The Con Shea fire road closure, which accounts for approximately 4 miles of road, is necessary because the roads and adjacent public lands are at risk from further damage by motorized vehicles. Road structure and integrity has been compromised due to heavy use from suppression efforts, and there is the potential for increased overland travel and resource damage. The road closures will eliminate possible new resource damage until precipitation events allow for the roads to pack and are safely passable again. These closures will remain effective for 24 months from the date this notice is published in the **Federal Register**. The closures will be

rescinded earlier if the roads become passable. The BLM will post closure signs at main entry points to the closed roads. This closure will be posted in the Boise District BLM Office and Owyhee Field Office. Maps of the affected area and other documents associated with this closure are available at 3948 Development Avenue, Boise, Idaho, 83705 and 20 First Avenue West, Marsing, Idaho, 83639.

Area Closure

In addition to the road closure, a portion of the affected area will be closed to all public use. This closure affects public lands located in Owyhee County, Idaho approximately 10 miles northeast of Murphy, which burned June 13–16, 2012. The closure is found in:

Boise Meridian, Idaho

T. 1 S., R. 1 W., secs. 34, and 35, and T. 2 S., R. 1 W., sec. 2, generally located south of a non-motorized trail and north of the canyon rim, encompassing approximately 225 acres, as shown on the ''Con Shea Closures'' map.

This closure is necessary to allow seeded shrub, forb, and grass species to become established; and allow existing plants to recover from the effects of the fire. The BLM will post closure signs at main entry points to the closed areas and/or other locations on-site. This closure will be posted in the Boise District BLM Office and Owyhee Field Office. Maps of the affected area and other documents associated with this closure are available at 3948 Development Avenue, Boise, Idaho, 83705, and 20 First Avenue West, Marsing, Idaho, 83639.

Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rules within the Con Shea fire closure:

Motorized vehicles must not be used on closed roads.

Public entry into the 225 acre closed area is restricted.

Exemptions: The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and entities with valid existing use authorizations, i.e. rights-of-way, leases and permits.

Penalties: Any person who violates the above rule may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Violators may also be subject to the enhanced fines provided for in 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Loretta Chandler,

Owyhee Field Manager.

Patricia Roller,

Morley Nelson Snake River Birds of Prey NCA Manager.

[FR Doc. 2012–30751 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–DPOL–11034; PPWODIREP0/PPMPSAS1Y.YP0000]

Notice of Availability of Draft Director's Order #77–10 Concerning National Park Service Policies and Procedures Governing Benefits Sharing

AGENCY: National Park Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The National Park Service (NPS) is proposing to adopt a Director's Order setting forth policies and procedures that guide NPS practices to implement benefits sharing in accordance with the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5935(d)) that authorizes the Secretary of the Interior to enter into negotiations with the research community and private industry for equitable, efficient benefits-sharing arrangements. Benefits sharing occurs when NPS receives monetary or other benefits from a discovery or invention with a commercial application resulting from research originating under an NPS Scientific Research and Collecting Permit, or other permit or authorization.

DATES: Written comments will be accepted until January 22, 2013.

ADDRESSES: Draft Director's Order #77–10 is available on the Internet at *http://www.nps.gov/applications/npspolicy/DOrders.cfm* where readers may comment on the draft. In lieu of the above preferred process, requests for paper copies of and written comments on the draft Director's Order should be sent to Ann Hitchcock, Senior Advisor for Scientific Collections, 1201 Eye Street NW., (Room 1247), Washington, DC 20005. We will not accept comments by fax, e-mail, or in any other way other than those specified above.

FOR FURTHER INFORMATION CONTACT: Ann Hitchcock at (202) 354–2271 or John G. Dennis at (202) 513–7174.

SUPPLEMENTARY INFORMATION: Draft Director's Order #77–10 addresses benefits sharing stemming from research results derived from NPS-permitted research and the relationship between NPS benefits sharing and NPS technology transfer activities under authority of the Federal Technology Transfer Act of 1986 and related legislation (15 U.S.C. 3710 *et seq.*). This Order clarifies National Park Service *Management Policies 2006* 4.2.4, defines NPS benefits sharing, lists fundamental benefits-sharing principles, describes basic benefits-sharing procedures, addresses related ethics and confidentiality, assigns responsibilities for administering benefits sharing, and outlines reporting requirements.

Public Availability of Comments

Before including your address, phone number, e-mail 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 may 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: December 18, 2012.

Herbert C. Frost,

Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 2012–30830 Filed 12–20–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–11808; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 24, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted

by January 7, 2013. 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: November 29, 2012.

Alexandra M. Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pima County

Owen Homesite, (Tucson Health Seekers MPS) 1415 E. Prince Rd., Tucson, 12001142

Tucson Medical Center, (Tucson Health Seekers MPS), 5301 E. Grant Rd., Tucson, 12001143

CALIFORNIA

Napa County

Monte Vista and Diamond Mountain Vineyard, 2121 Diamond Mountain Rd., Calistoga, 12001144

GEORGIA

Lumpkin County

Blood Mountain Trail Shelter, Blood Mountain Wilderness Area, Blairsville, 12001145

ILLINOIS

Williamson County

Marion Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS), 2401 W. Main St., Marion, 12001146

INDIANA

Allen County

Lafayette Place Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Roughly bounded by S. Calhoun & Lafayette Sts., McKinnie & Pettit Aves., Fort Wayne, 12001147

Floyd County

Georgetown Historic District, Roughly bounded by Georgetown-Greenville Rd., Canal Ln., Walnut St. & unnamed alley, Georgetown, 12001148

Grant County

Meshingomesia Cemetery and Indian School Historic District, 3820 Co. Rd. 600 N., Jalapa, 12001149

Lake County

Lake County Sanatorium, Nurse's Home and Superintendent's Residence (Boundary Increase), 425 W. 93rd Ave., Crown Point, 12001150

Marshall County

Bremen Baltimore and Ohio Railroad Station, Jct. of Douglas Rd. & IN 106, Bremen, 12001151

Bremen Water Tower, W. side of 100 blk. of S. Jackson St., Bremen, 12001152

Polk Township District No. 2 School, 18998 W. 2A Rd., Walkerton, 12001153

Miami County

Peru High School Historic District, (Indiana's Public Common and High Schools MPS), 80 W. 6th St., Peru, 12001154

Ripley County

Milan Masonic Lodge No. 31, 312 Main St., Milan, 12001155

NORTH CAROLINA

Currituck County

Coinjock Colored School, 4358 Caratoke Hwy., Coinjock, 12001156

Durham County

Biddle, Mary Duke, Estate, 1044 & 1050 W. Forest Hills Blvd., Durham, 12001157

Hertford County

Uptown Suburbs Historic District, Roughly bounded by W. Lexington & Sunset Aves., Westchester Dr., Johnson & W. Ray Sts., High Point, 12001158

WASHINGTON

Clark County

Clark County Poor Farm—Southwestern Washington Experiment Station, 1919 NE. 78th St., Vancouver, 12001159

Mason County

Mason County Courthouse, 419 N. 4th St., Shelton, 12001160

San Juan County

Donohue, Michael and Myra, House, 1159 N. Beach Rd., Eastsound, 12001161

A request for removal has been made for the following resources:

WISCONSIN

Rock County

Leedle Mill Truss Bridge, SR 1, Evansville, 80000398

KANSAS

Ellis County

Krueger Building, 811 Fort St., Hays, 06000111

Saline County

Brookville Hotel, Perry St., Brookville, 72000525

[FR Doc. 2012–30758 Filed 12–20–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0079]

Research Lease for Renewable Energy on the Outer Continental Shelf (OCS) Offshore Virginia, Request for Competitive Interest (RFCI)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Public Notice of an Unsolicited Request for an OCS Research Lease; Request for Competitive Interest; and Request for Public Comment.

SUMMARY: The purpose of this public notice is to: (1) Describe the proposal submitted to BOEM by the Commonwealth of Virginia, Department of Mines Minerals and Energy (DMME) to acquire an OCS lease for wind energy research activities; (2) solicit public input regarding the proposal, its potential environmental consequences, and the use of the area in which the proposed project would be located; and (3) solicit indications of competitive interest for a research lease in the area identified by DMME for activities that would support future, potential commercial wind development.

On June 1, 2012, BOEM received an unsolicited request for a research lease from DMME. The objective of DMME is to obtain a lease under 30 CFR 585.238 for renewable energy research activities, including the siting of two meteorological and ocean monitoring platforms for pre-and post-construction collection of resource data, including wind velocities, water levels, waves, and bird and bat activities, to support the future production of renewable energy within and around the Wind Energy Area (WEA) offshore Virginia, identified by BOEM.

This RFCI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR Part 585.

DATES: If you are a Federal agency or a state entity submitting an indication of interest in acquiring a research lease for the area proposed by DMME, your submission must be sent by mail, postmarked no later than January 22, 2013 for your submission to be considered. If you are providing comments or other submissions of information, you may send them by mail, postmarked by this same date, or you may submit them through the Federal Rulemaking Portal at *http://www.regulations.gov,* also by this same date.

Submission Procedures: Federal agencies and state entities wishing to obtain a research lease for the area requested by DMME should submit detailed and specific information as described in the section entitled ''Required Indication of Interest Information.'' If you are submitting an indication of competitive interest for a research lease or comments, please submit it by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. Submissions must be postmarked by January 22, 2013 to be considered by BOEM for the purposes of determining competitive interest. In addition to a paper copy of your submission, include an electronic copy on a compact disc. BOEM will list the parties that submit indications of competitive interest on the BOEM Web site after the 30-day comment period has closed.

If you wish to protect the confidentiality of your submissions or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this notice entitled, ''Privileged or Confidential Information.'' BOEM will post all comments on regulations.gov unless labeled as confidential. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

If you are submitting comments and other information concerning the proposed research lease area, you may use either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry entitled ''Enter Keyword or ID,'' enter BOEM–2012–0079, and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

2. *Alternatively, comments may be submitted by mail to the following address:* Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170.

FOR FURTHER INFORMATION CONTACT: Mr. Casey Reeves, Renewable Energy Program Specialist, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170; phone (703) 787–1320.

SUPPLEMENTARY INFORMATION:

Purpose of the RFCI

Responses to this public notice will allow BOEM to determine, pursuant to 30 CFR 585.238, whether or not there is competitive interest in acquiring an OCS research lease in the area requested by DMME. At this time, BOEM is only soliciting indications of interest in obtaining a research lease in the area described in this notice. If BOEM receives no competing indications of interest for a research lease in response to this notice, BOEM may decide to move forward with the research leasing process using the non-competitive procedures described in 30 CFR 585.238(d).

BOEM previously solicited nominations for commercial wind development in the Virginia WEA through the publication of a notice, on February 3, 2012, entitled, ''Commercial Leasing for Wind Power Development on the Outer Continental Shelf (OCS) Offshore Virginia—Call for Information and Nominations'' (77 FR 5545). In that notice, BOEM identified the area that DMME had proposed for potential research activities, and BOEM requested the any entity submitting a nomination for a potential commercial lease area that overlapped with DMME's potential research lease area include in their nomination information relating to potential interaction between the nominating entity's proposed activities and DMME's proposed activities. Specifically, BOEM asked whether the nominating entity would consider the proposed DMME activities to be compatible with its commercial wind activities proposed for the Virginia WEA. BOEM also stated that if the nominating entity believed it would be necessary to exclude or restrict DMME's proposed activities from occurring in the commercial lease area, then the nominating entity should provide an explanation. No nominating entities indicated that there would be potential incompatibilities with the proposed DMME research activities. Therefore, BOEM determined that it would be appropriate to move forward with DMME's research lease application and publish this RFCI.

This notice also provides an opportunity for interested stakeholders to comment on the proposed lease area and the proposed DMME research project and any potential impacts that the project may have. BOEM will consider comments submitted when deciding whether and how to move forward with the research leasing process.

DMME's Proposed Research Activities

DMME's proposed research activities are described in their unsolicited request for a research lease, which is available at the following URL: *http://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/State_Activities/VA%20DMME%20Application%20for%20Sec238%20Research%20Lease1%202012–06–01.pdf.*

Description of the Proposed Research Lease Area

The proposed research lease area consists of four OCS sub-blocks (i.e., 1/16 of an OCS block). The table below describes the OCS lease sub-blocks included within the area of interest.

Protraction name	Protraction No.	Block No.	Sub block
Currituck Sound	NJ18–11	6014	B,C
Currituck Sound	NJ18–11	6164	N,O

Map of the Area

A map of the area proposed by DMME and the area included in this RFCI can be found at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.*

A large scale map of the RFCI area showing boundaries of the area with the numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. Phone: (703) 787–1320, Fax: (703) 787–1708.

Required Indication of Interest Information

If you are a Federal agency or a state entity and you intend to submit an indication of competitive interest for a research lease for the area identified in this notice you must provide the following:

(1) A statement that you wish to acquire a research lease for the proposed lease area (i.e., the entire area as described above). BOEM will not consider indications of interest if they cover less than the entire proposed research lease area. Any interest in an area located outside of the proposed research lease area should be submitted separately pursuant to 30 CFR 585.238;

(2) A general description of your objectives and the facilities that you would use to achieve those objectives;

(3) A general schedule of proposed activities;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area that you wish to lease, including energy and resource data and information used to evaluate the area of interest. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83);

(5) Documentation demonstrating that you are legally qualified to hold a research lease as set forth in 30 CFR 585.106 and 107. Examples of the documentation appropriate for demonstrating your legal qualifications and related guidance can be found in Chapter 2 and Appendix B of the Guidelines for the Minerals Management Service Renewable Energy Framework available at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see ''Protection of Privileged or Confidential Information Section,'' below); and

(6) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities described in your submission. Guidance regarding the required documentation to demonstrate your technical and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.*

It is critical that you provide a complete submission of competitive interest including the items identified in (1) through (6) so that BOEM may consider your submission in a timely manner. If BOEM reviews your submission and determines that it is incomplete, BOEM will inform you of this determination in writing and describe the information that BOEM wishes you to provide in order for BOEM to deem your submission complete. You will be given 15 business days from the date of the letter to provide the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines your second submission is also insufficient, BOEM may deem your submission invalid. In such a case, BOEM would not consider your submission.

Environmental Review Process

On February 3, 2012, BOEM published an environmental assessment (EA) and finding of no significant impact (FONSI) for the issuance of commercial and research leases and approval of a reasonably foreseeable range of data collection devices in the WEAs offshore New Jersey, Maryland, Delaware, and Virginia. The EA and FONSI can be found at: *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx.* If BOEM issues a research lease to DMME, BOEM would determine whether the EA adequately considers the environmental consequences of the activities proposed in DMME's submitted plan, which would include the results of the necessary site characterization surveys. If the analysis in the EA adequately considers these consequences, then no further National Environmental Policy Act (NEPA) analysis would be required before the plan could be approved. If, on the other hand, BOEM determines that the analysis in the EA is inadequate for that purpose, BOEM would prepare an additional NEPA analysis before approving the plan.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information, ''Contains Confidential Information,'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential: (1) The legal title of the nominating Federal or state agency; or (2) the geographic location of facilities and the types of those facilities. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources, if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate information that they wish to be held as ''confidential.''

Dated: December 18, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–30829 Filed 12–20–12; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–034]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 28, 2012 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1205 (Preliminary)(Silica Bricks and Shapes from China). The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before December 31, 2012; Commissioners'' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before January 8, 2013.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 19, 2012.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2012–30895 Filed 12–19–12; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–852]

Certain Video Analytics Software, Systems, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 31, 2012, based on a complaint filed by ObjectVideo, Inc. (''ObjectVideo'') of Reston, Virginia. 77 FR 45376. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video analytics software systems, components thereof, and products containing same by reason of infringement of certain claims of the following U.S. Patent Nos: 6,696,945; 6,970,083; 7,868,912; and 7,932,923. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named PELCO, Inc. (''PELCO'') of Clovis, California as the sole respondent. No Commission investigative attorney is participating in the investigation.

On November 8, 2012, ObjectVideo and PELCO moved to terminate the investigation based on a settlement agreement.

The ALJ issued the subject ID (Order No. 7) on November 27, 2012, granting the joint motion for termination of the investigation. He found that the motion satisfies Commission rules 210.21(a)(2) and (b)(1). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation is in the public interest. No party petitioned for review of the ID.

The Commission has determined not to review the ID, and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42(h)).

By order of the Commission.

Issued: December 18, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–30818 Filed 12–20–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 14, 2012, the United States Department of Justice lodged a proposed First Amended Consent Decree (''Decree'') with the United States District Court for the District of New Jersey in the lawsuit entitled *United States* v. *Johnson & Johnson, et al.,* Civil Action No. 06–6077 (FSH). The proposed Decree provides for the performance of a remedial action, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.,* for soils and groundwater contamination (''Operable Unit Two'') selected by the United States Environmental Protection Agency for the Horseshoe Road Drum Disposal (''HRDD'') portion of the Horseshoe Road Superfund Site and the adjacent Atlantic Resources Corporation (''ARC'') Superfund Site in Sayreville, New Jersey. The proposed Decree would supersede an existing consent decree in this action which provides for ARC Operable Two remedial action but does not provide for HRDD Operable Unit Two remedial action.

The Operable Unit Two remedial action for the ARC and HRDD sites will be performed by a group of Settling Work Defendants, consisting of Johnson & Johnson, Permacel, Inc., 3M Company, Lionetti Oil Recovery, Inc., and Fry's Metals, Inc. The United States on behalf of the Department of Defense and a group of De Minimis Settling Defendants, consisting of Novartis Corporation, Essex Chemical Corporation, Chevron Environmental Management Company, Union Carbide Corporation, Advanced Environmental Technology Corporation, AT&T Corp., The City of Philadelphia, Honeywell International Inc., ICI Americas Inc., International Paper Company, ITT Corporation, JPMorgan Chase Bank, N.A., North Jersey Media Group, Philips Electronics North America Corporation, Robert Wood Johnson University Hospital Rahway, Saint Peter's University Hospital, Inc., and Sun Chemical Corporation, will contribute to the costs of the performance of the work. The proposed Decree also provides for reimbursement of EPA's HRDD past costs in the amount of $1,979,206.75. The proposed Decree includes the United States' covenants not to sue or take administrative action against the settling defendants with respect to the HRDD Operable Unit Two remedial action, HRDD past costs, and an Operable Unit Three relating to the marsh and Raritan River adjacent to the ARC and Horseshoe Road sites.

The publication of this notice opens a period for public comment on the First Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Johnson & Johnson, et al.,* D.J. Ref. No. 90–11–3–480/4. 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 $57.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $27.00.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–30733 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: FEL Out-of-Business Records

ACTION: 30-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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. This proposed information collection was previously published in the **Federal Register**, Volume 77, Number 200, page 63340, on October 16, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 22, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

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 functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* FEL Out of Business Records.

(3) *Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

Federal explosives licensees (FELs) and permittees are required by 27 CFR 555.128 where an explosive materials business or operations is discontinued and succeeded by a new licensee or new permittee to reflect that fact in the records and deliver records to the successor or where discontinuance of the business or operations is absolute, deliver records to any ATF office located in the region in which the business or operations was located or to ATF Out of Business Records Center, 244 Needy Road, Martinsburg, WV 25405 within 30 days following the business or operations discontinuance. FELs and permittees are also required by 27 CFR 555.61 to furnish notification of the discontinuance or succession and submit his license or permit and any copies furnished with the license or permit to the Chief, Firearms and Explosives Licensing Center within 30 days following the discontinuance.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 200 respondents will take 30 minutes to package and deliver the records to ATF.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 100 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 3W–1407B, 145 N Street NE., Washington, DC 20530.

Dated: December 18, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–30767 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0025]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Limited Permittee Transaction Report

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 February 19, 2013. 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 Anita Scheddel, Explosives Industry Programs Branch at *eipb-informationcollection@atf.gov*.

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 functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit.

Need for Collection

The Limited permittees are required to complete ATF F 5400.4 prior to receiving explosive materials. The form is used to verify that all persons who are purchasing explosive materials have the proper Federal permit and to ensure that such persons have appropriate facilities for storage of the explosive materials.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 175 respondents will complete a 20 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1,050 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 18, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–30812 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0075]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Transactions Among Licensees/Permittees, Limited

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 February 19, 2013. 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 Anita Scheddel, Explosives Industry Programs Branch at *eipb-informationcollection@atf.gov*.

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 functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensees/Permittees, Limited.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

A licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a holder of a limited permit if the holder of such permit is a resident of the same State in which the licensee's business premise is located. A holder of a limited permit may receive explosive materials on no more than 6 separate occasions during the one-year period of the permit. A holder of a user permit may dispose of surplus stocks of explosive materials to the holder of a limited permit who is a resident of the same State in which the premises of the holder of the user permit are located. A licensed importer, licensed manufacturer, licensed dealer or permittee, must, prior to delivering the explosive materials, obtain from the limited permitee a current list of the persons who are authorized to accept delivers of the explosive materials on behalf of the limited permittee.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 175

respondents will take 30 minutes to comply with the required information.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 88 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 18, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–30815 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0064]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Restoration of Explosives Privileges

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 February 19, 2013. 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 Daniel Board, Firearms Trafficking Branch at *Daniel.Board@atf.gov*.

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 functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Restoration of Explosives Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.29. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit.

Need for Collection

ATF F 5400.29 is required in order to determine whether or not explosive privileges may be restored. The form is used to conduct an investigation to establish if it is likely that the applicant will act in a manner dangerous to public safety or contrary to public interest.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 500 respondents will complete a 30 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 18, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–30814 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0024]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Report of Firearms Transactions

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act 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 February 19, 2013. 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 Robin Little, Industry Records Branch at *NTC-IndustryRecords Branch@atf.gov*, 244 Needy Road, Martinsburg, WV 25405.

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 functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Firearms Transactions—Demand 2.

(3) *Form Number:* ATF F 5300.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The information collection documents transactions of firearms for law enforcement purposes. ATF uses the information to determine that the transaction is in accordance with laws and regulations, and establishes the person(s) involved in the transactions. Changes to the form are to simplify reporting by clarifying required information, removing information that is no longer needed and reducing the form size to 8½″ x 11″.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 865 respondents will complete a 30 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1,730 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 3W–1407B, 145 N Street NE., Washington, DC 20530.

Dated: December 18, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–30800 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0043]

Agency Information Collection Activities: Proposed Collection; Comments Requested: National Tracing Center Trace Request

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 February 19, 2013. 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 Ben Hayes, ATF National Tracing Center at *Benjamin.Hayes@atf.gov*, 1–800–788–7123, 244 Needy Road, Suite 1500, Martinsburg, WV 25405.

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 functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Tracing Center Trace Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3312.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. Other: State, Local, or Tribal Government.

Need for Collection

The form is used by the Federal, State, Local, and International law enforcement community to request that ATF trace firearms used, or suspected to have been used, in crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 6,103 respondents will complete the form within 6 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 34,448 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 18, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–30813 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on October 31, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the TeleManagement Forum (''The Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were

filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have been added as members to this venture: Telecom Development Company Afghanistan Ltd.—ROSHAN, Kabul, AFGHANISTAN; Facultad Regional Buenos Aires, Universidad Tecnologica Nacional, Buenos Aires, ARGENTINA; Telecom Personal Argentina, Ciudad Autónoma de Buenos Aires, ARGENTINA; Universidad Argentina de la Empresa, Ciudad Autonoma de Buenos Aires, ARGENTINA; Digicel PNG, Brisbane, AUSTRALIA; Focus Information Technology Pty Ltd., North Sydney, AUSTRALIA; Indigo Telecom (Aust) Pty Ltd., Brisbane, AUSTRALIA; Nextgen Networks Pty Ltd., Melbourne, AUSTRALIA; RMIT University, Melbourne, AUSTRALIA; The University of Adelaide—Teletraffic Research Center, Adelaide, AUSTRALIA; University of Technology Sydney, Sydney, AUSTRALIA; Siemens AG Oesterreich, Vienna, AUSTRIA; Focus Consulting Services bvba, Sint-Truiden, BELGIUM; University of Antwerp Department of Mathematics and Computer Science, Antwerp, BELGIUM; ENTEL S.A., La Paz, BOLIVIA; mtel Banja Luka, Banja Luka, BOSNIA-HERCEGOVINA; University of Sarajevo, Faculty of Electrical Engineering, Sarajevo, BOSNIA-HERCEGOVINA; Federal University of Ceará—Computer Science Department, Fortaleza-Ceara, BRAZIL; Fundação Getulio Vargas São Paulo, Bela Vista—São Paulo, BRAZIL; Fundacao Universidade do Contestado—Engenharia Eletrica/Telecomunicacoes, Canoinhas, BRAZIL; ISPM, Rio de Janeiro, BRAZIL; Rede Nacional de Ensino e Pesquisa, Rio de Janeiro, BRAZIL; Universidade do Estado de Santa Catarina—UDESC Centro de Ciencias Tecnologicas—CCT, Joinville-SC, BRAZIL; Axia NetMedia Corporation, Calgary, CANADA; Olds Fibre Ltd., Olds, CANADA; Phone Wave, Vaughan, CANADA; TradeMerit, Ottawa, CANADA; University of Calgary, Calgary, CANADA; Pontificia Universidad Católica de Chile—School of Engineering, Santiago, CHILE; Universidad Adolfo Ibañez—Faculty of Ingineering and Science, Peñalolén, CHILE; Universidad Técnica Federico Santa María—Departamento de Industrias, Vitacura, Santiago, CHILE; Beijing BOCO Inter-Telecom Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; China Communication Service Application and Solution Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Inspur Communication Information Systems Co., Ltd., Jinan, PEOPLE'S REPUBLIC OF CHINA; Mobius Wireless Solutions Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Shenzhen Huge Information Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Universidad Pontificia Bolivariana—Engineering faculty in Information and communication technology, Medellin, COLOMBIA; University of Zagreb, Faculty of Electrical Engineering and Computing, Zagreb, CROATIA; University of Zagreb, Faculty of Transport and Traffic Sciences, Zagreb, CROATIA; EPAEON LTD, Nicosia, CYPRUS; UNIVERSITY OF NICOSIA—Department of Electrical & Computer Engineering, Nicosia, CYPRUS; Brno University of Technology—Faculty of Electrical Engineering and Communications, Brno, CZECH REPUBLIC; Telebilling A/S, Sonderborg, DENMARK; LINK Development, Cairo, EGYPT; IBISC—IBGBI—University of Evry Val D'Essonne, Evry, FRANCE; Lyatiss, Lyon, FRANCE; Mobinets, Puteaux, FRANCE; Telecom Bretagne, School of Institute Mines-Telecom, Brest Cedex 3, FRANCE; Université de Rennes 1—Laboratoire de recherche IRISA, Rennes Cedex, FRANCE; University of Versailles Prism Lab, Versailles, FRANCE; VEDICIS, Paris, FRANCE; ABITEL Consulting GmbH, Duesseldorf, GERMANY; Bauhaus-Universität Weimar, Weimar, GERMANY; ENTEREST GmbH, Hamburg, GERMANY; FNT GmbH, Ellwangen, GERMANY; GWDG, Gesellschaft für wissenschaftliche Datenverarbeitung mbH Göttingen, Gottingen, GERMANY; Hochschule RheinMain DCSM—Computer Science Distributed Systems Lab, Wiesbaden, GERMANY; Munich University of Applied Sciences, Munich, GERMANY; Technische Universität Berlin Faculty IV—Electrical Engineering & Computer Science, Berlin, GERMANY; University of Erlangen-Nuremberg, Chair Information Systems II, Nuremburg, GERMANY; wi-mobile Research Group, University of Augsburg, Augsburg, GERMANY; Winkler Consulting, Rohr, GERMANY; Xenodon Consulting und Marketing GmbH, Darmstadt, GERMANY; Athena—Research and Innovation Center in Information, Communication and Knowledge Technologies, Athens, GREECE; Cosmoline, Peania, GREECE; National and Kapodistrian University of Athens, Department of Informatics and Telecommmunications, Athens, GREECE; National Technical University of Athens—Network Management & Optimal Design Laboratory, Zofragou, GREECE; University of Patras—Department of Electrical and Computer Engineering, Patras, GREECE; University of Piraeus—Department of Digital Systems, Pireaus, GREECE; Digicel Haiti, Port-au-Prince, HAITI; Budapest University of Technology and Economics, Budapest, HUNGARY; Corvinus University of Economic Sciences, Budapest, HUNGARY; ForecastCons Ltd., Budapest, HUNGARY; Securit Kft, Szilasliget, HUNGARY; University of Szeged, Szeged, HUNGARY; Covalense Technologies Ltd., Hyderabad, INDIA; G. L. Bajaj Institute of Technology and Management, Geater Noida, INDIA; Infotel Broadband Services Limited, Ghansoli, INDIA; Tree Technologies Pvt. Ltd., Bangalore, INDIA; Vodafone India Limited, Mumbai, INDIA; Telkom Institute of Technology, Bandung, INDONESIA; DANU Technologies Ireland ltd., Blackrock, IRELAND; Digital Enterprise Research Institute—NUI Galway, Galway, IRELAND; Eirtech Communications, Cork, IRELAND; First Derivatives Ireland Ltd., Dublin, IRELAND; Perform IT Limited, Dublin, IRELAND; University College Cork, Cork, IRELAND; Jerusalem College of Technology—Department of Computer Science, Jerusalem, ISRAEL; QualiSystems, Ganey-Tikva, ISRAEL; Smart Path ltd., Jaffa-Tel-Aviv, ISRAEL; imaginary srl, Milan, ITALY; Istituto di Tecnologie della Comunicazione, Informazione e Percezione (TeCIP) Scuola Superiore Sant'Anna, Pisa, ITALY; Istituto di Tecnologie della Comunicazione, Informazione e Percezione (TeCIP) Scuola Superiore Sant'Anna, Pisa, ITALY; Università di Napoli Federico II—Dipartimento di Informatica e Sistemistica, Naples, ITALY; University of Padova and University of Genova—Computer Platform Research Center (CIPI), Genoa, ITALY; University of Rome ''Tor Vergata'', Rome, ITALY; Digicel Group, Kingston, JAMAICA; Digicel Jamaica Limited, Kingston, JAMAICA; Kyushu University, Faculty of Economics, Higashiku, JAPAN; Nara Institute of Science and Technology, Ikoma, JAPAN; Al-Quds College, Amman, JORDAN; Kazakhstan Business Review, Astana, KAZAKHSTAN; Kyung Hee University, Seoul, KOREA; VIVA—Kuwait Telecommunications Company, Salmiya, KUWAIT; Ss. Cyril and Methodious University—Faculty of Computer Science and Engineering, Skopje, MACEDONIA; Servicios Axtel, SAB, San Pedro Garza Garcia, MEXICO; Starnet SRL, Chisinau, MOLDOVA;

Unitel Group, Ulaanbaatar, MONGOLIA; WANA CORPORATE, Casablanca, MOROCCO; Telecom Namibia Limited, Windboek, NAMIBIA; Ncell, Kathmandu, NEPAL; BridgeWorks, Haarlem, NETHERLANDS; Infopact Netwerkdiensten B.V., Hoogvliet, NETHERLANDS; Stargue, Julianadorp, NETHERLANDS; University of Amsterdam, Informatics Institute, Amsterdam, NETHERLANDS; University of Twente—Faculty of Electrical Engineering, Mathematics and Computer Science, Enschede, NETHERLANDS; Chorus New Zealand Limited, Wellington, NEW ZEALAND; University of Auckland—Department of Information Systems & Operations Management (ISOM), Auckland, NEW ZEALAND; Universidad Nacional de Ingeniería (UNI), Managua, NICARAGUA; Spurs and Galilleo Limited, Ojodu, NIGERIA; NextGenTel AS, Bergen, NORWAY; Center for Emerging Sciences, Engineering & Technology (CESET), Islamabad, PAKISTAN; Digicel Panama S A, Panama, PANAMA; Poznan University of Technology, Politechnika Poznanska, Poznan, POLAND; Suntech S.A., Warszawa, POLAND; PT Comunicacoes, Lisbon, PORTUGAL; Universidade de Aveiro, Aveiro, PORTUGAL; Universidade de Coimbra, Coimbra, PORTUGAL; Orange Romania, Bucharest, ROMANIA; University ''POLITEHNICA'' of Bucharest—Automatic Control and Computers Faculty, Bucharest, ROMANIA; University Politehnica of Bucharest—Computer Science Department, Bucharest, ROMANIA; Asteros Labs, Moscow, RUSSIA; CBOSS, Moscow, RUSSIA; Kazgorset, Kazan, RUSSIA; MTUCI, Moscow, RUSSIA; NVision group, Moscow, RUSSIA; OJSC ''Rostelecom'', Moscow, RUSSIA; Stack Soft, Moscow, RUSSIA; BTC Networks, Riyadh, SAUDI ARABIA; King Faisal Foundation, Riyadh, SAUDI ARABIA; University Belgrade, Transport and Traffic Engineering Faculty, Belgrade, SERBIA; Singapore Management University, Singapore, SINGAPORE; Orange Slovensko a.s., Bratislava, SLOVAK REPUBLIC; SYMBIOSS, Senec, SLOVAK REPUBLIC; University of Ljubljana, Faculty of Computer and Information Science, Ljubljana, SLOVENIA; Council for Scientific and Industrial Research (CSIR), Pretoria, SOUTH AFRICA; Internet Solutions, Bryanston, SOUTH AFRICA; Kwezi Software Solutions, Woodmead, SOUTH AFRICA; MobileTV(Pty)Ltd, Gauteng, SOUTH AFRICA; Nelson Mandela Metropolitan University, Port Elizabeth, SOUTH AFRICA; Vox Telecom, Rivonia, SOUTH AFRICA; DIT-UPM, Madrid, SPAIN; Gradiant, Vigo, SPAIN; Technical University of Catalonia (UPC)—Department of Computer Architecture, Vilanova i la Geltru, Barcelona, SPAIN; Universidad Autónoma de Madrid—Escuela Politécnica Superior Departamento de Technologia Electronica y de las Comunicaciones C/Francisco Tomas y Valiente, Madrid, SPAIN; Universidad de Alcalá, Madrid, CuBIT, Laboratorio de Medición de Software, Alcalá de Henares, Madrid, SPAIN; Universidad Politécnica de Madrid—School of Computer Science—Computer Networks and Web Technologies Laboratory, Boadilla del Monte, Madrid, SPAIN; Universidad Pública de Navarra—School of Engineering, Pamplona, SPAIN; University of Castilla La Mancha, Ciudad Real, SPAIN; University of Deusto—Deusto Institute of Technology, Bilbao, Bizkaia, SPAIN; University of Murcia—Departamento de Ingenieria de la Informacion y las Comunicaciones (DIIC), Murcia, SPAIN; University of the Basque Country (UPV/EHU), Alameda Urquijo S/N, Bilboa, SPAIN; Department of Computer and Systems Sciences, DSV, Stockholm University, Kista, SWEDEN; Dignitas Solutions AB, Jarfalla, SWEDEN; IFS, Linkoping, SWEDEN; IOQB Nordic AB, Karlskrona, SWEDEN; PacketFront Software Solutions AB, Kista, SWEDEN; Tarifflex Telecom AB, Stockholm, SWEDEN; HEC Lausanne, University of Lausanne, Lausanne, SWITZERLAND; Lucerne University of Applied Sciences and Arts, Horw, SWITZERLAND; Open Technologies Solutions SA, Nyon, SWITZERLAND; King Mongkut's University of Technology Thonburi—Faculty of Engineering, Bangmod Thungkru, Bangkok, THAILAND; King Mongkut's University of Technology Thonburi—School of Information Technology, Thungkru, Bangkok, THAILAND; Digicel Trinidad, St. Clair, TRINIDAD AND TOBAGO; ProXwel, Bizerte, TUNISIA; Tunisie Telecom, Tunis, TUNISIA; Istanbul Bilgi University, Istanbul, TURKEY; National Technical University of Ukraine ''Kiev Polytechnic Institute'', Kiev, UKRAINE; American University of Ras Al Khaimah—Electronics and Communication Engineering & Computer Engineering, Ras Al Khaimah, UNITED ARAB EMIRATES; NeuString FZE, Dubai, UNITED ARAB EMIRATES; 6PM Management Consultancy (UK) Ltd., London, UNITED KINGDOM; ABHIDEEP LTD, Kidlington, UNITED KINGDOM; BBFA Ltd., Shrewton, UNITED KINGDOM; Brunel University, Middlesex, UNITED KINGDOM; Focus Data Services Ltd., Oxfordshite, UNITED KINGDOM; Innovise ESM Ltd., Slough, UNITED KINGDOM; Liverpool John Moores University—School of Computing & Maths, Liverpool, UNITED KINGDOM; London School of Economics, LSE Network Economy Forum, London, UNITED KINGDOM; McKinsey & Company, Inc., London, UNITED KINGDOM; Perpetual Solutions, London, UNITED KINGDOM; tarantula.NET, Slough, UNITED KINGDOM; University of Bradford, Bradford, UNITED KINGDOM; University of Reading—School of Systems Engineering, Reading, UNITED KINGDOM; University of Sheffield Department of Electronic and Electrical Engineering, Sheffield, UNITED KINGDOM; University of the Highlands and Islands, Inverness, UNITED KINGDOM; University of Warwick—School of Engineering, Coventry, UNITED KINGDOM; University of York Communications Research Group, Heslington, UNITED KINGDOM; Virtual Clarity Ltd., London, UNITED KINGDOM; Agilis International, Inc., Rockville, MD; Allscripts Healthcare Solutions Inc., Chicago, IL; Applied Communication Sciences, Piscataway, NJ; Bank of America, New York, NY; Carnegie Mellon University, Moffett Field, CA; Case Western Reserve University Information Technology Services, Cleveland, OH; Clarkson University Office of Information Technology, Potsdam, NY; Columbia University Columbia Institute for Tele-Information, New York, NY; DePaul University—School of Computing, College of Computing and Digital Media, Chicago, IL; Diplomatic Telecommunications Program Office (DTS–PO), Fairfax, VA; DIRECTV, Inc., El Segundo, CA; DSET Corporation, Norcross, GA; Fault Tolerant Designs, Inc., Jamaica Plain, MA; GENBAND, Frisco, TX; Georgia Southern University Computer Science Faculty, Statesboro, GA; Johns Hopkins University—Engineering for Professionals, Elkridge, MD; Latro Services, Chantilly, VA; Lockheed Martin Corporation, Bethesda, MD; Loyola University New Orleans College of Business, Business Administration, New Orleans, LA; Manhattan College—Computer Information Systems, Riverdale, NY; McAfee, Santa Clara, CA; Mercy College—School of Liberal Arts, Dobbs Ferry, NY; Mirus Teknologia, Osterville, MA; Momac, Boca Raton, FL; Pearson PLC, New York, NY; Pepperdine University, Malibu, CA; Pinger, San Jose, CA; Smartecute, LLC., Marietta, GA; Sooth Inc, Pepper Pike, OH; Southern Polytechnic State University—

Department of Information Technology, Marietta, GA; Syniverse Technologies, LLC, Tampa, FL; Syntologica, Half Moon Bay, CA; Syracuse University, Syracuse, NY; The College Board, New York, NY; The Ohio State University, Colombus, OH; The University of San Francisco, San Francisco, CA; TIBCO Software Inc., Palo Alto, CA; Trilogy—International Partners, LLC., Bellevue, WA; UBS Financial Services, Weehawken, NJ; UnboundID Corp., Austin, TX; U.S. Department of Agriculture, Fort Collins, CO; Virtual Instruments, San Jose, CA; Xirrus, Thousand Oaks, CA; Corporacion Digitel, C.A., Urbanización La Castellana, VENEZUELA and Global Consultants Group 2020 C.A., Chacao, VENEZUELA.

The following members have changed their names: IPLAN Networks to IPLAN Networks—Membership, Buenos Aires, ARGENTINA; Telecom Personal (Argentina) to Telecom Personal Argentina, Ciudad Autónoma de Buenos Aires, ARGENTINA; UADE to Universidad Argentina de la Empresa, Ciudad Autonoma de Buenos Aires, ARGENTINA; Clarity International Ltd. to Clarity, Sydney, AUSTRALIA; Pacific Broadband Research to Pacific Broadband Networks Limited, Scoresby, AUSTRALIA; VanceInfo Technologies Australia to VanceInfo Technologies Australia Pty. Ltd., Melbourne, AUSTRALIA; Siemens Aktiengesellschaft Oesterreich, acting through the business unit Communications, Media and Techhnology to Siemens AG Oesterreich, Vienna, AUSTRIA; Siemens to Siemens AG Oesterreich, Vienna, AUSTRIA; Siemens AG Oesterreich to Siemens AG Oesterreich, Vienna, AUSTRIA; Siemens Communications, Media and Technology to Siemens AG Oesterreich, Vienna, AUSTRIA; Axiata Bangladesh Limited to Robi Axiata Limited, Gulshan-1, BANGLADESH; Telekom Srpske to mtel Banja Luka, Banja Luka, BOSNIA-HERCEGOVINA; BTC Mobile (PTY) Ltd. to Botswana Telecommunications Corporation, Gaborone, BOTSWANA; BTC Mobile (PTY) Ltd. to Botswana Telecommunications Corporation, Gaborone, BOTSWANA; Fundação Getulio Vargas—Escola de Administração de Empresas de São Paulo (FGV–EAESP)—Innovation Forum to Fundação Getulio Vargas São Paulo, Bela Vista—São Paulo, BRAZIL; Fundação Universidade do Contestado—Engenharia Elétrica/Telecomunicações to Fundacao Universidade do Contestado—Engenharia Eletrica/Telecomunicacoes, Canoinhas, BRAZIL; ISPM to ISPM, Rio de Janeiro, BRAZIL; ISPM Servicos de Informatica Ltda to ISPM, Rio de Janeiro, BRAZIL; ISPM Servicos de Informatica Ltda to ISPM, Rio de Janeiro, BRAZIL; RNP to Rede Nacional de Ensino e Pesquisa, Rio de Janeiro, BRAZIL; CGI Group Inc. to CGI Info Systems Management Consulting Inc., Toronto, CANADA; Cogeco, Inc. to Cogeco Cable, Montreal, CANADA; Enghouse Systems Limited/Asset Management Division to Enghouse Networks Limited, Markham, CANADA; Enghouse Systems Limited to Enghouse Networks Limited, Markham, CANADA; Zenith System Solutions to Zenith System Solutions, Inc., Mississauga, CANADA; AsiaInfo Linkage to AsiaInfo-Linkage, Inc., Beijing, PEOPLE'S REPUBLIC OF CHINA; boco-intertelecom to Beijing BOCO Inter-Telecom technology Co.,Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; China Comservice Software Technology Co., Ltd. to China Communication Service Application and Solution Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Comservice Software Technology Co., Ltd. to China Communication Service Application and Solution Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Fareastone Telecom to Far EasTone Telecommunications Co., Ltd. (FarEasTone), Taipei, TAIWAN; Inspur Communication Information Systems Co., Ltd. to Inspur Communication Information Systems Co., Ltd., Jinan, PEOPLE'S REPUBLIC OF CHINA; BPS Service Consulting and Development Ltda to BPS Service Consulting and Development SAS, Bogotá DC, COLOMBIA; Empresa De Telecomunicaciones De Bogota S.A. E.S.P to Empresa De Telecomunicaciones De Bogota S.A. E.S.P, Bogota, COLOMBIA; Empresa De Telecomunicaciones De Bogota S.A. E.S.P—NIT: 899.999.115–8 to Empresa De Telecomunicaciones De Bogota S.A. E.S.P, Bogota, COLOMBIA; EPM Telecomunicaciones S.A. E.S.P to UNE EPM Telecomunicaciones S.A. Nit. 900.092.385–9, S100 Loma Los Balsos, COLOMBIA; UNE EPM Telecomunicaciones S.A. to UNE EPM Telecomunicaciones S.A. Nit. 900.092.385–9, S100 Loma Los Balsos, COLOMBIA; Radiografica Costarricense S.A to Radiografica Costarricense S.A, San Jose, COSTA RICA; University of Zagreb to University of Zagreb, Faculty of Electrical Engineering and Computing, Zagreb, CROATIA; Telefónica O2 Czech Republic,a.s. to Telefonica Czech Republic,a.s., Prague 3, CZECH REPUBLIC; Telefónica Czech Republic,a.s. to Telefonica Czech Republic,a.s., Prague 3, CZECH REPUBLIC; BaseN North America Inc. to BaseN, Helsinki, FINLAND; Atos Origin to Atos, Bezons Cedex, FRANCE; Capgemini Service (TME–GSA) to Capgemini, Paris, FRANCE; Hochschule München to Munich University of Applied Sciences, Munich, GERMANY; IDS Scheer AG to Software AG, Saarbrucken, GERMANY; o2 (Germany) GmbH to Telefonica Germany GmbH & Co. OHG, Munich, GERMANY; Telefónica Germany GmbH & Co. OHG to Telefonica Germany GmbH & Co. OHG, Munich, GERMANY; it vision GmbH to The Quality Group it vision GmbH, Hamburg, GERMANY; University of Erlangen-Nuremberg to University of Erlangen-Nuremberg, Chair Information Systems II, Nuremburg, GERMANY; University of Augsberg wi-mobile Research Group to wi-mobile Research Group, University of Augsburg, Augsburg, GERMANY; wi-mobile Research Group, University of Augsberg to wi-mobile Research Group, University of Augsburg, Augsburg, GERMANY; ATHENA—RESEARCH AND INNOVATION CENTER IN INFORMATION, COMMUNICATION AND KNOWLEDGE TECHNOLOGIES to Athena—Research and Innovation Center in Information, Communication and Knowledge Technologies, Athens, GREECE; National Kapodistrian University of Athens to National and Kapodistrian University of Athens, Department of Informatics and Telecommmunications, Athens, GREECE; National and Kapodistrian University of Athens to National and Kapodistrian University of Athens, Department of Informatics and Telecommmunications, Athens, GREECE; National Technical University of Athens to National Technical University of Athens—Network Management & Optimal Design Laboratory, Zofragou, GREECE; University of Pireus—Department of Digital Systems to University of Piraeus—Department of Digital Systems, Pireaus, GREECE; Caribbean Knowledge & Learning Network (CKLN) to Caribbean Knowledge & Learning Network (CKLN), St George's, GRENADA; Forecast Cons Ltd. to ForecastCons Ltd., Budapest, HUNGARY; Kopint-Datorg zRt. to NISZ Zrt. (Nemzeto Infokommunikacios Szolgaltato Zrt.), Budapest, HUNGARY; OSS Specialist to OSS Invent Consulting, Budapest, HUNGARY; CanGo Networks to CanGo Networks Private Ltd., Chennai, INDIA; Covalense Technologies Pvt. Ltd. to Covalense

Technologies Ltd., Hyderabad, INDIA; Covalense Technologies Ltd. to Covalense Technologies Ltd., Hyderabad, INDIA; Reliance Infotel to Infotel Broadband Services Limited, Ghansoli, INDIA; Tech Mahindra Ltd. to Tech Mahindra Limited, Andheri East, INDIA; Bonsai Network India Pvt Ltd. to Ushacomm© (Redtech Network India Private Limited), Kolkata, INDIA; Ushacomm© (Bonsai Network India Private Limited) to Ushacomm© (Redtech Network India Private Limited), Kolkata, INDIA; Telkom R&D Center to PT Telkomunikasi Indonesia, Bandung, INDONESIA; DANU Technologies to DANU Technologies Ireland Ltd., Blackrock, IRELAND; Eircom to Eircom Ltd., Dublin, IRELAND; Neosynapse Group to Neosynapse, Dublin 4, IRELAND; PerformIT to Perform IT Limited, Dublin, IRELAND; Perform IT to Perform IT Limited, Dublin, IRELAND; ServiceFrame Value Management Ltd. to ServiceFrame, Belfield, IRELAND; O2 Ireland to Telefonica Ireland, Dublin 2, IRELAND; cVidya Networks, Inc. to cVidya Networks Ltd., Tel-Aviv, ISRAEL; FASTWEB s.pa to FASTWEB, Milano, ITALY; Selex Elsag to Selex Elsag, Genova, ITALY; Elsag Datamat spa to Selex Elsag, Genova, ITALY; University of Cagliari to University of Cagliari, Department of Electrical & Electronic Engineering (DIEE), Cagliari, ITALY; University of Rome2 to University of Rome ''Tor Vergata'', Rome, ITALY; Kyushu University to Kyushu University, Faculty of Economics, Higashiku, JAPAN; Protiviti Global Middle East to Protiviti Member Firm Kuwait, Kuwait, KUWAIT; VIVA to VIVA—Kuwait Telecommunications Company, Salmiya, KUWAIT; MACH to MACH Sarl, Contern, LUXEMBOURG; Maxis Communications Bhd to Maxis Broadband Sdn Bhd, Kuala Lumpur, MALAYSIA; Maxis Berhad to Maxis Broadband Sdn Bhd, Kuala Lumpur, MALAYSIA; Axtel to Servicios Axtel, SAB, San Pedro Garza Garcia, MEXICO; Unitel LLC to Unitel Group, Ulaanbaatar, MONGOLIA; Univision to Univision LLC, Ulaanbaatar, MONGOLIA; INWI to WANA CORPORATE, Casablanca, MOROCCO; University of Amsterdam to University of Amsterdam, Informatics Institute, Amsterdam, NETHERLANDS; Chorus to Chorus New Zealand Limited, Wellington, NEW ZEALAND; Universidad Nacional de Ingeniería to Universidad Nacional de Ingeniería (UNI), Managua, NICARAGUA; Digicel Panama to Digicel Panama S A, Panama, PANAMA; Telefonica Peru to Telefonica Moviles SA, Lima, PERU; Telefonica del Peru to Telefonica Moviles SA, Lima, PERU; Faculty of Electronics and Information Technology, Warsaw University of Technology to Institute of Technology, Faculty of Electronics and Information Technology, Warsaw University of Technology, Warsaw, POLAND; Poznan University of Technology, Institute of Computing Science to Poznan University of Technology, Politechnika Poznanska, Poznan, POLAND; GMS Consulting to Maksen Consulting, S.A., Lisbon, PORTUGAL; Sonaecom to Optimus—Comunicacoes SA, Lisbon, PORTUGAL; PT Comunicações to PT Comunicacoes, Lisbon, PORTUGAL; Universidade de Aveiro—Instituto de Telecomunicações to Universidade de Aveiro, Aveiro, PORTUGAL; Universidade de Aveiro—Escola Superior de Tecnologia e Gestão de Águeda to Universidade de Aveiro, Aveiro, PORTUGAL; QATAR TELECOM (Qtel) to QATAR TELECOM (Qtel International), Doha, QATAR; Rostelecom to OJSC ''Rostelecom'', Moscow, RUSSIA; PETER–SERVICE to PETER–SERVICE, St.Petersburg, RUSSIA; CJSC ''PETER–SERVICE'' to PETER–SERVICE, St.Petersburg, RUSSIA; RooX LLC to Yota Group, St. Petersburg, RUSSIA; AIST ISP to ZAO 'AIST', Togliatti, RUSSIA; mobily to mobily, Riyadh, SAUDI ARABIA; Mobily—Etihad Etisalat to mobily, Riyadh, SAUDI ARABIA; Transport and Traffic Engineering Faculty, University Belgrade to University Belgrade, Transport and Traffic Engineering Faculty, Belgrade, SERBIA; Orange Sk to Orange Slovensko a.s., Bratislava, SLOVAK REPUBLIC; Orange Slovensko a.sa to Orange Slovensko a.s., Bratislava, SLOVAK REPUBLIC; O2 Slovakia to Telefonica Slovakia, Bratislava, SLOVAK REPUBLIC; Laboratory For Telecomm-Faculty of Elect. Eng. to Laboratory For Telecomm-Faculty of Elect. Eng. University of Ljubljana, Ljubljana, SLOVENIA; Universidad Autónoma de Madrid—Escuela Politécnica Superior to Universidad Autónoma de Madrid—Escuela Politécnica Superior Departamento de Technologia Electronica y de las Comunicaciones C/Francisco Tomas y Valiente, Madrid, SPAIN; university of the Basque Country to University of the Basque Country (UPV/EHU), Alameda Urquijo S/N, Bilbao, SPAIN; DSV to Department of Computer and Systems Sciences, DSV, Stockholm University, Kista, SWEDEN; Department of Computer and Systems Sciences, DSV, Stockholm University to Department of Computer and Systems Sciences, DSV, Stockholm University, Kista, SWEDEN; Digital Route AB to DigitalRoute, Stockholm, SWEDEN; Digital Route to DigitalRoute, Stockholm, SWEDEN; DigitalRoute to DigitalRoute, Stockholm, SWEDEN; Digital Route AB to DigitalRoute, Stockholm, SWEDEN; Ericsson to Ericsson Inc., Stockholm, SWEDEN; IOQB to IOQB Nordic AB, Karlskrona, SWEDEN; university of lausanne to HEC Lausanne, University of Lausanne, Lausanne, SWITZERLAND; HEC Lausanne University of Lausanne to HEC Lausanne, University of Lausanne, Lausanne, SWITZERLAND; itcps to itcps Management Consulting AG, Wollerau, SWITZERLAND; Lucerne University of Applied Science and Arts to Lucerne University of Applied Sciences and Arts, Horw, SWITZERLAND; EDEL Consulting to Simply Execute, Uerikon, SWITZERLAND; Digicel to Digicel Trinidad, St. Clair, TRINIDAD AND TOBAGO; Proxelence to ProXwel, Bizerte, TUNISIA; İstanbul Bilgi University to Istanbul Bilgi University, Istanbul, TURKEY; TTNet A.S. (Turkish Telekom) to TTNet A.S., Sisli/Istanbul, TURKEY; Telecominvest to PJSC Telecominvest, Kiev, UKRAINE; NeuString to NeuString FZE, Dubai, UNITED ARAB EMIRATES; 6pm to 6PM Management Consultancy (UK) Ltd., London, UNITED KINGDOM; BBFA to BBFA Ltd., Shrewton, UNITED KINGDOM; Brunel University Research Support and Development Office to Brunel University, Middlesex, UNITED KINGDOM; CTL Technologies Limited to Celona Technologies, London, UNITED KINGDOM; Orange PCS to France Telecom-Orange, Almondsbury, UNITED KINGDOM; Innovise ESM to Innovise ESM Ltd., Slough, UNITED KINGDOM; McKinsey to McKinsey & Company, Inc., London, UNITED KINGDOM; Martin Dawes Systems to MDS, Fearnhead, UNITED KINGDOM; UK Ministry of Defence to Network Technical Authority, UK MoD, Corsham, UNITED KINGDOM; Open Cloud to OpenCloud, Cambridge, UNITED KINGDOM; Quindell Enterprise Solutions to Quindell Telecoms, London, UNITED KINGDOM; O2UK to Telefonica UK Limited, Slough, UNITED KINGDOM; Telefónica UK Limited to Telefonica UK Limited, Slough, UNITED KINGDOM; University of Warwick to University of Warwick—School of Engineering, Coventry, UNITED KINGDOM; Aerospace to Aerospace Corporation, El Segundo, CA; Aerospace Corp to Aerospace Corporation, El Segundo, CA; The Aerospace Corporation to Aerospace Corporation, El Segundo, CA; The

Cloudscaling Group, Inc. to Cloudscaling© (The Cloudscaling Group, Inc.), San Francisco, CA; Consultingiss to Consultingiss LLC, Oceanside, CA; generationE Technologies to gen-E, San Clemente, CA; RainStor to RainStor Inc., San Francisco, CA; Stratecast—A division of Frost & Sullivan to Stratecast√Frost & Sullivan, Chico, CA; DirecTV Group, Inc. to DIRECTV, Inc., El Segundo, CA; Objective Systems Integrators to Objective Systems Integrators, Folsom, CA; OSI to Objective Systems Integrators, Folsom, CA; BATMANN Consulting to Cliintel, Centennial, CO; BATMANN Analytics to Cliintel, Centennial, CO; CSG Systems Inc. to CSG International, Englewood, CO; TW Telecom Inc. to tw telecom, Littleton, CO; US Dept of Ag to US Department of Agriculture, Fort Collins, CO; Cable Television Laboratories Inc. to CableLabs, Inc., Louisville, CO; SpatiaInfo, Inc. to SPATIALinfo, Englewood, CO; SpatiaInfo to SPATIALinfo, Englewood, CO; Gevenue Technologies to Beesion Technologies, Fort Lauderdale, FL; Vision Technologies/Gevenue Technologies to Beesion Technologies, Fort Lauderdale, FL; Vision Technologies to Beesion Technologies, Fort Lauderdale, FL; Gevenue Technologies (AKA Vision Technologies) to Beesion Technologies, Fort Lauderdale, FL; Gevenue Technologies (AKA Beesion Technologies) to Beesion Technologies, Fort Lauderdale, FL; Syniverse Technologies, Inc. to Syniverse Technologies, LLC, Tampa, FL; DSET Corp to DSET Corporation, Norcross, GA; ETI Software to ETI Software Solutions, Norcross, GA; Allscripts.com to Allscripts Healthcare Solutions Inc., Chicago, IL; Ideas That Work (ITW), LLC to Ideas That Work, LLC, Shiloh, IL; Qwest Communications International Inc. to CenturyLink, Monroe, LA; Century Link to CenturyLink, Monroe, LA; Century Link ''Qwest Communications'' to CenturyLink, Monroe, LA; Frederick Serr to Frederick Serr Consulting, Concord, MA; MIT Communications Futures Program to MIT Communications Futures Program, Cambridge, MA; CA to CA Technologies, Inc., Portsmouth, NH; Cognizant Technology Solutions U.S. Corporation to Cognizant Technology Solutions, Teaneck, NJ; Clarkson University Office of Information Technology to Clarkson University Office of Information Technology, Potsdam, NY; Syracuse University to Syracuse University, Syracuse, NY; TOA Technologies to TOA Technologies, Inc., Beachwood, OH; the Ohio State University to The Ohio State University, Colombus, OH; Prodapt Corporation to Prodapt, Tualatin, OR; UnboundID to UnboundID Corp., Austin, TX; NII to NII Holdings, Inc., Reston, VA; Nextel International Holdings Inc. to NII Holdings, Inc., Reston, VA; Soleilcom to Soliel, Reston, VA; TTI Telecom to TEOCO Corporation, Fairfax, VA; MITRE Corporation to MITRE, Bedford, MA; Digitel to Corporacion Digitel, C.A., Urbanización La Castellana, VENEZUELA; Corporación Digitel, C.A. to Corporacion Digitel, C.A., Urbanización La Castellana, VENEZUELA and Global Consultants Group to Global Consultants Group 2020 C.A., Chacao, VENEZUELA.

The following members have withdrawn as parties to this venture: AAPT, Sydney, AUSTRALIA; AASKI Technology, Inc., Ocean, NJ; ABIS & Associates Ltd., Chessington, UNITED KINGDOM; ADTRAN, Inc., Huntsville, AL; Advenis, Linden, BELGIUM; Agilent Technologies, Folsom, CA; Alepo USA, Austin, TX; Aljeel aljadeed for Technology, Tripoli, LIBYA; Almadar Aljadid, Tripoli, LIBYA; Alphion Corporation, Princeton Junction, NJ; Altion Technologies Ltd., Dublin, IRELAND; Alt-Lan, Moscow, RUSSIA; Altor Networks, Redwood Shores, CA; AmberNet Technologies, Inc., Adison, TX; Angel.Com, Mclean, VA; Antillean Technology & Consulting, Hollywood, FL; Aperium P/L, Melbourne, AUSTRALIA; Applied Broadband, Inc., Boulder, CO; ARANTECH, Blackrock, IRELAND; Areeba Guinea SA (Conakry), Almamyah, GUINEA; Aria Networks, Chippenham, UNITED KINGDOM; ARRIS Group Inc., Suwanee, GA; Asis Technology Partners S.A.C., Lima, PERU; ASPire Digital Technologies (Shenzhen) Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; ATLAS TELECOM Ltd., Moscow, RUSSIA; Auxia Partners, New York, NY; Aviat Networks, Morrisville, NC; Avisto Telecom SARL, Vallauris, FRANCE; Axial Sp. z o.o., Warszawa, POLAND; Axis Convergence Private limited, Noida, INDIA; Azur Telecom RCA, Bangui, CENTRAL AFRICAN REPUBLIC; Billskill AB, Stockholm, SWEDEN; Bintegra, Hoce, SLOVENIA; Bintel Ltd, Dubai, UNITED ARAB EMIRATES; Birdstep Technology, Espoo, FINLAND; Bluebird Network, LLC, Kansas City, MO; Booz Allen Hamilton Inc., McLean, VA; British Sky Broadcasting Group plc, Isleworth, UNITED KINGDOM; Business Logic Systems, Belper, UNITED KINGDOM; Bwired, Sandton, SOUTH AFRICA; Calix, Inc., Petaluma, CA; Cameleon Software, Labege Cedex, FRANCE; Canoe Ventures, Centennial, CO; Cariden Technologies, Inc., Mountain View, CA; Carrywater Consulting sp. z o.o., Warszawa, POLAND; Celona Technologies Ltd., London, UNITED KINGDOM; celsius technologies, Charleroi, BELGIUM; Center of Excellence, Abu Dhabi, UNITED ARAB EMIRATES; Centillion Consulting, Karachi, PAKISTAN; Ceragon Networks, Tel Aviv, ISRAEL; China Communication Service Application and Solution Technology Co. Ltd., Pudong, PEOPLE'S REPUBLIC OF CHINA; Cirquent GmbH, Munich, GERMANY; Cloud Cruiser, Roseville, CA; Cloud.com, Cupertino, CA; Compunet Services, Inc., Stockbridge, GA; Compuware Corporation, Detroit, MI; Connectiva Systems, Fair Lawn, NJ; Cordys, Putten, NETHERLANDS; Core180, Fairfax, VA; CRC-Pinnacle Consulting Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Cricket Communications, San Diego, CA; CSL Limited, Telegraph Bay, PEOPLE'S REPUBLIC OF CHINA; CTBC Multimidia Data Net S/A, Uberlândia, BRAZIL; Curtin University, Perth, AUSTRALIA; Cybercom Sweden South, Stockholm, SWEDEN; Dataduct Technologies Ltd, Dunlaoghaire, IRELAND; Datang Software Technologies Co., LTD, Beijing, PEOPLE'S REPUBLIC OF CHINA; Datanomic Limited, Cambridge, UNITED KINGDOM; Dataupia, Cambridge, MA; DAX Technologies, Matawan, NJ; DaySpring Limited, Dhaka, BANGLADESH; DCENR Ireland, Dublin, IRELAND; Dell Inc., Round Rock, TX; Devoteam Consulting A/S, Danish Telecoms Business Unit, Copenhagen, DENMARK; Dextra Technologies, Monterrey, MEXICO; Dorado Software, Folsom, CA; EDARE Consulting, Brussels, BELGIUM; Edge Strategies Inc., Wayland, MA; EHF Consultoria, Santa Rita do Sapucai, BRAZIL; Electricity Networks Corporation trading as Western Power, Perth, AUSTRALIA; EMBRATEL, Rio de Janeiro, BRAZIL; Equateur Telecom Congo SA, Congo BP 2487, CONGO; Etihad Atheeb Telecom Co., Riyadh, SAUDI ARABIA; Eutelsat S.A., Paris, FRANCE; EXFO (Service Assurance), Chelmsford, MA; Exigen USA, Inc., San Francisco, CA; Exploit Technologies LLC, Lone Tree, CO; FARICE, Kopavogur, ICELAND; Fenavic Ltd., Yehud, ISRAEL; Fluke Networks, Everett, WA; Fraunhofer Fokus, Berlin, GERMANY; Friedhelm Fink, Kiel, GERMANY; FROX communication, Hombrechtikon, SWITZERLAND;

Fusion Communications Corporation, Chiyoda-ku, JAPAN; GDI Systems Inc., Zagreb, CROATIA; Georg-August Universität, Göttingen, GERMANY; Giza Systems, Giza, Cairo, EGYPT; GRASP TECHNOLOGY PTY LIMITED, Newport, AUSTRALIA; GVT, Curitiba, BRAZIL; Hansen Corporation Europe, Teddington, UNITED KINGDOM; HCL TECHNOLOGIES, Noida, INDIA; Hitachi Communication Technologies America, Inc., Norcross, GA; Human 1.0, Andover, MA; Humbug Telecom Labs Ltd., Ramat Hasharon, ISRAEL; ICE, San Jose, COSTA RICA; Iceland Telecom Ltd., Reykjavik, ICELAND; iGate Patni, Fremont, CA; iLink Systems, Redmond, WA; ILIXI, Roma, ITALY; Inca Informatics Pvt. Ltd, Noida, INDIA; Infinite Infosoft Services Pvt Ltd., Gurgaon, INDIA; INFORMATION WORKS, Köln, GERMANY; ING Bank N.V., Amsterdam, NETHERLANDS; InteliPower, Johannesburg, SOUTH AFRICA; Intelligent Communication Software Entwicklungs GmbH, Muenchen, GERMANY; InterSoft, Melbourne, AUSTRALIA; Irdeto BSS, Carlsbad, CA; isilogica Sàrl, Arzier, SWITZERLAND; ISP Alliance, Inc. DBA ZCorum, Alpharetta, GA; IST Holdings (Pty) Ltd., Pretoria, SOUTH AFRICA; IT Management LTDA, Santiago, CHILE; ITS—International Turnkey Systems, Dubai Internet City, UNITED ARAB EMIRATES; Ixonos Business Solutions, Helsinki, FINLAND; Jamcracker, Inc., Santa Clara, CA; Joyent, San Francisco, CA; JSC Sitronics, Prague, CZECH REPUBLIC; JSC UKRTELECOM, Kyiv, UKRAINE; KARA DANISMANLIK YAZILIM Ve BILISIM TICARET LTD. STI, Istanbul, TURKEY; KPN International, Dusseldorf, GERMANY; Leonid Systems, Aptos, CA; Level 3 Communications, Broomfield, CO; LG CNS India Pvt Ltd., Bangalore, INDIA; LHS Telekommunikation GmbH & Co.KG, Frankfurt, GERMANY; Libyan International Telecommunication Company, Tripoli, LIBYA; Libyan Post, Telecommunication and Information Technology co, Tripoli, LIBYA; LightSquared, Reston, VA; LINKdotNET, Cairo, EGYPT; Marand d.o.o., Ljubljana, SLOVENIA; Marco Giaccaglini & C. S.a.s, Milano, ITALY; Martin Dawes Analytics, Boston, MA; Martin Dawes Systems Holdings Limited, Fearnhead, UNITED KINGDOM; Maxima Telecom, Moscow, RUSSIA; McShane Consulting, Rolling Meadows, IL; Mentum SA, Velizy Villacoublay, FRANCE; Mirafor Associates Oy, Helsinki, FINLAND; MKC, Darmstadt, GERMANY; mmO2 plc, Slough, UNITED KINGDOM; Mobile TeleSystems OJSC, Moscow, RUSSIA; Mobitel, d.d., Ljubljana, SLOVENIA; Monfox LLC, Alpharetta, GA; Moov Benin SA, Porto-Novo, BENIN; MOOV Central African Republic, Bangui, CENTRAL AFRICAN REPUBLIC; Moov Gabon, Liberville, GABON; Moov Togo, Lomé, TOGO; Mosaic Business Advisory Services, Inc., Atlanta, GA; Motorola, Arlington Heights, IL; MTC Touch, Beirut, LEBANON; NAB, Washington, DC; NASA JPL, Pasadena, CA; National Lab. of Software Development Environment, Beijing, PEOPLE'S REPUBLIC OF CHINA; NAUMEN, Moscow, RUSSIA; Neoris, San Pedro Garza Garcia, Nuevo Leon, MEXICO; Neotel, Johannesburg, SOUTH AFRICA; Net Evidence (SLM) Ltd., Gomshall, UNITED KINGDOM; Netadmin Systems, Linkoping, SWEDEN; netage solutions, Muenchen, GERMANY; NetApp, Sunnyvale, CA; Netezza Corporation, Marlborough, MA; NetTraffic, Frisco, TX; Network Critical, LLC, Buffalo, NY; Nimbula, Mountain View, CA; Nimsoft, Campbell, CA; Noblis Inc., Falls Church, VA; Nordiska Servercentralen AB, Bromma, SWEDEN; Northwestel Inc., Whitehorse, CANADA; NTC Kft., Budapest, HUNGARY; NuaTel, Cork, IRELAND; Office of Communications (OFCOM), London, UNITED KINGDOM; OJSC ''Megafon'', Moscow, RUSSIA; Olinda Solutions, Denver, CO; OneBill, Inc., Sunnyvale, CA; Orascom Telecom Holding, Cairo, EGYPT; Orbus Software UK, London, UNITED KINGDOM; Orckit-Corrigent, Tel-Aviv, ISRAEL; PacketFront Systems AB, SE–164 40, Kista, SWEDEN; Packetware India Pvt. Ltd., Hyderabad, INDIA; Pakistan Telecommunication Company Limited PTCL, Islamabad, PAKISTAN; Pantha Corp Pty Ltd., Manly, AUSTRALIA; Parallels, Renton, WA; Perceval, Brussels, BELGIUM; Perot Systems TSI (India) Ltd., Noida, INDIA; Pitney Bowes Software Pty Ltd., North Sydney, AUSTRALIA; PLINTRON Global Technology Solutions Private Limited, Chennai, INDIA; POSTINFO Sp z o.o., Warsaw, POLAND; PreClarity, Victor, NY; Prosilient Technologies AB, Stockholm, SWEDEN; Protiviti, Mumbai, INDIA; Proventa AG, Frankfurt am Main, GERMANY; PSI Transcom GmbH, Düsseldorf, GERMANY; PT Bakrie Telecom, Jakarta, INDONESIA; PT.AXIS Telekom Indonesia, Jakarta, INDONESIA; Reach Global Services Limited, Wanchai, PEOPLE'S REPUBLIC OF CHINA; RiCo, Feodosia, UKRAINE; RPG Grupo Consultores C.A., Caracas, VENEZUELA; Savvis, Town & Country, MO; Scuola Superiore Sant'Anna, Pisa, ITALY; Seacom ltd., Floreal, MAURITIUS; Selatra Limited, Cork, IRELAND; ServicePilot Technologies, Pornichet, FRANCE; Sezmi Corporation, Belmont, CA; Sidonis Limited, Bath, UNITED KINGDOM; Siemens AG, Vienna, AUSTRIA; Sincera Consulting, LLC, Manchester, NH; Singer TC GmbH, Duesseldorf, GERMANY; Sitra, Helsinki, FINLAND; Sivnet, Inc., Montreal, CANADA; Smartlabs, Moscow, RUSSIA; Solace Systems, Ottawa, CANADA; Sparx Systems Pty Ltd., Creswick, AUSTRALIA; Specinova Systems Ltd., Ljubljana—Crnuce, SLOVENIA; Spirent Communications, Germantown, MD; Split, New York, NY; State Street Corporation, N Quincy, MA; Sterling Commerce, Dublin, OH; Strategic Consulting Alliance, Amersfoort, NETHERLANDS; Striata (Australia) Pty Ltd., Sydney, AUSTRALIA; Subex, Bangalore, INDIA; Suntech Intelligent Solutions, Florianopolis, BRAZIL; Superna Business Consulting Inc., Kanata, CANADA; Swiss Federal Office of Information Technology, Systems and Telecommunication, Bern, SWITZERLAND; SWISSFOX Telecommunications Holding AG, Zug, SWITZERLAND; Sybase, an SAP Company, Dublin, CA; Sygnity, Warsaw, POLAND; SYNTAX I.T. inc., Holargos, GREECE; Tango Telecom Ltd., Limerick, IRELAND; Taseon, San Jose, CA; TDC, København C (Copenhagen), DENMARK; TEDESCA, Schwanebeck, GERMANY; Telcel Niger (Etisalat), Niamey, NIGER; Telconet S.A., Guayaquil, ECUADOR; Telcordia Technologies, Piscataway, NJ; TelcoSI, St Leonards, AUSTRALIA; TELEFOCUS SAL, Beirut, LEBANON; Telekom Slovenije, Ljubljana, SLOVENIA; Telephone and Data Systems, Inc., Chicago, IL; Telesur, Paramaribo, SURINAME; TerreStar Networks, Reston, VA; The CNIA Group, Westfield, NJ; The Value Management Company, Caguas, PUERTO RICO; Thinxtream Technologies, Singapore, SINGAPORE; T-Home, Darmstadt, GERMANY; TIBCO Software Inc., Palo Alto, CA; TIE Kinetix, Utrecht, NETHERLANDS; Tonex, Inc., Richardson, TX; Torokina Networks, Artarmon, AUSTRALIA; TouK sp. z o.o., Warszawa, POLAND; TRA—Telecom Regulation Authority, Manama, BAHRAIN; Univa, Lisle, IL; University of Johannesburg, Aucklandpark, SOUTH AFRICA; University of Maryland, College Park, MD; US Cellular, Chicago, IL; USAN Gabon (AZUR), Libreville, GABON; Varaha, Dallas, TX; Ventelo Networks AS, Oslo, NORWAY; Verecloud, Englewood, CO; Vertica Systems, Inc., Billerica, MA; Vesta Corporation,

Portland, OR; VicTrack, Docklands, AUSTRALIA; VIP Operator, Skopje, MACEDONIA; Virtus IT Limited, London, UNITED KINGDOM; VISITEK, Jakarta Selatan, INDONESIA; Vitria Technology, Inc., Sunnyvale, CA; Vonage, Holmdel, NJ; Wataniya Telecom Kuwait, Plot 1A, Sharq Area, KUWAIT; Wind Telecomunicazioni SpA, Roma, ITALY; WiTech, Cascina, ITALY; Xelas software, Marina del Rey, CA; XTRAC, LLC, Boston, MA; Yyield Group BV, Bennebroek, NETHERLANDS; Zain, Safat, KUWAIT; ZAO ''Glasnet'', Korolev, RUSSIA; Zenoss, Annapolis, MD and Zenulta Limited, Swindon, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 22, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 18, 2011 (76 FR 71602).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–30724 Filed 12–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application, Hospira

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on September 20, 2012, Hospira, 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Remifentanil (9739), a basic class of controlled substance listed in schedule II.

The company plans to import Remifentanil for use in dosage form manufacturing.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 22, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: December 14, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–30782 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Fisher Clinical Services,Inc.

By Notice dated September 20, 2012, and published in the **Federal Register** on October 2, 2012, 77 FR 60143, Fisher Clinical Services, Inc., 7554 Schantz Road, Allentown, Pennsylvania 18106, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of noroxymorphone (9668), a basic class of controlled substance in schedule II.

The company plans to import the listed substances for analytical research and clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Fisher Clinical Services, Inc., to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Fisher Clinical Services, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems; verification of the company's compliance with state and local laws; and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: December 14, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–30784 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration, AMRI Rensselaer, Inc.

By Notice dated July 30, 2012, and published in the **Federal Register** on August 7, 2012, 77 FR 47114, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Meperidine (9230)	II
Fentanyl (9801)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance

will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of AMRI Rensselaer, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated AMRI Rensselaer, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 18, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–30780 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Rhodes Technologies

By Notice dated May 31, 2012, and published in the **Federal Register** on June 8, 2012, 77 FR 34072, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for conversion and sale to dosage form manufacturers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Rhodes Technologies to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems; verification of the company's compliance with state and local laws; and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: December 14, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–30785 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Euticals, Inc.

By Notice dated August 17, 2012, and published in the **Federal Register** on August 29, 2012, 77 FR 52367, Euticals, Inc., (formerly known as Archimica, Inc.), 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Methadone Intermediate (9254)	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

With regards to amphetamine (1100), the company plans to acquire the listed controlled substance in bulk from a domestic source in order to manufacture other controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Euticals, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Euticals, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems; verification of the company's compliance with state and local laws; and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 14, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–30783 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Chemtos, LLC

By Notice dated July 30, 2012, and published in the **Federal Register** on August 7, 2012, 77 FR 47116, Chemtos, LLC, 14101 W. Highway 290, Building 2000B, Austin, Texas 78737–9331, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine-intermediate-A (9232)	II
Meperidine-intermediate-B (9233)	II
Meperidine-intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Levo-alphacetylmethadol (9648)	II

Drug	Schedule
Oxymorphone (9652)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers for use as reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Chemtos, LLC, to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chemtos, LLC, to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 14, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–30781 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration, Halo Pharmaceutical, Inc.

By Notice dated July 30, 2012, and published in the **Federal Register** on August 7, 2012, 77 FR 47114, Halo Pharmaceutical, Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Dihydromorphine is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution. The company plans to manufacture Hydromorphone HCL for sale to other manufacturers, and for the manufacture of other controlled substance dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Halo Pharmaceutical, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Halo Pharmaceutical, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 14, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–30774 Filed 12–20–12; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that seven meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (unless otherwise noted) as follows (ending times are approximate):

International (application review): By teleoconference. This meeting will be closed.

Dates: January 8, 2013; 1:00 p.m. to 2:00 p.m. e.s.t.

Folk & Traditional Arts (application review): In room 716. This meeting will be closed.

Dates: January 11, 2013; 9:00 a.m. to 5:30 p.m. e.s.t.

State & Regional (review of state partnership agreements): In Room 716. This meeting will be open.

Dates: January 16–17, 2013; From 9:00 a.m. to 5:00 p.m. e.s.t. on January 16th and from 9:00 a.m. to 3:30 p.m. e.s.t. on January 17th.

Music (review of nominations): 3 Columbus Circle, 12th Floor, New York, NY 10019 and by teleconference. This meeting will be closed.

Dates: January 15, 2013, from 9:00 a.m. to 10:15 a.m. e.s.t.

State & Regional (review of regional partnership agreements): By teleconference. This meeting will be open.

Dates: January 30, 2013; From 3:00 p.m. to 4:00 p.m. e.s.t.

Folk & Traditional Arts (review of nominations): In room 716. This meeting will be closed.

Dates: January 29–February 1, 2013; from 9:00 a.m. to 5:30 p.m. e.s.t. on January 29th–31st and from 9:00 a.m. to 1:00 p.m. e.s.t. on February 1st.

Research (application review): In Room 627. This meeting will be closed.

Dates: January 29–30, 2013; From 9:00 a.m. to 5:30 p.m. e.s.t. on January 29th and from 9:00 a.m. to 5:00 p.m. e.s.t. on January 30th.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: December 18, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2012–30759 Filed 12–20–12; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0176]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on September 5, 2012 (77 FR 54615).

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* 10 CFR Part 110, Export and Import of Nuclear Equipment and Material.
3. *Current OMB approval number:* 3150–0036.
4. *The form number if applicable:* NRC Forms 830, 830A, 831, and 831A.
5. *How often the collection is required:* On occasion and annually.
6. *Who will be required or asked to report:* Any person in the U.S. who wishes to export or import nuclear material or equipment subject to the requirements of a general or specific license.
7. *An estimate of the number of annual responses:* 2,598.
8. *The estimated number of annual respondents:* 108.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 780.
10. *Abstract:* Persons in the U.S. whom export or import nuclear material or equipment under a general or specific authorization must comply with certain reporting and recordkeeping requirements under part 110 of Title 10 of the *Code of Federal Regulations* (10 CFR).

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 22, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0036), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 17th day of December, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–30807 Filed 12–20–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0198]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on September 24, 2012 (77 FR 58872).

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* 10 CFR part 40, Domestic Licensing of Source Material.
3. *Current OMB approval number:* 3150–0020.
4. *The form number if applicable:* N/A.
5. *How often the collection is required:* On occasion. Reports required under part 40 of Title 10 of the *Code of Federal Regulations* (10 CFR) are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications need to be submitted every 5 to 10 years. Information in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.
6. *Who will be required or asked to report:* 10 CFR part 40: Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source and byproduct material.
7. *An estimate of the number of annual responses:* 589 [220 (168.6 NRC responses + 51 recordkeepers)] + 369 (220 Agreement States responses + 149 recordkeepers).
8. *The estimated number of annual respondents:* 99 (33 NRC Licensees + 66 Agreement State Licensees).
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 11,106 hours (4,815 NRC Licensees hours [2,743 reporting + 2,072 recordkeeping] + 6,291 Agreement States Licensees hours [2,500 reporting + 3,791 recordkeeping]).
10. *Abstract:* 10 CFR part 40 establishes requirements for licenses for the receipt, possession, use and transfer of radioactive source and byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination on whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

The public may examine and have copied for a fee, publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20874. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the

NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 22, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0020), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov,* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 18th day of December 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–30808 Filed 12–20–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388; NRC–2012–0306]

Susquehanna Steam Electric Station, Units 1 and 2, PPL Susquehanna, LLC, Exemption

1.0 Background

PPL Susquehanna, LLC (the licensee) is the holder of Renewed Facility Operating License Nos. NPF–14 and NPF–22, which authorizes operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of two boiling-water reactors located in Salem Township in Luzerne County, Pennsylvania.

2.0 Request/Action

Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), Appendix E, Section IV.F.2.b requires that ''[e]ach licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years. * * *'' By letters dated October 25, November 16, and November 29, 2012,[1] the licensee requested a temporary one-time exemption from this requirement that would allow postponing the onsite portion of the biennial emergency preparedness (EP) exercise from October 23, 2012, to February 26, 2013.

The licensee stated that an exemption is being requested due to an unplanned Unit 1 outage necessary due to fatigue cracking experienced on the Unit 1 turbine blades described herein. On October 3, 2012, SSES received a recommendation from its low pressure (LP) turbine supplier to remove the Unit 1 Main Turbine from service to perform LP turbine end blade root inspections. The licensee subsequently reduced reactor power on Units 1 and 2 to minimize blade tip vibration and allow additional time for outage planning. The licensee removed Unit 1 from service on October 20, 2012. According to the licensee, the Unit 1 shutdown affected the availability of a significant number of employees that would be required to support outage functions on a 24-hour basis, including an operating shift, as well as several key managers. Therefore, these personnel were unavailable to support the EP exercise on October 23, 2012.

The licensee further stated that it has made a good faith effort to comply with the regulation as indicated by the licensee's personnel supporting the Federal Emergency Management Agency (FEMA), the Commonwealth of Pennsylvania, and local agencies in the successful demonstration of the offsite portions of the SSES biennial exercise on October 23, 2012, with no deficiencies being identified by FEMA. All onsite positions that would provide communications to/from offsite agencies regarding emergency event classifications and protective action recommendations were staffed by licensee control cells at the emergency operations facility (EOF) to facilitate the offsite response. A licensee Recovery Manager also participated as a control cell to address communications with the Senior State Official. However, as a result of the licensee's participation in the offsite portion of the exercise, the scenario was compromised. To ensure exercise integrity, the licensee stated that it was developing and validating a new scenario, which would require the NRC review under 10 CFR part 50, Appendix E, Section IV.F.2.b.

When the licensee submitted its letter dated November 16, 2012, Unit 1 had been restored to service and the licensee had determined, based on the results of the Unit 1 turbine blade outage, that it was necessary to shutdown Unit 2 to conduct the same inspection. The licensee further stated that the estimated time needed to develop and validate a new scenario, as well as resources required in support of the Unit 2 outage, required that the onsite portion of a biennial EP exercise be rescheduled beyond calendar year 2012.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, Appendix E, when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Authorized by Law

This exemption would allow the licensee to accommodate these impacts upon its resources by postponing the onsite portion of the exercise from the previously scheduled date of October 23, 2012, to February 26, 2013.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, Appendix E. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.b, requiring licensees to conduct a biennial EP exercise is to ensure that the licensee's emergency response organization (ERO) personnel are familiar with their duties and to test the adequacy of emergency plans. In addition, 10 CFR part 50, Appendix E, Section IV.F.2.b, also requires licensees to maintain adequate emergency response capabilities during the intervals between biennial exercises by conducting drills to exercise the principal functional areas of emergency response. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the remaining onsite portions of the SSES full participation exercise by February 26, 2013, rather than in calendar year 2012, places the exercise outside of the required biennium.

[1] Agencywide Documents Access and Management System Accession Nos. ML12300A108, ML12324A249, and ML123350107, respectively.

Since the last biennial EP exercise conducted on October 5, 2010, the licensee has conducted seven full-scale drills, which included activation of all of the licensee's emergency response facilities, and participation by the Commonwealth of Pennsylvania and local agencies. The licensee indicated that these full-scale drills exercised the functions of SSES's ERO to respond to an emergency scenario involving a radiological release, coordinate actions to mitigate the event, and coordinate actions and communications with the Commonwealth of Pennsylvania and risk county emergency management agencies. To further ensure that the licensee's ERO maintains a proper level of readiness to perform their duties since October 5, 2010, the licensee has also conducted 13 practice drills, involving the activation of the licensee's emergency response facilities but without offsite agencies participation, and a combination of 24 licensed operator scenarios or control room simulator table tops. In addition, the licensee has conducted extensive training for licensee ERO functions, offsite municipalities, county emergency responders, and various offsite emergency response personnel since the previous biennial exercise, as outlined in the licensee's letter dated October 25, 2012.

On August 23, 2011, the licensee demonstrated its response to an actual event resulting from the classification of a Notification of Unusual Event due to an earthquake that resulted in the staffing of the licensee's Technical Support Center.

The NRC staff considers the intent of the requirement of 10 CFR part 50, Appendix E, Section IV.F.2.b met by having conducted these series of drills, training sessions, and actual event response. As such, no new accident precursors are created by allowing the licensee to postpone the onsite portion of the biennial EP exercise from the previously scheduled date of October 23, 2012, to February 26, 2013. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow rescheduling of the onsite portion of the SSES biennial EP exercise from the previously scheduled date of October 23, 2012, to February 26, 2013. This change to the EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

In order to grant exemptions in accordance with 10 CFR 50.12, special circumstances must be present. The special circumstances per 10 CFR 50.12 that apply to this exemption request are 10 CFR 50.12(a)(2)(ii) and (v).

Special circumstances, per 10 CFR 50.12(a)(2)(ii), are present when: ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' The underlying purposes of 10 CFR part 50, Appendix E, Section IV.F.2.b, requiring licensees to conduct a biennial EP exercise is to ensure that ERO personnel are familiar with their duties and to test the adequacy of emergency plans. Section IV.F.2.b of 10 CFR part 50, Appendix E requires licensees at each site to conduct an exercise of onsite emergency plans biennially with full-participation by each offsite authority having a role under the plan. Since the licensee has: (1) Conducted seven full-scale drills involving offsite participation, 13 ERO (licensee only) practice drills, and a combination of 24 licensed operator scenarios or control room simulator table tops; (2) provided extensive training for licensee ERO functions, offsite municipalities, county emergency responders, various offsite emergency response personnel since the previous biennial exercise; (3) demonstrated ERO proficiency in response to the August 23, 2011, Notification of Unusual Event; and (4) supported the FEMA evaluation of the State and local authorities during the exercise held October 20, 2012, the NRC staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during the period of postponement from October 23, 2012, to February 26, 2013, satisfying the underlying purpose of the rule.

Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. The licensee requested the offsite portion of the biennial EP exercise be postponed from October 23, 2012, to February 26, 2013, providing only temporary relief. The licensee has made a good faith effort to comply with the regulation as indicated by the licensee's personnel supporting the FEMA, the Commonwealth of Pennsylvania, and local agencies in the successful demonstration of the offsite portions of the SSES biennial exercise on October 23, 2012, with no deficiencies being identified by FEMA. All onsite positions that would provide communications to/from offsite agencies regarding emergency event classifications and protective action recommendations were staffed by licensee control cells at the EOF to facilitate the offsite response. A licensee Recovery Manager also participated as a control cell to address communications with the Senior State Official. The licensee had intended to conduct the onsite portion of the EP exercise on October 23, 2012, but requested to postpone it due to the turbine outage that was described above in Section 2.0. Also, as a result of the licensee's participation in the offsite portion of the exercise performed on October 23, 2012, the exercise scenario was compromised. To ensure exercise integrity, a new scenario will need to be developed, validated and submitted to the NRC, and new ERO participants and controllers selected to participate in the onsite portion of the biennial exercise. The licensee stated that due to the unplanned turbine outages on Units 1 and 2, key personnel would not be available to complete the scenario modification activities and conduct the exercise prior to the end of calendar year 2012.

Therefore, since the licensee requested only temporary relief, made a good faith effort to comply, and the underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.b is achieved, the special circumstances required by 10 CFR 50.12 for the granting of an exemption exist.

4.0 Environmental Consideration

By letters dated October 25, November 16, and November 29, 2012, the licensee requested an exemption from the requirements in 10 CFR part 50, Appendix E, Section IV.F.2.b with regards to conducting an exercise of onsite emergency plans biennially with full-participation, as discussed above. The NRC staff has determined that the proposed exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment is required to be prepared in connection with the proposed issuance of the exemption. The basis for the NRC staff's determination is discussed below with an evaluation against each of the requirements in 10 CFR 51.22(c)(25).

Requirements in 10 CFR 51.22(c)(25)(i)

The NRC staff evaluated the issue of no significant hazards consideration,

using the standards described in 10 CFR 50.92(c), as presented below:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed exemption is administrative in nature and relates solely to the scheduling requirements of the performance of an exercise of onsite emergency plans. The proposed exemption does not involve any physical plant modifications to SSES, Units 1 and 2. The proposed exemption would not alter the way any structure, system, or component (SSC) functions and would not alter the way SSES, Units 1 and 2 are operated. As such, the proposed exemption would have no impact on the ability of any SSCs to either prevent or mitigate any previously evaluated accidents as described in the SSES, Units 1 and 2 Updated Final Safety Analysis Reports. Therefore, the proposed exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed exemption is administrative in nature and relates solely to the scheduling requirements of the performance of an exercise of onsite emergency plans. The proposed exemption does not involve any physical plant modifications to SSES, Units 1 and 2. The proposed exemption would not alter the way any SSC functions and would not alter the way SSES, Units 1 and 2 are operated. As such, the proposed exemption would not introduce any credible new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. Therefore, the proposed exemption does not create the possibility of a new or different kind of accident than any previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. There are no physical plant modifications associated with the proposed exemption. The proposed exemption would not alter the way any SSC functions and would not alter the way SSES, Units 1 and 2 are operated. The proposed exemption would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed exemption would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the NRC staff concludes that the proposed exemption would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public. Therefore, the proposed exemption does not involve a significant reduction in a margin of safety.

Based on the above evaluation, the NRC staff concludes that no significant hazards consideration is involved for the proposed exemption (i.e., satisfies the provisions of 10 CFR 51.22(c)(25)(i)).

Requirements in 10 CFR 51.22(c)(25)(ii) Through 10 CFR 51.22(c)(25)(vi)

The proposed exemption is administrative in nature and relates solely to the scheduling requirements of the performance of an exercise of onsite emergency plans. The proposed exemption does not involve any physical plant modifications to SSES, Units 1 and 2. The proposed exemption would not alter the way any SSC functions and would not alter the way SSES, Units 1 and 2 are operated. As such, the NRC staff concludes that granting the proposed exemption: (1) Would not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite (i.e., satisfies the provisions of 10 CFR 51.22(c)(25)(ii)); (2) would not result in a significant increase in individual or cumulative public or occupational radiation exposure (i.e., satisfies the provisions of 10 CFR 51.22(c)(25)(iii)); (3) would have no significant construction impact (i.e., satisfies the provisions of 10 CFR 51.22(c)(25)(iv)); and (4) would not result in a significant increase in the potential for or consequences from a radiological accident (i.e., satisfies the provisions of 10 CFR 51.22(c)(25)(v)). In addition, the requirements from which the proposed exemption is sought involve scheduling requirements, therefore satisfying the provisions of 10 CFR 51.22 (c)(25)(vi)(G).

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(i) through 10 CFR 51.22(c)(25)(vi). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment is required to be prepared in connection with the proposed issuance of the exemption.

5.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission, hereby grants PPL Susquehanna, LLC an exemption from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.b to conduct the onsite portion of the biennial EP exercise required for 2012, permitting that part of the exercise be conducted by February 26, 2013 for the Susquehanna Steam Electric Station, Units 1 and 2. This conclusion is based on the licensee's commitment to conduct the postponed exercise by February 26, 2013. As such, the calendar biennium will continue to be determined from the previous exercise date (i.e., the next evaluated exercise is expected to be performed in 2014).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of December 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–30773 Filed 12–20–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0220]

Standard Review Plan for Review of Fuel Cycle Facility License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG revision; extension of comment period.

SUMMARY: On December 7, 2012 (77 FR 73060), the U.S. Nuclear Regulatory Commission (NRC), solicited comments on the proposed changes to NUREG–1520, Revision 1, ''Standard Review Plan (SRP) for the Review of a License Application for a Fuel Cycle Facility.'' The NRC is extending the public comment period for its SRP from January 7, 2013, to March 7, 2013.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0220. You may submit comments by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0220. 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 additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Soly I. Soto, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3147; email: *Soly.Soto@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0220 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0220.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please 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.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. NUREG–1520, Revision 1 is available under ADAMS Accession No. ML101390110.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0220 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

C. Receiving Alerts

The NRC may post additional information related to revising NUREG–1520, including meeting notices, to the Federal rulemaking Web site at *http://www.regulations.gov,* under Docket ID NRC–2012–0220. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2012–0220); (2) click the ''Email Alert'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly). In addition, public meeting notices will be posted on the NRC's Public Meeting Schedule Web site, *http://www.nrc.gov/public-involve/public-meetings/index.cfm,* at least 10 days prior to the meeting. Therefore, the comment submittal period is extended from the original date of January 7, 2013, to March 7, 2013.

Dated at Rockville, Maryland, this 13th day of December 2012.

For the Nuclear Regulatory Commission.

Marissa Bailey,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–30769 Filed 12–20–12; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request the Office of Management and Budget (''OMB'') to extend approval, under the Paperwork Reduction Act, of a collection of information under its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 19, 2013.

ADDRESSES: Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the Web site instructions for submitting comments.

Email: paperwork.comments@pbgc.gov.

Fax: 202–326–4224.

Mail or Hand Delivery: Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

PBGC will make all comments available on its Web site, *www.pbgc.gov.*

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) PBGC's regulation on Administrative Appeals may be accessed on PBGC's Web site at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General

Counsel, or Donald McCabe, Attorney, Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under ERISA section 4021 or employer liability under ERISA sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or email. For appeals of benefit determinations, PBGC has optional forms for filing appeals and requests for extensions of time to appeal.

OMB has approved the administrative appeals collection of information under control number 1212–0061 through April 30, 2013. PBGC intends to request that OMB extend approval of this collection of information for three years. 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.

PBGC estimates that an average of 900 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is about forty-five minutes and $52 per appellant, with an average total annual burden of 643 hours and $46,680.

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

Issued in Washington, DC, this 17th day of December 2012.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–30760 Filed 12–20–12; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–27; Order No. 1582]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice concerning changes to Inbound Air Parcel Post (at UPU Rates). This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* December 26, 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:

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I. Introduction
II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

Notice of filing. On December 14, 2012, the Postal Service filed a notice announcing its intention to change rates for Inbound Air Parcel Post (at Universal Postal Union (UPU) Rates).[1] The Notice does not include any classification changes. *Id.* at 2. The intended effective date of the rate changes is January 1, 2013. The timing of the filing comports with the requirement, in 39 CFR 3015.5, that notice of this type of change be submitted at least 15 days before the effective date.

Background. The Commission approved the Postal Service's request to add Inbound Air Parcel Post (at UPU Rates) to the competitive product list in Order No. 362, following consideration in Docket No. MC2010–11.[2] The request was based on Governors' Decision No. 09–15. Notice at 1.

II. Contents of Filing

This filing includes a Notice, along with the following attachments:

- Attachment 1—an application for non-public treatment of material filed under seal;
- Attachment 2—a redacted copy of Governors' Decision No. 09–15;
- Attachment 3—a redacted copy of the new rates; and
- Attachment 4—a copy of the certification required under 39 CFR 3015.5(c)(2).

The material filed under seal consists of unredacted copies of the referenced Governors' Decision, the new rates and related financial information. *Id.* at 3. The Postal Service filed redacted versions of the sealed financial documents in public Excel spreadsheets. *Id.* at 2.

Classification and rates. The Notice incorporates by reference previous explanations (1) concerning the UPU Postal Operations Council's mechanism for setting base rates for Inbound Air Parcel Post, and (2) the formal nature of the Governors' Decision establishing those rates for purposes of statutory compliance. *Id.*

The Postal Service asserts that the prices comport with the Governors' Decision No. 09–15 as they are the highest possible inward land rates that the Postal Service is eligible for based on inflation increases and other factors. *Id.* at 2–3. It also asserts that it has met its burden of providing notice to the Commission of changed rates within the scope of Governors' Decision No. 09–15, as required by 39 U.S.C. 3632(b)(3). *Id.* at 3.

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[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability and Application for Non-Public Treatment of Materials Filed Under Seal, December 14, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5. Notice at 1.

[2] Docket Nos. MC2010–11 and CP2010–11, Order Adding Inbound Air Parcel at UPU Rates to Competitive Product List, December 15, 2009 (Order No. 362).

III. Commission Action

The Commission establishes Docket No. CP2013–27 for consideration of matters raised in the Notice. Interested persons may submit comments on whether the Agreement is consistent with the requirements of 39 CFR 3015.5 and the policies of 39 U.S.C. 3632 and 3633. Comments are due no later than December 26, 2012. The public portions of the Postal Service's filing can be accessed via the Commission's Web site at *http://www.prc.gov.* Information on how to obtain access to nonpublic material appears at 39 CFR 3007.40.

The Commission appoints James F. Callow to represent the interest of the general public (Public Representative) in this case.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–27 for consideration of matters raised in the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission designates James F. Callow to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than December 26, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–30822 Filed 12–20–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–13; SEC File No. 270–263; OMB Control No. 3235–0275.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–13 (17 CFR 240.17Ad–13), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–13 requires an annual study and evaluation of internal accounting controls under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). It requires approximately 150 registered transfer agents to obtain an annual report on the adequacy of their internal accounting controls from an independent accountant. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad–13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad–13 as are transfer agents that service only their own companies' securities.

Approximately 150 independent, professional transfer agents must file the independent accountant's report annually. We estimate that the annual internal time burden for each transfer agent to comply with Rule 17Ad–13 by submitting the report prepared by the independent accountant to the Commission is minimal. The time required for the independent accountant to prepare the accountant's report varies with each transfer agent depending on the size and nature of the transfer agent's operations. The Commission estimates that, on average, each report can be completed by the independent accountant in 120 hours, resulting in a total of 18,000 external hours annually (120 hours × 150 reports). The burden was estimated using Commission review of filed Rule 17Ad–13 reports and Commission conversations with transfer agents and accountants. The Commission estimates that, on average, 120 hours are needed to perform the study, prepare the report, and retain the required records on an annual basis. Assuming an average hourly rate of an independent accountant of $60, the average total annual cost of the report is $7,200. The total annual cost for the approximate 150 respondents is approximately $1,080,000.

The retention period for the recordkeeping requirement under Rule 17Ad–13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *shagufta_ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/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.* Comments must be submitted within 30 days of this notice.

Dated: December 17, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30790 Filed 12–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Appendix F to Rule 15c3–1; SEC File No. 270–440; OMB Control No. 3235–0496.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Appendix F to Rule 15c3–1 (''Appendix F'' or ''Rule 15c3–1f'') (17 CFR 240.15c3–1f) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Appendix F requires a broker-dealer choosing to register, upon Commission approval, as an OTC derivatives dealer to develop and maintain an internal risk management system based on Value-at-Risk (''VaR'') models. It is anticipated that a total of four (4) broker-dealers registering as OTC derivatives dealers will spend 1,000 hours on a one-time basis complying with the system development requirements of Rule 15c3–1f, for an estimated one-time initial stratup burden of approximately 4,000 hours. Appendix F also requires the OTC derivatives dealer to maintain its system model according to certain prescribed standards. It is anticipated that a total of eight (8) broker-dealers will spend 1,000 hours per year maintaining the system model required by Rule 15c3–1f, for an estimated recurring annual burden of approximately 8,000 hours. Thus, the total industry-wide burden is estimated to be approximately 12,000 hours (4,000 hours + 8,000 hours) for the first year and 8,000 hours for each subsequent year.[1]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed 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 the 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.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 17, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30791 Filed 12–20–12; 8:45 am]

BILLING CODE 8011–01–P

[1] The Commission estimates that a total of eight entities will be registered as OTC derivatives dealers at the end of the next three years, consisting of the four current OTC derivatives dealers and four anticipated registrants. This is in contrast with the prior estimate of five OTC derivatives dealers, consisting of four current OTC derivatives dealers and one anticipated registrant.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17g–4; SEC File No. 270–566; OMB Control No. 3235–0627.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g–4 (17 CFR 240.17g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The Credit Rating Agency Reform Act of 2006 added a new section 15E, ''Registration of Nationally Recognized Statistical Rating Organizations,''[1] to the Exchange Act. Pursuant to the authority granted under section 15E of the Exchange Act, the Commission adopted Rule 17g–4, which requires that a nationally recognized statistical rating organization (''NRSRO'') establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information, including policies and procedures reasonably designed to prevent: (a) The inappropriate dissemination of material nonpublic information obtained in connection with the performance of credit rating services; (b) a person within the NRSRO from trading on material nonpublic information; and (c) the inappropriate dissemination of a pending credit rating action.[2]

There are 10 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the policies and procedures required by Rule 17g–4. Based on staff experience, an NRSRO is estimated to spend an average of approximately 10 hours per year reviewing its policies and procedures regarding material nonpublic information and updating them (if necessary), resulting in an average industry-wide annual hour burden of approximately 100 hours.[3]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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 in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 17, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30789 Filed 12–20–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78o–7.

[2] *See* 17 CFR 240.17g-4; Release No. 34–55231 (Feb. 2, 2007), 72 FR 6378 (Feb. 9, 2007); Release No. 34–55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

[3] 10 currently registered NRSROs × 10 hours = 100 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68451; File No. SR–NYSEMKT–2012–82]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, January 18, 2013

December 17, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 13, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, January 18, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [4] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[5] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36—Equities requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36—Equities. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[6] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[7] On November 9, 2012, the Exchange filed an additional extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 16, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[8] On November 19, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, December 14, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[9] The continued extension of the temporary suspension was needed because of the ongoing intermittent phone and internet service. Specifically, the wired telephone lines and internet connections for Floor brokers continue to not be functional, many Exchange authorized and provided portable phones continue to not be functional and therefore Floor brokers still could not consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. The Exchange now seeks another extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 because of ongoing telephone and internet issues.

The Exchange has been advised by its third-party carrier that the damage to the telephone connections continues to be more extensive than previously anticipated. In addition, there has been damage to the internet connections available to Floor brokers on the Trading Floor, which has adversely impacted service. In particular, the Exchange notes that the lines that support both the wired and wireless phone connections and internet connections for the Floor brokers are based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy. The type of damage that was sustained will, in some cases, require the third-party carrier to rebuild the infrastructure that supports

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[5] *See* Securities Exchange Act Release No. 68138 (Nov. 1, 2012), 77 FR 66890 (Nov. 7, 2012) (SR–NYSEMKT–2012–59).

[6] *See* Securities Exchange Act Release No. 68162 (Nov. 5, 2012), 77 FR 67720 (Nov. 13, 2012) (SR–NYSEMKT–2012–62).

[7] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[8] *See* Securities Exchange Act Release No. 68212 (Nov. 9, 2012), 77 FR 69536 (Nov. 19, 2012) (SR–NYSEMKT–2012–66). Because the telephone lines for the DMMs were operational, the Exchange did not need to extend the temporary suspension of Rule 36.30 as it related to DMMs.

[9] *See* Securities Exchange Act Release No. 68272 (Nov. 20, 2012), 77 FR 70871 (Nov. 27, 2012) (SR–NYSEMKT–2012–69). Relief was not extended for DMM's. [sic] *See infra* note 11.

these services, rather than engage in repairs of existing lines. While such rebuilding and repairs are in process, the telephone line and internet connections for Floor brokers still are not fully operational and may not be so for at least another month, possibly more given the type of work that needs to be completed to restore the telephone services.

Because of the ongoing intermittent phone and internet service, many Exchange authorized and provided portable phones continue to not be functional and therefore many Floor brokers still cannot consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20—Equities and 36.21—Equities. In addition, many of the wired telephone lines and internet connections for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone and internet service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones, wired phone lines, or internet connections.[10]

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, January 18, 2013.[11] The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[12]

In particular, as set forth in the prior filings, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, to the extent that personal portable phones are used to replicate internet connections previously approved pursuant to Rule 36 that are not operational on the Trading Floor because of damage sustained by Hurricane Sandy, such use is subject to the same requirements that would otherwise be applicable, including record-retention requirements. This emergency relief is solely meant to maintain the status quo to the extent provided in Rule 36 and not intended to broaden the scope of the activities allowed pursuant to the Rule (*e.g.,* accessing internet only at the booth). As with all member organization records, such cell phone data records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request. To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service and internet connections on the Trading Floor, the Exchange does not know how long the proposed temporary suspension of Rules 36.20—Equities and 36.21—Equities will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored for at least another month, possibly more.

Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36—Equities that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, January 18, 2013.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36—Equities that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The

[10] To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

[11] Consistent with the existing relief, Exchange is not proposing to provide any relief to DMMs in this proposal. Because phone service to DMMs has been restored, the existing relief does not provide for a temporary suspension of Rule 36.30—Equities, which prohibits DMMs from using personal portable phones on the Trading Floor. Similarly, because the off-Floor locations for DMMs have been restored, the existing relief does not provide for the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. The Exchange is not proposing to provide such relief in this proposal. *See supra* notes 5 and 6 (notices describing the relief previously requested for DMMs).

[12] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[13] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to January 18, 2013, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36—Equities that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that doing so will allow the Exchange to continue uninterrupted, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, and to help maintain the status quo, until the earlier of when phone service for Floor brokers is fully restored or January 18, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–82. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–82 and should be submitted on or before January 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30794 Filed 12–20–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 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).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68452; File No. SR–NYSE–2012–73]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20 and 36.21 That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, January 18, 2013

December 17, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b-4 thereunder,[3] notice is hereby given that December 13, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, January 18, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [4] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[5] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36 requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[6] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[7] On November 9, 2012, the Exchange filed an additional extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 16, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[8] On November 19, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, December 14, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[9] The continued extension of the temporary suspension was needed because of the ongoing intermittent phone and internet service. Specifically, the wired telephone lines and internet connections for Floor brokers continue to not be functional, many Exchange authorized and provided portable phones continue to not be functional and therefore Floor brokers still could not consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. The Exchange now seeks another extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 because of ongoing telephone and Internet issues.

The Exchange has been advised by its third-party carrier that the damage to the telephone connections continues to be more extensive than previously anticipated. In addition, there has been damage to the internet connections available to Floor brokers on the Trading Floor, which has adversely impacted service. In particular, the Exchange notes that the lines that support both the wired and wireless phone connections and internet connections for the Floor brokers are based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy. The type of damage that was sustained will, in some cases, require the third-party carrier to rebuild the infrastructure that supports these services, rather than engage in repairs of existing lines. While such rebuilding and repairs are in process, the telephone line and internet connections for Floor brokers still are not fully operational and may not be so for at least another month, possibly more given the type of work that needs to be completed to restore the telephone services.

Because of the ongoing intermittent phone and internet service, many Exchange authorized and provided portable phones continue to not be functional and therefore many Floor brokers still cannot consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. In addition, many of the wired telephone lines and internet connections for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone and internet service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-

[4] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[5] *See* Securities Exchange Act Release No. 68137 (Nov. 1, 2012), 77 FR 66893 (Nov. 7, 2012) (SR–NYSE–2012–58).

[6] *See* Securities Exchange Act Release No. 68161 (Nov. 5, 2012), 77 FR 67704 (Nov. 12, 2012) (SR–NYSE–2012–61).

[7] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[8] *See* Securities Exchange Act Release No. 68211 (Nov. 9, 2012), 77 FR 69534 (Nov. 19, 2012) (SR–NYSE–2012–64). Because the telephone lines for the DMMs were operational, the Exchange did not need to extend the temporary suspension of Rule 36.30 as it related to DMMs.

[9] *See* Securities Exchange Act Release No. 68271 (Nov. 20, 2012), 77 FR 70862 (Nov. 27, 2012) (SR–NYSE–2012–67). Relief was not extended for DMM's. [sic] *See infra* note 11.

operational Exchange authorized and provided portable phones, wired phone lines, or internet connections.[10]

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, January 18, 2013.[11] The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[12]

In particular, as set forth in the prior filings, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, to the extent that personal portable phones are used to replicate internet connections previously approved pursuant to Rule 36 that are not operational on the Trading Floor because of damage sustained by Hurricane Sandy, such use is subject to the same requirements that would otherwise be applicable, including record-retention requirements. This emergency relief is solely meant to maintain the status quo to the extent provided in Rule 36 and not intended to broaden the scope of the activities allowed pursuant to the Rule (e.g., accessing internet only at the booth). As with all member organization records, such cell phone data records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request. To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service and internet connections on the Trading Floor, the Exchange does not know how long the proposed temporary suspension of Rules 36.20 and 36.21 will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored for at least another month, possibly more.

Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36 that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, January 18, 2013.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36 that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public

[10] To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

[11] Consistent with the existing relief, Exchange is not proposing to provide any relief to DMMs in this proposal. Because phone service to DMMs has been restored, the existing relief does not provide for a temporary suspension of Rule 36.30—Equities, which prohibits DMMs from using personal portable phones on the Trading Floor. Similarly, because the off-Floor locations for DMMs have been restored, the existing relief does not provide for the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. The Exchange is not proposing to provide such relief in this proposal. *See supra* notes 5 and 6 (notices describing the relief previously requested for DMMs).

[12] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[13] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to January 18, 2013, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36 that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that doing so will allow the Exchange to continue uninterrupted, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, and to help maintain the status quo, until the earlier of when phone service for Floor brokers is fully restored or January 18, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–73 and should be submitted on or before January 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30795 Filed 12–20–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 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).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68450; File No. SR–BYX–2012–024]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

December 17, 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 December 6, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 14, 2012, the Exchange filed with the Commission a proposed rule change to establish on a one-year pilot basis the Retail Price Improvement (''RPI'') Program (the ''Program'').[6] The Program seeks to establish a venue for the execution of retail orders with greater price competition and transparency than existing execution arrangements. The Exchange filed an amendment to the proposal on November 13, 2012, proposing to make various minor amendments to the Proposal, including an amendment to limit the Program to a group of up to 25 securities for the first 90 days of the pilot period, and to gradually expand the program on a monthly basis for the remainder of the pilot period.

The Program establishes a new class of market participants (Retail Member Organizations) and two new order types (Retail Orders and Retail Price Improvement Orders). Retail Member Organizations will submit Retail Orders to the Exchange. All Exchange Users [7] will be permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO'', and together with the Protected NBB, the ''Protected NBBO'').[8] Such price improving interest can be entered either in the form of Retail Price Improvement Orders (or ''RPI Orders'') or as other non-displayed interest.

The Commission recently approved the Program's operation on a pilot basis.[9] Accordingly, the Exchange proposes to modify its fee schedule effective December 6, 2012, in order to adopt pricing for the Program, which will be applicable to the first set of securities selected by the Exchange for inclusion in the Program.[10]

The Exchange proposes to provide a rebate to Retail Member Organizations for executions of their Retail Orders and to charge Users a fee for executions of their orders against Retail Orders. Further, the Exchange proposes to bifurcate into ''Group 1'' and ''Group 2'' the original 20 securities selected by the Exchange to be included in the Program, and to differentiate rebates and fees between such Groups.

Group 1, as proposed, will initially include 10 securities, as follows: Apple Inc. (AAPL), SPDR S&P ETF Trust (SPY), Facebook Inc. (FB), Direxion Daily Financial Bull 3X Shares (FAS), Direxion Daily Financial Bear 3X Shares (FAZ), iShares Russell 2000 Index (IWM), Citigroup Inc. (C), General Electric Company (GE), Google Inc. (GOOG), and SPDR Gold Trust (GLD) (''Group 1 Securities''). The Exchange proposes to provide a rebate of $0.0025 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 1 Security. Similarly, the Exchange proposes to charge $0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order.

Group 2, as proposed, will initially include 10 securities, as follows: Sirius XM Radio Inc. (SIRI), Bank of America Corp. (BAC), Nokia Corporation-ADR (NOK), Sprint Nextel Corporation (S), Micron Technology, Inc. (MU), Ford Motor Company (F), Advanced Micro Devices, Inc. (AMD), JPMorgan Chase & Co. (JPM), Hewlett-Packard Company (HPQ), and Financial Select Sector SPDR (XLF) (''Group 2 Securities''). The Exchange proposes to provide a rebate of $0.0010 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 2 Security. Similarly, the Exchange proposes to charge $0.0010 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 2 Security and is removed by a Retail Order.

As proposed, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such Retail Orders, when removing displayed liquidity, will receive the standard rebate of $0.0002 per share for orders that remove liquidity. Similarly, a liquidity provider that enters a displayed order that is removed by a Retail Order will be charged the standard fee for adding displayed liquidity (either $0.0003 per share or $0.0002 per share depending on whether such liquidity provider qualifies for tiered pricing incentives).

The Exchange is proposing the higher remove rebate and fee to add liquidity for Group 1 Securities because the Exchange believes that, while both Group 1 and Group 2 Securities attract heavy retail investor interest, liquidity providers in the over-the-counter market are generally willing to pay retail brokers higher fees for retail orders in Group 1 Securities. The Exchange's rebate for Group 1 Securities is designed to compete with such higher fees.

The Exchange currently charges a fee of $0.0010 per share to add non-displayed liquidity to the BYX order book. As explained in the Proposal, the Exchange proposes to execute incoming Retail Orders against all available contra-side interest that will provide price improvement to the Retail Order, including non-displayed orders other than RPI Orders. In the event non-displayed interest other than an RPI Order interacts with a Retail Order, the Exchange proposes to charge the User that entered such non-displayed interest the same fee as is imposed for an RPI Order execution. As set forth above, the Exchange proposes to charge a fee of $0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order. Accordingly, the Exchange proposes

[6] *See* Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (SR–BYX–2012–019) (the ''Proposal'').

[7] A ''User'' is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[8] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO'', together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[9] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019).

[10] The Exchange currently plans to implement the Program on December 17, 2012. Although the Program is not yet operative, the Exchange is adopting the applicable fees in anticipation of the Program's operation.

language to the existing text related to liquidity fees to make clear that any non-displayed order removed by a Retail Order will pay the applicable fee under the Retail Pricing Improvement program for such execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Program is intended to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[13] The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market where it may be subject to greater competition from multiple liquidity providers.

The Exchange understands that Section 6(b)(5) of the Act[14] prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business. The differentiation established by the Exchange in connection with the Program is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements.

The Exchange believes that the proposed rebates for Retail Orders are fair and equitable in that they are designed to compete with internalization arrangements established by executing broker-dealers. The Exchange further believes that differentiation between the two types of securities (Groups 1 and 2) is fair and equitable and not unreasonably discriminatory because this differentiation is based on the Exchange's belief as to relative economic value of order flow, namely, that order flow in Group 1 Securities is more valuable, and in turn, is rewarded with better economic arrangements by broker-dealers, than is order flow in Group 2 Securities.

As set forth above, in addition to establishing pricing for orders particularly designated to participate in the Program, namely Retail Orders and RPI Orders, the proposal will impact non-displayed orders that interact with Retail Orders in Group 1 Securities in that such orders will be charged a higher fee than they do today. The Exchange believes that the proposal to treat non-displayed orders differently depending on the parties with whom they interact is consistent with Section 6(b)(5) of the Act,[15] which requires that the rules of an exchange are not designed to permit unfair discrimination. The Exchange believes that such a differential pricing structure for non-displayed orders is not unfairly discriminatory. As stated in the NYSE RLP Approval Order, the ''Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.'' [16] The Exchange's proposed differential pricing structure for non-displayed orders recognizes that not only are liquidity providers willing to provide better prices to retail investors, they are also willing to pay higher fees to trade certain securities with retail investors and, hence, raises substantively identical policy considerations as the rules approved by the Commission in the NYSE RLP Approval Order, which account for the difference of assumed information and sophistication level between different trading participants by providing Retail Orders access to better execution prices as well as more favorable access fees.

Finally, as set forth above, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such Retail Orders, when removing displayed liquidity, will receive the standard rebate of $0.0002 per share for orders that remove liquidity. Type 2 Retail Orders under the Program are designated by the entering Member as willing to remove all available liquidity, after receiving any available price improving liquidity, including removing the Exchange's displayed best bid or offer. The Exchange believes that Type 2 Retail Orders that remove displayed liquidity should receive the same pricing as any other order that removes displayed liquidity from the Exchange and that applying its existing pricing structure for any executions of Retail Orders against displayed quotations is fair and equitable and not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (b)(5).

[13] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673, at 40679–40680 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84) (citing Concept Release on Equity Market Structure and approval of an options exchange program related to price improvement for retail orders). Certain options exchanges deploy this same rationale today through pricing structures that vary for a trading participant based on the capacity of the contra-side trading participant. *See, e.g.,* Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR–BATS–2010–038) (notice of filing and immediate effectiveness of proposal to modify fees for BATS Options, including liquidity rebates that are variable depending on the capacity of the contra-party to the transaction; *see also* Securities Exchange Act Release No. 67171 (June 8, 2012), 77 FR 35732 (June 14, 2012) (SR–NASDAQ–2012–068) (notice of filing and immediate effectiveness of proposal to modify fees for the NASDAQ Options Market, including certain fees and rebates that are variable depending on the capacity of the contra-party to the transaction).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and Rule 19b–4(f)(2) thereunder,[18] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2012–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of BYX. 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–BYX–2012–024, and should be submitted on or before January 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30793 Filed 12–20–12; 8:45 am]

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68453; File No. PCAOB–2012–01]

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules on Auditing Standard No. 16, Communications With Audit Committees, and Related and Transitional Amendments to PCAOB Standards

December 17, 2012.

I. Introduction

On August 28, 2012, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b) [1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b) [2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), proposed rules to adopt PCAOB Auditing Standard No. 16, ''Communications with Audit Committees,'' and related and transitional amendments to PCAOB standards (collectively, the ''Proposed Rules''). The Proposed Rules were published for comment in the **Federal Register** on September 17, 2012.[3] At the time the notice was issued, the Commission designated a longer period to act on the Proposed Rules, until December 17, 2012.[4] The Commission received five comment letters in response to the notice.[5] On November 9, 2012, the PCAOB submitted a letter addressing certain comments received by the Commission.[6] This order approves the Proposed Rules.

II. Description of the Proposed Rules

Auditing Standard No. 16 will supersede PCAOB interim auditing standard AU section 380, ''Communication with Audit Committees'' (''AU sec. 380''), and interim auditing standard AU section 310, ''Appointment of the Independent Auditor'' (''AU sec. 310''). Auditing Standard No. 16 retains or enhances existing audit committee communication requirements, incorporates SEC auditor communication requirements set forth in Rule 2–07 of Regulation S–X,[7] provides a definition of the term 'audit committee' for issuers and non-issuers, and adds new communication requirements that are generally linked to performance requirements set forth in other PCAOB auditing standards.

Auditing Standard No. 16 requires the auditor to establish an understanding of the terms of the audit engagement with the audit committee. This requirement aligns the auditing standard with the provision of the Exchange Act, as amended by the Sarbanes-Oxley Act, that requires the audit committee of listed companies to be responsible for the appointment of the external auditor.[8] Additionally, Auditing Standard No. 16 requires the auditor to record the terms of the engagement in an engagement letter and to have the engagement letter executed by the appropriate party or parties on behalf of the company and determine that the audit committee has acknowledged and agreed to the terms.

Auditing Standard No. 16 requires the communications with the audit committee to occur before the issuance

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] *See* Release No. 34–67804 (September 10, 2012), 77 FR 57408 (September 17, 2012).

[4] *Ibid.*

[5] *See* letters to the Commission from Howard B. Levy, Principal and Director, Technical Services, Piercy Bowler Taylor & Kern, dated September 28, 2012 (''Piercy Letter''); Robert L. Leclerc, Chairman, Quest Rare Minerals Ltd., dated September 30, 2012 (''Quest Letter''); Tom Quaadman, Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, dated October 5, 2012 (''Chamber Letter''); Deloitte & Touche LLP, dated October 5, 2012 (''Deloitte Letter''); and Cindy M. Fornelli, Executive Director of the Center for Audit Quality, dated October 9, 2012 (''CAQ Letter'').

[6] *See* letter to the Commission from the PCAOB, dated November 9, 2012.

[7] 17 CFR 210.2–07.

[8] *See* Section 10A(m) of the Exchange Act, as added by Section 301 of the Sarbanes-Oxley Act.

of the audit report. The standard requires auditors to communicate, among other matters, the following to audit committees:

- Certain matters regarding the company's accounting policies, practices, and estimates (consistent with Rule 2–07 of Regulation S–X);
- The auditor's evaluation of the quality of the company's financial reporting;
- Information related to significant unusual transactions, including the business rationale for such transactions;
- An overview of the overall audit strategy, including timing of the audit, significant risks the auditor identified, and significant changes to the planned audit strategy or identified risks;
- Information about the nature and extent of specialized skill or knowledge needed in the audit, the extent of the planned use of internal auditors, company personnel or other third parties, and other independent public accounting firms, or other persons not employed by the auditor that are involved in the audit;
- Difficult or contentious matters for which the auditor consulted outside the engagement team;
- The auditor's evaluation of going concern;
- Expected departures from the auditor's standard report; and
- Other matters arising from the audit that are significant to the oversight of the company's financial reporting process, including complaints or concerns regarding accounting or auditing matters that have come to the auditor's attention during the audit.

Auditing Standard No. 16 retains from AU sec. 380 the option for auditors to communicate to audit committees either orally or in writing, unless otherwise specified in the standard. The auditor is required to document the communications in the work papers, regardless of whether the communications take place orally or in writing.

As part of the Proposed Rules, the Board adopted conforming amendments to several PCAOB standards, including PCAOB interim auditing standard AU sec. 722, ''Interim Financial Information.'' In addition to the conforming amendments, the Board adopted transitional amendments to AU sec. 380 so that audit committee communications would continue to be required in audits of all SEC-registered broker-dealers in the event PCAOB standards become applicable to broker-dealer audits prior to the effective date of Auditing Standard No. 16.

The PCAOB has proposed application of its Proposed Rules to audits of all issuers, including audits of emerging growth companies (''EGCs''),[9] and the Proposed Rules also would apply to audits of SEC-registered brokers and dealers if the Commission subsequently determines to make PCAOB standards applicable to such audits.[10] The Proposed Rules would be effective for audits of financial statements with fiscal years beginning on or after December 15, 2012. The transitional amendments to AU sec. 380 would be effective for the periods that PCAOB standards become applicable to audits of SEC-registered brokers and dealers, as designated by the Commission, if the effective date of the application of PCAOB standards occurs prior to the effective date of Auditing Standard No. 16.

III. Comment Letters and the PCAOB's Responses

As noted above, the Commission received five comment letters concerning the Proposed Rules. Two commenters expressed unqualified support for the Proposed Rules, and cited a link between Auditing Standard No. 16 and investor protection.[11] One of these commenters expressed its view that the matters Auditing Standard No. 16 requires auditors to communicate to audit committees are commensurate with, and supportive of, the important role audit committees have in serving the interests of investors through oversight of financial reporting and the audit process.[12] The other commenter cited its belief that adoption of Auditing Standard No. 16 is in the public interest and contributes to investor protection because it establishes requirements that enhance the relevance, timeliness, and quality of communications between auditors and audit committees.[13]

One of these commenters also expressed unqualified support for the application of the proposed rules to audits of EGCs and stated its belief that investors in public companies of all sizes are entitled to the same level of protection, including the protection provided by improved communications between auditors and audit committees.[14] This commenter also cited the following points in support of its view:

- *Auditing Standard No. 16 will foster improved financial reporting.* The commenter believes improved financial reporting reduces information asymmetry and should increase the efficiency of capital allocation, thereby fostering capital formation. The commenter also believes this may be particularly important for EGCs, which may need to access the capital markets more regularly than more established companies.
- *Bifurcation of the requirements would be confusing as to the level of investor protection an investor is receiving.* The commenter believes that applying Auditing Standard No. 16 to audits of EGCs would avoid bifurcation of the rules applied to the preparation and audit of public company financial statements. The commenter also believes that having different sets of rules for different categories of public companies makes it more difficult for investors to know what rules governed the preparation and audit of a given set of financial statements.

Three commenters raised questions and concerns about the Proposed Rules and their proposed application. These matters relate to: (1) Application of the Proposed Rules to audits of foreign private issuers (''FPIs'');[15] (2) application of Auditing Standard No. 16 to audits of broker-dealers; (3) the role of management in communicating matters to the audit committee that are also the subject of Auditing Standard No. 16; (4) the specificity of the requirements in Auditing Standard No. 16; (5) potential regulatory conflicts; (6) convergence of auditing standards; and (7) the PCAOB's analysis supporting its proposal that the Proposed Rules apply to audits of EGCs (the ''PCAOB's EGC analysis'').

1. Audits of FPIs

One commenter requested clarification as to whether or not the Proposed Rules would apply to audits of issuers that are FPIs.[16] The commenter stated that it was not seeking relief, solely clarity. In response to the commenter's request, the Commission notes that under the Sarbanes-Oxley Act, the PCAOB's auditing and other professional standards apply to audits of

[9] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act.

[10] The Commission proposed requiring application of PCAOB standards to audits for brokers and dealers in Release No. 34–64676 (June 15, 2011).

[11] *See* CAQ Letter and Deloitte Letter.

[12] *See* Deloitte Letter.

[13] *See* CAQ Letter.

[14] *See* CAQ Letter.

[15] The term ''foreign private issuer'' is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer means any foreign issuer other than a foreign government except an issuer that meets the following conditions: (1) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States.

[16] *See* Quest Letter.

issuers.[17] There is no exception for issuers that are FPIs, and the PCAOB did not propose to create an exclusion. Accordingly, the Proposed Rules, consistent with other auditing standards adopted by the PCAOB, will apply to audits of FPIs.

2. Audits of Broker-Dealers

One commenter requested more clarity about to whom the required Auditing Standard No. 16 audit committee communications should be made in situations when a broker-dealer does not have a board of directors or audit committee.[18] The commenter also recommended that the PCAOB make clear that the required communications should not be made to a chief financial officer or similar officer, but rather a chief executive officer. The commenter raised similar comments in connection with the PCAOB's own solicitation for comments on the Proposed Rules. The PCAOB revised Auditing Standard No. 16 in response to this comment, which was also raised by other commenters. The PCAOB revised the definition of audit committee with respect to non-issuers such that, if a non-issuer broker-dealer did not have a board of directors or audit committee, the required communications would be directed to the person(s) identified by the auditor as responsible for overseeing the accounting and financial reporting processes of the company.

However, the definition was not revised to exclude from the definition of audit committee those persons with oversight responsibility who also have management responsibilities for the preparation of the financial statements of the company. In its adopting release, the PCAOB stated that for non-issuers with no existing audit committee or board of directors (or equivalent body), the auditor would be expected to identify senior persons at the company who have decision-making authority and responsibility to oversee the accounting and financial reporting processes of the company and audits of the financial statements, and to make the required communications to those persons.[19] The PCAOB provided examples and stated that if all persons identified by the auditor as having responsibility for oversight of the company's accounting and financial reporting processes and audits also have management responsibilities for the preparation of the financial statements, then the auditor could also make the communications specified in the standard to other individuals at the company (*e.g.,* the chief executive officer or others in charge of the company's operations and performance, who may benefit from the communications). The Commission does not find the PCAOB's response to be unreasonable.

The commenter also requested that the PCAOB clarify to whom audit committee communications should be made when a broker-dealer is a subsidiary of an entity that has an audit committee.[20] The PCAOB addressed this comment in its adopting release as well. In that release, the PCAOB observed that some commenters suggested that the standard should clarify to whom the auditor should communicate when the company is a subsidiary of another entity. The PCAOB stated that Auditing Standard No. 16 does not require communication outside the governance structure of the audited entity because the standard designates the appropriate party to receive the auditor communications within the audited entity.[21] The PCAOB also stated that if directed by the audit client, or if the auditor otherwise deems it appropriate, the auditor could also communicate to a parent company audit committee or equivalent body. The Commission does not find the PCAOB's response to be unreasonable.

3. The Role of Management in Communicating Matters to the Audit Committee

One commenter repeated concerns expressed in letters to the PCAOB during the PCAOB's proposal stages that Auditing Standard No. 16 appears to shift inappropriately from management to auditors the primary responsibility to communicate to audit committees about matters of the selection and identification of significant and critical accounting policies, estimates and significant unusual transactions.[22] The commenter acknowledged that the PCAOB revised Auditing Standard No. 16 in response to this comment, and observed that Auditing Standard No. 16 is not intended to change the requirements of Rule 2–07 of Regulation S–X. However, the commenter believes the Commission should give consideration to its concerns and make ''appropriate revisions'' to Rule 2–07 to preserve what the commenter believes is the proper balance among the responsibilities of management, audit committees and auditors.

The Commission has previously considered views similar to those expressed by the commenter. Exchange Act Section 10A(k), as added by Section 204 of the Sarbanes-Oxley Act, directed the Commission to issue rules requiring timely reporting of specific information by auditors to audit committees. In response to this directive, in 2002, the Commission proposed amending Regulation S–X to require each public accounting firm registered with the Board that audits an issuer's financial statements to report, prior to the filing of such report with the Commission, to the issuer or registered investment company's audit committee:[23]

(1) All critical accounting policies and practices used by the issuer or registered investment company;

(2) All alternative accounting treatments of financial information within generally accepted accounting principles that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the accounting firm; and

(3) Other material written communications between the accounting firm and management of the issuer or registered investment company.

In response to this proposal, some commenters expressed a view that these communications should be the responsibility of management alone, while others expressed a view that both the accountant and management should share the responsibility for informing the audit committee about such matters. In adopting Rule 2–07, the Commission stated that ''[w]hile we understand that management has the primary responsibility for the information contained in the financial statements, since the accounting firm is retained by the audit committee, we share the view reflected in Section 205 [sic] of the Sarbanes-Oxley Act and current auditing standards, that the accounting firm has a responsibility to communicate certain information to the audit committee.''[24] The Commission still holds this view and believes that the communications required by Auditing Standard No. 16 in this regard are appropriate.

Further, the Commission believes that additional changes made by the PCAOB in response to this concern are appropriate and balanced. In its adopting release, the PCAOB observed

[17] *See* Sections 101(c)(2) and 103(a)(1) of the Sarbanes-Oxley Act.

[18] *See* Chamber Letter.

[19] *See* PCAOB Release No. 2012–004 (August 15, 2012), pg. A4–3.

[20] *See* Chamber Letter.

[21] *See* PCAOB Release No. 202–004 (August 15, 2012), pg. A4–4.

[22] *See* Piercy Letter.

[23] *See* Release No. 33–8154 (December 2, 2002).

[24] *See* Release No. 33–8183 (March 27, 2003).

that in many companies, management might communicate matters involving management's preparation of the company's financial statements and that in many companies, management might communicate these matters or take the lead on communicating these matters to the audit committee. The PCAOB also observed that it does not have the authority to require management to communicate to the audit committee, and that certain communications are mandated by federal securities laws and Commission rules. Because of these factors, Auditing Standard No. 16 clearly recognizes and acknowledges that management might communicate to the audit committee certain matters related to the company's financial statements; and in such circumstances, the auditor does not need to communicate those matters at the same level of detail as management, as long as certain conditions are met, as specified in the standard.

4. Level of Specificity of Requirements in Auditing Standard No. 16

One commenter observed that Auditing Standard No. 16 is ''prescriptive'' in that it contains specific mandatory communication requirements.[25]

The PCAOB addressed this comment in its letter to the Commission. In that letter, the PCAOB stated that its standards, including Auditing Standard No. 16, reflect the fact that a company's size and complexity can affect the risks of material misstatement and that the Proposed Rules are designed to allow auditors to tailor the required communications to the size and level of complexity of a company's operations, accounting practices, and audit issues.

The Commission addressed a similar comment in 2010 in connection with its consideration of rules proposed by the PCAOB to establish new risk assessment standards.[26] The Commission recognizes that there should be an appropriate balance in auditing standards between providing necessary minimum requirements and allowing auditors to apply judgment in determining the nature and extent of audit procedures given the particular circumstances of an individual engagement. The Commission believes that all PCAOB standards should reflect an appropriate balance of requirements and judgments that enables auditors to perform high quality and effective audits and believes the PCAOB's approach in Auditing Standard No. 16 reflects a reasonable balance in this respect.

5. Potential Regulatory Conflicts

One commenter voiced concerns that the Proposed Rules may go outside of the scope of the PCAOB's jurisdiction over the audit and infringe upon the corporate governance responsibilities of the Commission or under applicable state law in overseeing the audit committee.[27] This commenter asked that the Commission review the Proposed Rules ''with an eye towards eliminating any potential regulatory conflict.'' In considering the Proposed Rules, the Commission does not believe the Proposed Rules create any potential regulatory conflicts. In its adopting release, the PCAOB recognized the scope and limits of its jurisdiction. In one place, the PCAOB states that its definition of audit committee is not intended to conflict with or affect any requirements, or the application of any requirements, under federal law, state law, foreign law, or an entity's governing documents regarding the establishment, approval, or ratification of board of directors or audit committees, or the delegation of responsibilities of such a committee or board;[28] and in another place, the Board recognized that it does not have the authority to require management to communicate to the audit committee.[29]

6. Convergence of Auditing Standards

One commenter expressed support for the notion of working to achieve one set of global high quality auditing standards through the convergence of PCAOB auditing standards with those of the International Auditing and Assurance Standards Board (''IAASB'') and the Auditing Standards Board of the American Institute of Certified Public Accountants (''ASB'') and observed that the Proposed Rules do not adequately identify and explain the rationale for differences between the Proposed Rules and the relevant standards of the IAASB and ASB.[30]

The PCAOB has received similar comments in the past, and has observed that:

> [B]ecause the Board's standards must be consistent with the Board's statutory mandate, differences will continue to exist between the Board's standards and the standards of the IAASB and ASB, *e.g.,* when the Board decides to retain an existing requirement in PCAOB standards that is not included in IAASB or ASB standards. Also, certain differences are often necessary for the Board's standards to be consistent with relevant provisions of the federal securities laws or other existing standards or rules of the Board.[31]

The Commission also addressed a similar comment in connection with its consideration of the rules proposed by the PCAOB to establish new risk assessment standards.[32] As noted then, the Commission encourages the Board's efforts to consider standards issued by the IAASB and the ASB, and appreciates the reasons why it is reasonable to expect that the Board's standards may appropriately differ from such standards. In this regard, we take note of the efforts the PCAOB has taken in developing the Proposed Rules to consider the work of other standard setters.

7. The PCAOB's EGC Request and the Commission's EGC Determination

Section 103(a)(3)(C) of the Sarbanes-Oxley Act provides that any additional rules adopted by the PCAOB subsequent to April 5, 2012 do not apply to the audits of EGCs, unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.[33] Having considered those factors, and as explained further below, the Commission finds that applying the Proposed Rules to audits of EGCs is necessary or appropriate in the public interest.

The PCAOB adopted Auditing Standard No. 16 on August 15, 2012 for application to audits of all issuers, including EGCs; and the PCAOB requested that the Commission make the determination required by Section 103(a)(3)(C) such that Auditing Standard No. 16 would apply to audits of EGCs. To assist the Commission in making its determination, the PCAOB prepared and submitted to the Commission its own EGC analysis. The PCAOB's EGC analysis includes discussions of: (1) The background of and reasons for the new standard; (2) the PCAOB's approach to developing the new standard, including consideration of alternatives; (3) key changes and improvements from existing audit committee

[25] *See* Chamber Letter.

[26] *See* Release No. 34–63606 (December 23, 2010).

[27] *See* Chamber Letter.

[28] *See* PCAOB Release No. 202–004 (August 15, 2012), pg. A4–2.

[29] *See* PCAOB Release No. 202–004 (August 15, 2012), pg. 4.

[30] *See* Chamber Letter.

[31] *See* PCAOB Release No. 2010–004, August 5, 2010, pp. A10–91—A10–92 (internal footnotes omitted).

[32] *See* supra note 26.

[33] Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act (the ''JOBS Act'').

communication requirements; and (4) characteristics of EGCs and economic considerations.

In developing its analysis, the PCAOB compiled data available from entities voluntarily identifying themselves as EGCs in SEC filings. Based on data available to the PCAOB, the Board observed that one key difference between EGCs and other entities appears to be the length of time an EGC has been subject to the reporting requirements under the Exchange Act.[34] The Board also observed that the enhanced audit committee communication requirements of Auditing Standard No. 16 may be of particular benefit to EGCs given that: (1) Some EGCs are companies that are relatively new to the SEC reporting process, and may have new audit committee members that may be less familiar with SEC reporting requirements and have relatively more questions regarding how to present their financial statements for SEC reporting purposes; and (2) some EGCs may also be considering, for the first time, initial choices in their accounting policies and practices that could have implications for their financial reporting.[35]

The PCAOB's EGC analysis was included in the Commission's public notice soliciting comment on the Proposed Rules. Based on the analysis submitted, the comments received, and the PCAOB's response, we believe the information in the record is sufficient for us to make the EGC determination in relation to this standard. Specifically, the PCAOB's EGC analysis discussed its approach to developing the new standard and its consideration of alternatives, as well as the characteristics of EGCs and economic considerations. The Commission also takes note, in particular, of the PCAOB's overall approach to Auditing Standard No. 16, which was designed to: (1) Scale the required communications to the size and complexity of the company being audited; (2) maintain flexibility (*e.g.,* with respect to auditors communicating orally or in writing); (3) minimize duplicative or redundant communications to the audit committee from the auditor and management; (4) focus the communications on the accounting matters that are significant to the auditor and the audit committee; and (5) reduce auditors' search costs (*i.e.,* the costs associated with researching the federal securities laws' and auditing standards' various communication requirements) by providing a list of other PCAOB standards and rules that contain audit committee communication requirements in one place. Moreover, the auditor's requirements under the new standard are focused on communicating the results of audit procedures that the auditor is already required to perform.

One commenter raised concerns about the PCAOB's EGC analysis.[36] This commenter did not assert that any specific aspect of Auditing Standard No. 16 should not apply to audits of EGCs. Rather, the commenter raised several concerns about the substance and form of the PCAOB's EGC analysis and whether it was sufficient to form a basis for the Commission's EGC determination. We discuss each of this commenter's main points, and set forth our responses, separately below.

- First, the commenter states that because the JOBS Act provides an automatic exemption for EGC audits from any future PCAOB rules, there is a special burden on the Commission to determine that benefits outweigh costs in order to reverse a clear Congressional directive in favor of an exemption.

As noted above, Section 103(a)(3)(C) of the Sarbanes-Oxley Act contains very specific provisions concerning the application of PCAOB rules to audits of EGCs. The statutory text of Section 103(a)(3)(C) demonstrates that where Congress intended to provide EGCs with an absolute exemption from future PCAOB rules, it did so explicitly (*e.g.,* that any future PCAOB rules on mandatory audit firm rotation or an auditor discussion and analysis shall not apply to EGCs audits). By contrast, with respect to other future PCAOB rules, Congress indicated that new requirements may apply to EGCs, but that for them to apply, the Commission needs to make a determination that such application is ''necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' This determination is separate from the existing finding needed to approve a PCAOB proposed rule change under Section 107 of the Sarbanes-Oxley Act that the proposed rule is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.[37]

Just as the Section 107 finding does not require the Commission to overcome a ''presumption'' that a proposed PCAOB rule should be disapproved, the Section 103 EGC determination does not require the Commission to overcome a ''presumption'' that a PCAOB proposed rule should not apply to audits of EGCs. Rather, in both instances, the statute sets forth a predicate finding that the Commission must make, after considering specified factors, in order for the rule to be approved (section 107(b)(2)) or for it to apply to EGC audits (Section 103(a)(3)(C)).

The statutory text of Section 103(a)(3)(C) requires the Commission to *consider* the protection of investors and whether the action will promote efficiency, competition, and capital formation as part of its affirmative *determination* that the application of such additional requirements is necessary or appropriate in the public interest. Plainly this involves considering the economic effects of the Proposed Rules as they relate to efficiency, competition and capital formation.

- Second, the commenter believes the PCAOB's EGC analysis is ''devoid of any semblance of an analysis of the cost of compliance with the rule for all issuers or for EGCs,'' and asserts that the PCAOB, in its EGC analysis, cited a belief that Auditing Standard No. 16 would be less costly for EGCs.

The PCAOB did provide information regarding potential costs of the proposed rules to issuers, including EGCs. The PCAOB's analysis included qualitative factors that would affect such costs (*e.g.,* nature or complexity of the issuer). As noted above, the PCAOB also provided an analysis of the characteristics of EGCs, including data on the number of issuers that have voluntarily disclosed their EGC status after enactment of the JOBS Act. In its analysis, the PCAOB noted that EGCs vary widely in size, and noted that one key difference between EGCs and other entities appears to be the length of time an EGC has been subject to the reporting requirements under the Exchange Act. In this regard, the PCAOB further described how this difference may in fact relate to the ability of the Proposed Rules to promote efficiency and capital formation for EGCs over other issuers.

Notwithstanding the commenter's assertion that the PCAOB believes the application of Auditing Standard No. 16 would be less costly for EGCs, no such statement is expressed in the PCAOB's EGC analysis. Rather, the PCAOB's EGC analysis reflects the Board's view that a company's size and complexity can affect the risks of material misstatement, and therefore, auditing challenges and audit strategies (matters that impact the

[34] *See* 77 FR 57448.

[35] *See* 77 FR. 57447.

[36] *See* Chamber Letter.

[37] *See* Section 107(b)(3) of the Sarbanes-Oxley Act. As discussed below, the Commission makes both findings. The Commission makes each finding on its own merits and does not consider either one dependent on the other.

amount of time and effort put into an audit). This point was reiterated in the PCAOB's letter to the Commission. In that letter, the PCAOB also provided examples of how communications required by Auditing Standard No. 16 could be tailored to the audit of a less complex company, which could have an impact on the overall cost of the audit and could help to avoid unnecessary costs.

Section 103(a)(3)(C) does not require the Commission to conclude that a proposed PCAOB rule would be ''less costly'' for EGC audits than for other issuer audits in order to find that applying the rule to EGC audits would be necessary or appropriate in the public interest. The relative impact on EGCs *vis a vis* other issuers could be a factor to consider in whether the application of the proposed rules to EGC audits is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation. However, nothing in the statutory text indicates that the Commission's public interest finding hinges on whether, on a categorical basis, the requirements of a given PCAOB rule would be less costly for EGCs.

• Third, the commenter disputes the relevance of existing audit committee communication requirements under PCAOB interim auditing standard AU sec. 380 to a discussion of the application of Auditing Standard No. 16 to audits of EGCs.

The Commission does not view the PCAOB's discussion of the Proposed Rules in relation to the existing standards as inconsistent with the proper analysis of an EGC determination. Rather, establishing a baseline for conducting an analysis of economic effects of a proposed regulatory action is an appropriate regulatory practice. Also, it is important to consider that currently, all issuers, including EGCs, are subject to the existing audit committee communication requirements of AU secs. 310 and 380 and Rule 2–07 of Regulation S–X. If the Commission determined that the Proposed Rules should not apply to audits of EGCs, AU secs. 310 and 380 and Rule 2–07 of Regulation S–X would still apply to the audits of EGCs.[38]

The Commission believes the PCAOB's EGC analysis appropriately describes the consequences of the Proposed Rules relative to the baseline. As the PCAOB notes in its submission, the impact of the Proposed Rules is largely incremental to existing requirements regarding communications between auditors and audit committees. Accordingly, this discussion of existing requirements is highly relevant to considering the impacts on efficiency, competition and capital formation that would be caused by applying the new standard to audits of EGCs. The Commission does not believe the Proposed Rules can be categorized as a major or profound change to the way auditors communicate with audit committees. In fact, the PCAOB received comments to this effect during its own due process. For example, one commenter observed that ''many of the requirements [of the proposed rules] are already reflected in the best practices of audit firms and public companies.'' [39] Another commenter to the PCAOB stated its ''belie[f] that auditors, in most cases, are already providing meaningful communications on the financial statement and audit areas that meet the spirit of the requirements of the Proposed Standard and go beyond what is currently required by the extant standards.'' [40]

• Fourth, the commenter raised a concern that the public was never afforded an opportunity to comment upon the impact of the proposed rules on the audits of EGCs.

Section 103(a)(3)(C) requires the Commission to make the specified determination. The PCAOB submitted an EGC analysis that assisted the Commission in its own determination. The PCAOB's analysis was included in the Commission's notice of the Proposed Rules which provided an opportunity for the public, including the commenter, to submit comments on the analysis.[41] The PCAOB also supplemented the record with additional information after comments were received. As noted above, based on the analysis submitted, the comments received, and the PCAOB's response, we believe the information in the record is sufficient for us to make the EGC determination.

• Fifth, the commenter believes that the inspection findings cited in the PCAOB's EGC analysis do not provide any indication whether any of the audit committee communication failures involved the audits of EGCs. The commenter also criticizes the relevance of the PCAOB's citation to four year old research that indicated that audit committee oversight was having a positive impact on the overall quality of audits.

In its EGC analysis, the PCAOB cited its inspection findings as one input into its decision to bring together in one place audit committee communication requirements;[42] and in its letter to the Commission, the PCAOB reiterated this point. The Commission believes it was appropriate for the PCAOB to consider its inspection findings in developing the Proposed Rules.

As to the PCAOB's reference in its EGC analysis to research, the Commission believes it was wholly appropriate for the PCAOB to highlight the relationship between audit committee communications and overall audit quality and improved financial reporting, given the relevance of the quality of financial reporting to considerations of efficiency and capital formation. It does not appear that the PCAOB was referencing the research identified by the commenter to justify the Proposed Rules themselves or was attempting to use research inconsistently or opportunistically to support its views. Rather, the PCAOB noted, citing to other research, that improved financial reporting quality promotes efficiency and capital formation. The PCAOB explained that the results of one of the studies cited in its EGC analysis supported its view that audit committee oversight of the auditor improves audit quality and financial reporting quality. The PCAOB then went on to discuss additional findings from its outreach and research that improved interaction between, and information shared, between the auditor and the audit committee enhances audit committee oversight and auditor performance.

IV. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules and the information submitted therewith by the PCAOB, including the

[38] Also, the Commission does not view the PCAOB's highlighting the existing baseline as the sole justification to carry forward existing requirements. Rather, throughout the PCAOB's submission describing the individual requirements of the standard, while the PCAOB notes whether the particular requirement is new or carried forward, the PCAOB also explains why it chose to include them irrespective of whether they already are included in the existing standards.

[39] *See* letter from The Society of Corporate Secretaries and Governance Professionals to the PCAOB (June 1, 2010). This letter may be viewed at: *http://pcaobus.org/Rules/Rulemaking/Docket030/032_SCSGP.pdf.*

[40] *See* letter from Deloitte & Touche to the PCAOB (May 28, 2010). This letter may be viewed at: *http://pcaobus.org/Rules/Rulemaking/Docket030/020_DT.pdf.*

[41] In addition, the commenter acknowledged that the JOBS Act was signed into law after the PCAOB's second comment period closed. The PCAOB did not re-expose the Proposed Rules again as part of its standard-setting process to seek public input on whether application of the Proposed Rules to EGC audits would be necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.

[42] *See* 77 FR 57441.

PCAOB's EGC analysis, the comment letters received, and the PCAOB's response. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to EGC audits is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB–2012–01) be and hereby are approved.

By the Commission.

Elizabeth M. Murphy.

Secretary.

[FR Doc. 2012–30739 Filed 12–20–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8130]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 24, 2013, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street NW., Washington, DC The meeting is open to the public and will last until approximately 12:00 p.m.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas that are assisted by the Department of State and attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. In addition there will be a report and discussion about the status of the Council-sponsored project to expand the World Virtual School.

Members of the public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should advise the office of Dr. Keith D. Miller, Department of State,

Office of Overseas Schools, telephone 202–261–8200, prior to January 14, 2013. Each visitor will be asked to provide his/her date of birth and either driver's license or passport number at the time of registration and attendance, and must carry a valid photo ID to the meeting.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered, however, requests made after January 10th might not be possible to fill. All attendees must use the C Street entrance to the building.

Dated: December 17, 2012.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 2012–30863 Filed 12–20–12; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 8132]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Notice of Public Meeting of the Study Group on the Hague Judgments Project

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting of the Study Group on the Judgments Project in the Hague Conference on Private International Law.

Last April, the General Affairs and Policy Council of the Hague Conference decided to proceed with the Judgments Project as follows:

(1) A Working Group was established to draft proposals for inclusion in an instrument on the recognition and enforcement of judgments; and

(2) An Experts' Group will convene separately to give further consideration to whether it would be desirable and feasible to include in this or another instrument provisions on jurisdiction.

The Permanent Bureau of the Hague Conference has announced that two meetings will be held in The Hague during the latter part of February (precise dates to be determined): The Working Group on recognition and enforcement of judgments will meet, followed by a meeting of the Experts' Group on jurisdiction and related issues.

The purpose of the meeting of the Study Group is to obtain the views of concerned stakeholders on these matters; specifically, reactions to the issue papers that are being prepared by the Permanent Bureau for the Hague meetings. Those issue papers will be circulated, as soon as they become available, to those individuals who advise that they intend to participate in the public meeting. This is not a meeting of the full Advisory Committee.

Time and Place: The meeting will take place on Wednesday, January 23, 2013 from 9:00 a.m. until 2:00 p.m., EST in Room 240, South Building, State Department Annex 4. Participants should arrive at the Navy Hill gate at the corner of 23rd Street NW. and D Street NW. before 8:30 a.m. for visitor screening. Persons arriving later will need to make arrangements for entry using the contact information provided below. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room.

Access to Navy Hill is strictly controlled. For pre-clearance purposes, those planning to attend in person are requested to email or phone Tricia Smeltzer (*smeltzertk@state.gov,* 202–776–8423) or Niesha Toms (*tomsnn@state.gov,* 202–776–8420) and provide your full name, address, date of birth, citizenship, driver's license or passport number, affiliation, and email address. This will greatly facilitate entry.

Participants will be met at the Navy Hill gate at 23rd and D Streets NW., and will be escorted to the South Building.

A member of the public needing reasonable accommodation should advise Ms. Smeltzer or Ms. Toms not later than January 16, 2013. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by

telephone, please contact Ms. Smeltzer or Ms. Toms to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: December 12, 2012.

Keith Loken,

Assistant Legal Adviser, Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2012–30865 Filed 12–20–12; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 8131]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting of the Study Group on Family Law

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting of the Study Group on Family Law to discuss the recognition and enforcement of foreign civil protection orders. Pursuant to a decision of the General Affairs and Policy Council of the Hague Conference on Private International Law, the Conference's Permanent Bureau has published a Questionnaire for Member States on the Recognition and Enforcement of Foreign Civil Protection Orders, which is available at *http://www.hcch.net/upload/wop/gap2013pd04a_en.doc.* The purpose of the public meeting is to obtain comments on Part VI of that questionnaire, which seeks views on a potential international instrument in the area of civil protection orders. This is not a meeting of the full Advisory Committee.

Time and Place: The meeting will take place on Monday, January 14, 2013, at 1:00 p.m. EST and is tentatively scheduled to last until 4:00 p.m. EST. The meeting will be held in Room 240, South Building, State Department Annex 4. Participants should plan to arrive at the Navy Hill gate at the corner of 23rd Street NW., and D Street NW., by 12:30 p.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should phone Tricia Smeltzer (202–776–8423) or Niesha Toms (202–776–8420) and provide your full name, affiliation, address, and email address. This will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should advise Ms. Smeltzer or Ms. Toms not later than January 7, 2013. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please contact Ms. Smeltzer or Ms. Toms to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: December 12, 2012.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of Legal Adviser, Department of State.

[FR Doc. 2012–30862 Filed 12–20–12; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0072]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 28, 2012, Capital Passenger Car, Inc. (CPC) of Orrville, OH, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223—Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses. FRA assigned the petition Docket Number FRA–2012–0072.

CPC has petitioned for a permanent waiver of compliance for a 28-seat parlour car (RPCX 3850) named ''C&B Marshall.'' This car was built by Pullman in 1947, and since 1989 has operated on lease for passenger excursions that are limited to regional railroads, namely Buffalo and Pittsburgh Railroad, Columbia and Ohio River Railroad, Ohio Central Railroad (Genesee and Wyoming), and Wheeling and Lake Erie Railway. The car typically operates between 1,000 and 2,000 miles per year on about six weekends at speeds of 45 mph or less, mostly on single-track rail lines through areas largely rural in nature. When not being used, this car is stored at the Orrville Railroad Heritage Society, Inc.'s Pine Street Yard in Orrville, OH, on the Wheeling and Lake Erie Railway.

There are two end windows in the B-end vestibule, one right and one left. Both the right side and left side of the car contain eight windows each. No Type I or Type II FRA-certified glazing is currently installed in the car. However, all side windows are ¼-inch panes of Duplate ASI PPG Safety Glass. Some of these side windows are equipped with double panes. Also, each end window is ¼-inch pane of Duplate ASI PPG Safety Glass. CPC states that barring one incident of vandalism in the spring of 2010 when the car was in storage—resulting in several cracked windows—there has been no accident or injury attributed to window glazing since this car came under its present ownership in 1988. CPC states that besides the prohibitive cost (approximately $30,000) involved in retrofitting the car with FRA-certified glazing, side-lining the car for this purpose will be catastrophic because most of its revenue comes from the operation of this car on steam and diesel powered excursions. Therefore, CPC is requesting this relief.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a

hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 4, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 17, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30873 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0077]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 28, 2012, the Orrville Railroad Heritage Society, Inc. (ORHS) of Orrville, OH, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses). FRA assigned the petition Docket Number FRA–2012–0077.

ORHS has petitioned for a permanent waiver of compliance for three passenger cars, numbered RPCX 101 (named ''William B Baer''), RPCX 102 (named ''HH Wade''), and RPCX 103 (named ''Robert S Bixler''), each manufactured as a coach car by The Budd Company. RPCX 101 (a 60-seater built in 1947), RPCX 102 (a 56-seater built in 1947), and RPCX 103 (a 68-seater built in 1946) have operated since 1985, 1986, and 1986, respectively. They are on lease for passenger excursions that are limited to regional railroads, namely Buffalo and Pittsburgh Railroad, Columbia and Ohio River Railroad, Ohio Central Railroad (Genesee and Wyoming), and the Wheeling and Lake Erie Railway. The cars typically operate between 1,000 and 2,000 miles per year on about six weekends at speeds 45 mph or less, mostly on single-track rail lines through areas largely rural in nature. When not being used, these cars are stored at the ORHS Pine Street Yard in Orrville, OH, on the Wheeling and Lake Erie Railway.

There are no end windows except for end doors. No Type I or Type II FRA-certified glazing is currently installed in the cars either in end windows or side windows. However, all windows, end and side, are ¼-inch panes of Duplate ASI PPG Safety Glass. ORHS states that barring one incident of vandalism on RPCX 101 in the spring of 2010 when the car was in storage—resulting in one cracked window—there has been no accident or injury attributed to window glazing of these cars came under their present ownership in 1985. ORHS states that besides the prohibitive cost (approximately $33,600 for RPCX 101; $32,200 for PRCX 102; and $33,800 for RPCX 103) involved in retrofitting the cars with FRA-certified glazing, side-lining the cars for this purpose will be catastrophic because most of its revenue comes from the operation of these cars on steam and diesel powered excursions. Therefore, ORHS is requesting this relief.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 4, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 17, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30870 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0089]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 12, 2012, Capital Metropolitan Transportation Authority

(CMTA) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 213.57—*Curves; elevation and speed limitations.* FRA has assigned the petition Docket Number FRA–2012–0089.

CMTA seeks a waiver of compliance from provisions regarding ''cant deficiency'' contained at 49 CFR 213.57. Cant deficiency is a technical term describing the imbalance of inner and outer wheel loads when a rail vehicle traverses a curve. With the right combination of speed, curvature, and superelevation (the amount the outer rail is elevated above the inner rail), the loads on both inner and outer wheels will be equal, i.e., balanced. The curving speed corresponding to this balanced state is referred to as ''balance speed.'' At speeds higher than the balance speed, the centrifugal force will cause the outer wheel load to increase and the inner wheel load to decrease. The manifestation of this load imbalance is that a lateral throw will be sustained by the passengers when the vehicle is traversing the curve. To counter the imbalance, the superelevation on the curve would have to be increased. The necessary amount of the increase in the superelevation is the amount of cant deficiency.

CMTA intends to operate its Stadler Diesel Multiple Unit (DMU) fleet on curves at speeds which will generate a cant deficiency up to, but not more than, 5 inches; but no more than the maximum authorized speed.

In support of it petition, CMTA has conducted a ''static lean test,'' a test to demonstrate that the Stadler DMU fleet can safely be operated at the requested 5 inches of cant deficiency.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 4, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 17, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30876 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0078]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 28, 2012, the North Coast Line, Inc. (NCL) of Doylestown, OH, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses). FRA assigned the petition Docket Number FRA–2012–0078.

NCL has petitioned for a permanent waiver of compliance for a 26-seat diner lounge car, RPCX 3125, named ''Paul Revere.'' This car was built by The Budd Company in 1952, and since 2007 has operated on lease for passenger excursions that are limited to regional railroads, namely Buffalo and Pittsburgh Railroad, Columbia and Ohio River Railroad, Ohio Central Railroad (Genesee and Wyoming), and Wheeling and Lake Erie Railway. The car typically operates between 1,000 and 2,000 miles per year on about six weekends at speeds 45 mph or less, mostly on single-track rail lines through areas largely rural in nature. When not being used, this car is stored at the Orrville Railroad Heritage Society, Inc. Pine Street Yard in Orrville, OH, on Wheeling and Lake Erie Railway.

There are no end windows except for the end doors. The left side of the car contains six windows while the right side contains seven windows. No Type I or Type II FRA-certified glazing is currently installed in the car. All windows have two panes. Except for the end windows and four emergency windows, all other windows are ¼-inch panes of Duplate ASI PPG Safety Glass. The emergency windows and the end windows are ¼-inch panes of GE Marguard/Lexan. NCL states that there has been no accident or injury attributed to window glazing while under the present ownership since 2007. NCL further states that besides the prohibitive cost (approximately $23,800) involved in retrofitting the car with FRA-certified glazing, side-lining the car for this purpose will be catastrophic because most of its revenue comes from the operation of this car on steam and diesel powered excursions. Therefore, NCL is requesting this relief.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 4, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 17, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30824 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0105]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 19, 2011, Railserve Inc. (RSSX) of Atlanta, GA, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses). FRA assigned the petition Docket Number FRA–2011–0105.

RSSX has petitioned for a permanent waiver of compliance for one locomotive, RSSX 1, from the requirements contained at 49 CFR 223.11–*Requirements for existing locomotives;* specifically, the requirements for FRA Type I material in the forward and rearward end-facing glazing locations of the locomotive cab windshield as well as FRA Type II material in all side-facing windows of the locomotive cab. RSSX states that it is a small switching operation inside the premises of the agribusiness company Cargill Inc. in Memphis, TN, and that it interchanges with Norfolk Southern Railway for cars inbound and outbound for the Cargill facility only, over a track that is less than a quarter of a mile. These switching operations occur at restricted speed that is 5 mph or less. RSSX further states that it does not have a history of vandalism inside the grounds of the Cargill facility. RSSX is requesting this relief on account of the prohibitive cost involved in retrofitting the locomotive with FRA-certified glazing. RSSX intends to install hurricane and/or safety glass if approved, which will maintain safety.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 4, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 17, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30868 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0308]

Pipeline Safety: Reporting of Exceedances of Maximum Allowable Operating Pressure

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing this Advisory Bulletin to inform owners and operators of gas transmission pipelines that if the pipeline pressure exceeds maximum allowable operating pressure (MAOP) plus the build-up allowed for operation of pressure-limiting or control devices, the owner or operator must report the exceedance to PHMSA on or before the fifth day following the date on which the exceedance occurs. If the pipeline is subject to the regulatory authority of one of PHMSA's State Pipeline Safety Partners, the exceedance must also be reported to the applicable state agency.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by phone at 202–366–1319 or by email at

cameron.satterthwaite@dot.gov. Information about PHMSA may be found at *http://www.phmsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 3, 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. Section 23 (a) of the Act amended 49 U.S.C. Chapter 601 to add ''§ 60139. Maximum allowable operating pressure.'' Specifically, § 60139 (b) (2) states:

> If there is an exceedance of the maximum allowable operating pressure with respect to a gas transmission pipeline of an owner or operator of a pipeline facility that exceeds the build-up allowed for operation of pressure-limiting or control devices, the owner or operator shall report the exceedance to the Secretary and appropriate State authorities on or before the 5th day following the date on which the exceedance occurs.

This reporting requirement is applicable to all gas transmission pipeline facility owners and operators. In order to comply with this self-executing provision, PHMSA advises owners and operators to submit this information in the same manner as safety-related condition reports (SRCR). The information submitted by owners and operators should comport with the information listed in § 191.25(b), and the reporting methods listed in § 191.25(a) should be employed.

The reporting exemptions for SRCR listed in § 191.23(b) do not apply to the reporting requirement for exceedance of MAOP plus build-up. Specifically, § 191.23(b)(4), which allows for non-reporting if the safety-related condition is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filing the SRCR, does not apply. Gas transmission owners and operators must report the exceedance of MAOP plus build-up regardless of whether the exceedance was corrected before five days have passed.

Finally, owners and operators have five days after occurrence to report exceedance of MAOP plus build-up.

II. Advisory Bulletin (ADB–2012–11)

To: Owners and Operators of Gas Transmission Pipeline Facilities.

Subject: Reporting of Exceedances of Maximum Allowable Operating Pressure.

Advisory: Section 23 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 requires owners and operators of gas transmission pipeline facilities to report any exceedance of the maximum allowable operating pressure (MAOP) plus the build-up allowed for operation of pressure-limiting or control devices. This requirement further specifies that such exceedances must be reported within five calendar days of the exceedance. PHMSA is issuing this Advisory Bulletin to notify operators to submit information comparable to that required for Safety-Related Condition reports as outlined in § 191.25(b) for reports of exceedance. The report should be titled ''Gas Transmission MAOP Exceedance'' and provide the following information:

- The name and principal address of the operator, date of the report, name, job title, and business telephone number of the person submitting the report.
- The name, job title, and business telephone number of the person who determined the condition exists.
- The date the condition was discovered and the date the condition was first determined to exist.
- The location of the condition, with reference to the town/city/county and state or offshore site, and as appropriate, nearest street address, offshore platform, survey station number, milepost, landmark, and the name of the commodity transported or stored.
- The corrective action taken before the report was submitted and the planned follow-up or future corrective action, including the anticipated schedule for starting and concluding such action.

These reports must be submitted within five days of the occurrence using one of the reporting methods described in § 191.25(a). PHMSA is poised to issue a final rule modifying this regulation to include electronic mail (email) as an acceptable reporting method for SRCR.

PHMSA encourages gas transmission owners and operators to report MAOP plus build-up exceedances by emailing information to *InformationResourcesManager@dot.gov.* Reports may also be submitted by fax to (202) 366–7128.

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

Alan K. Mayberry,

Deputy Associate Administrator Field Operations.

[FR Doc. 2012–30770 Filed 12–20–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35590]

Illinois Railway, L.L.C., Chicago, Central & Pacific Railroad Company and Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific—Joint Relocation Project Exemption—in Rockford, IL

On December 5, 2012, Illinois Railway, L.L.C. (IR), Chicago, Central & Pacific Railroad Company (CC&P),[1] and Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (CP) (collectively, applicants) jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint project involving the relocation of certain tracks by IR and CC&P over which they currently operate, or have authority to operate, in the City of Rockford, Winnebago County, Ill. (the City).[2]

The purpose of the joint relocation project is to facilitate the City's removal and replacement of the Morgan Street Bridge (the Bridge), an old highway bridge that crosses over the Rock River in the City. To allow for the City's bridge replacement project to proceed, IR and CC&P have agreed to realign their trackage and interchange points within the project area, including the removal of IR's tracks located beneath the Bridge.

According to applicants, the relocation project involves seven components. First, IR will acquire limited overhead trackage rights from CC&P over CC&P's trackage between CCP milepost 85.75 and the connection with CP's trackage at or near CCP milepost 86.85, a distance of approximately 1.1 miles. In addition to overhead trackage rights, IR explains that it will have the right to enter and exit its main line west of the diamond at CCP milepost 85.75. IR will also have the right to enter and exit its former main line track east of the diamond at CCP milepost 85.65 (including between CCP milepost 85.65 and CCP milepost 85.00 for headroom) to enable IR to continue serving the shipper, Joseph Behr & Sons, Inc. (Behr). These trackage rights will allow IR to use the CC&P route across the Rock River and existing rights over CP's line to access IR's yard

[1] IR is a subsidiary of OmniTRAX, Inc. CC&P is an indirect subsidiary of Canadian National Railway Company (CN) and is operated as part of the CN rail system.

[2] Two redacted trackage rights agreements between IR and CC&P, were filed with the notice of exemption. The unredacted versions were filed under seal along with a motion for protective order, which will be addressed in a separate decision.

at South Rockford. Second, CC&P will acquire limited overhead and local trackage rights over IR trackage between IR milepost 22.54 and IR milepost 21.90, a distance of approximately 0.64 miles to enable CC&P to continue serving the shipper, Accuride Wheel End Solutions, formerly Gunite Foundries (Gunite). Third, a new connecting track will be constructed west of the diamond at or near CCP milepost 85.75 to facilitate IR's use of its trackage rights and to facilitate CC&P's use of its trackage rights. Fourth, a new connecting track connecting CC&P's mainline and the former IR mainline north of the diamond will be constructed east of the diamond at or near CCP milepost 85.65 to facilitate IR's use of its trackage rights to continue serving Behr. Fifth, IR will remove the diamond and its trackage on either side of the diamond between the two connecting tracks and between IR milepost 23.05 (approximately 150 feet south of the center line of Morgan Street) to IR milepost 23.45 (at the north end of IR's Rock River bridge). Sixth, CC&P will remove certain industrial lead track south of the diamond (located parallel to the IR's line) currently used by CC&P to serve Gunite. Seventh, CP will discontinue its overhead trackage rights over IR trackage between IR milepost 22.54 and IR milepost 23.5. According to applicants, these trackage rights through this area have been relocated to the CC&P route.

Applicants state that, once the relocation project is completed, IR will quitclaim to the City IR's right-of-way that consists of a distance of 750 feet north of the centerline of Morgan Street and 150 feet south of the centerline of Morgan Street.

According to applicants, the relocation project will provide a number of public and private benefits such as: (a) Enhanced public safety through the closing of the existing public highway-rail grading crossings and the upgrading of five existing highway-rail grade crossings; (b) improved railroad safety and decreased maintenance costs for the railroads through the removal of the IR–CC&P diamond south of the Bridge; and (c) a safer and more suitable highway bridge which will support a Class II truck route.

Applicants state that the proposed joint relocation project will not disrupt service to shippers, nor will it expand IR's or CC&P's service into a new territory or alter the existing competitive situation. The two shippers, Behr and Gunite, will continue to receive service. CC&P will continue to have access to Gunite via the new connecting track west of the former diamond and the CC&P trackage rights. IR will continue to have access to Behr via the new connecting track east of the former diamond and its trackage rights.

The Board will exercise jurisdiction over the abandonment, construction, or sale components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory. *See City of Detroit* v. *Canadian Nat'l Ry.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne Cnty. Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995); *Flats Indus. R.R. & Norfolk S. Ry.—Joint Relocation Project Exemption—in Cleveland, Ohio,* FD 34108 (STB served Nov. 15, 2001). Line relocation projects may embrace trackage rights transactions such as those involved here. *See Detroit, Toledo & Ironton R.R.—Trackage Rights—Between Washington Court House & Greggs, Ohio—Exemption,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components of this relocation project require no separate approval or exemption because the relocation project will not disrupt service to shippers, expand IR's or CC&P's service into a new territory, or alter the existing competitive situation, and thus, this joint relocation project qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

The transaction may be consummated on or after January 4, 2013, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 28, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35590, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicants' representatives: Karl Morell, Ball Janik LLP, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005, (IR's representative); William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606 (CC&P's representative); and W. Karl Hansen, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402 (CP's representative).

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: December 17, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–30817 Filed 12–20–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35702]

Landisville Railroad, LLC—Operation Exemption—Buckeye East Chicago Railroad LLC

Landisville Railroad, LLC (Landisville), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 7,065 feet (1.34 miles) of track,[1] existing railroad right-of-way, and bulk liquid transloading facilities owned by Buckeye East Chicago Railroad, LLC, a Class III rail carrier, in East Chicago, Ind.[2]

The transaction may be consummated on or after January 6, 2012 (30 days after the notice of exemption was filed).[3]

Landisville certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of

[1] Applicant states that the track does not have designated mileposts.

[2] *See Buckeye E. Chicago R.R.—Acquis. & Operation Exemption—Buckeye Partners, L.P.,* FD 35698 (STB served Nov. 30, 2012).

[3] The notice was initially filed on November 30, 2012, but it did not meet the Board's regulatory requirements. Landisville filed supplements on December 3 and 7, 2012, containing the necessary information. Because the notice was not complete until the December 7 filing, that date will be considered the actual filing date.

the exemption. Petitions to stay must be filed no later than December 28, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35702, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, 111 West Washington Street, Suite 1023, Chicago, IL 60602.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*''.

Decided: December 17, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–30816 Filed 12–20–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Supplemental Identification Information for 1 Individual Designated Pursuant to Executive Order 13441

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing supplemental information for the name of 1 individual whose property and interests in property are blocked pursuant to Executive Order 13441 of August 1, 2007, ''Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions.''

DATES: The publishing of updated identification information by the Director of OFAC of the 1 individual in this notice, pursuant to Executive Order 13441, is effective on December 17, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On August 1, 2007, the President issued Executive Order 13441 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., the National Emergencies Act, 50 U.S.C. 1601 et seq., and section 301 of title 3, United States Code. In the Order, the President declared a national emergency to address the threat posed by the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions, to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation, to reassert Syrian control or contribute to Syrian interference in Lebanon, or to infringe upon or undermine Lebanese sovereignty.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including any overseas branch, of the following persons: persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State, (1) To have taken, or to pose a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, contributing to the breakdown of the rule of law in Lebanon, supporting the reassertion of Syrian control or otherwise contributing to Syrian interference in Lebanon, or infringing upon or undermining Lebanese sovereignty; (2) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such actions, including acts of violence, or any person whose property and interests in property are blocked pursuant to the Order; (3) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to the Order; or (4) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to the Order.

On December 17, 2012 the Director of OFAC, in consultation with the Departments of State, and other relevant agencies, supplemented the identification information for 1 individual whose property and interests in property are blocked pursuant to Executive Order 13441.

The supplementation identification information for the individual is as follows:

Individual

1. SAMAHA, MICHEL (a.k.a. SAMAHAH, Mishal Fuad; a.k.a. SAMAHAH, Saadah Al-Naib Mishal Fuad); DOB 09 Sep 1948; POB Jouar, Lebanon; nationality Lebanon; alt. nationality Canada; Passport 7012003 (Lebanon); alt. Passport PE385243 (Canada) (individual) [SDGT] [LEBANON].

Dated: December 17, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control,

[FR Doc. 2012–30823 Filed 12–20–12; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 51

Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Regional Haze and Visibility Impacts of Transport, Ozone and Fine Particulates; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–R09–OAR–2012–0904, FRL–9763–2]

Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Regional Haze and Visibility Impacts of Transport, Ozone and Fine Particulates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part a revision of Arizona's State Implementation Plan (SIP) to implement the regional haze program for the first planning period through July 31, 2018. This proposed action includes all portions of the SIP except for three electric generating stations that were addressed in a final rule published in the **Federal Register** on December 5, 2012. Today, EPA is taking action on Arizona's Best Available Retrofit Technology (BART) control analysis and determinations, Reasonable Progress Goals (RPGs) for the State's 12 Class I areas, Long-term Strategy (LTS), and other elements of the State's regional haze plan. If EPA takes final action to disapprove any portion of the SIP, EPA will work with the State to develop plan revisions to address the disapproved provisions. Regional haze is caused by emissions of air pollutants from numerous sources located over a broad geographic area. The Clean Air Act (CAA) requires states to adopt and submit to EPA SIPs that assure reasonable progress toward the national goal of achieving natural visibility conditions in 156 national parks and wilderness areas designated as Class I areas.

DATES: Written comments must be received by the designated contact at the address below on or before February 4, 2013.

ADDRESSES: See the General Information section for further instructions on where and how to learn more about this proposed rule, and how to submit comments.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA, Region 9, Planning Office, Air Division, Air–2, 75 Hawthorne Street, San Francisco, CA 94105. Gregory Nudd can be reached at telephone number (415) 947–4107 and via electronic mail at *r9azreghaze@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

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

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

(2) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(3) The words *Arizona* and *State* mean the State of Arizona.

(4) The initials *ARHP* mean or refer to the Arizona Regional Haze Plan submitted by the State of Arizona on February 28, 2011.

(5) The initials *BART* mean or refer to Best Available Retrofit Technology.

(6) The term *Class I area* refers to a mandatory Class I Federal area.

(7) The initials *CBI* mean or refer to Confidential Business Information.

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

(9) The initials *FGD* mean or refer to flue gas desulfurization.

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

(11) The initials *FLMs* mean or refer to Federal Land Managers.

(12) The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

(13) The initials *LTS* mean or refer to Long-term Strategy.

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

(15) The initials NH_3 mean or refer to ammonia.

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

(17) The initials *NM* mean or refer to National Monument.

(18) The initials *NP* mean or refer to National Park.

(19) The initials *OC* mean or refer to organic carbon.

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

(21) The initials $PM_{2.5}$ mean or refer to fine particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

(22) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers (coarse particulate matter).

(23) The initials *ppm* mean or refer to parts per million.

(24) The initials *PSD* mean or refer to of Significant Deterioration.

(25) The initials *PTE* mean or refer to Potential to Emit.

(26) The initials *RAVI* mean or refer to Reasonably Attributable Visibility Impairment.

(27) The initials *RHR* mean or refer to the Regional Haze Rule, originally promulgated in 1999 and codified at 40 CFR 51.301–309.

(28) The initials *RMC* mean or refer to Regional Modeling Center.

(29) The initials *RP* mean or refer to Reasonable Progress.

(30) The initials *RPG* or *RPGs* mean or refer to Reasonable Progress Goal(s).

(31) The initials *RPOs* mean or refer to regional planning organizations.

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

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

(34) The initials *SRP* mean or refer to Salt River Project Agricultural Improvement and Power District.

(35) The initials *SSJF* mean or refer to the Stationary Sources Joint Forum of the Western Regional Air Partnership.

(36) The initials *tpy* mean tons per year.

(37) The initials *TSD* mean or refer to Technical Support Document.

(38) The initials *VOC* mean or refer to volatile organic compounds.

(39) The initials *WA* mean or refer to Wilderness Area.

(40) The initials *WEP* mean or refer to Weighted Emissions Potential.

(41) The initials *WRAP* mean or refer to the Western Regional Air Partnership.

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I. General Information

A. Docket

The proposed action relies on documents, information and data that are listed in the index on *http://www.regulations.gov* under docket number EPA–R09–OAR–2012–0904. Although listed in the index, some information is not publicly available (e.g., Confidential Business Information (CBI)). Certain other material, such as copyrighted material, is publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, AIR–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9–5:00 PST, excluding Federal holidays.

B. Instructions for Submitting Comments

Written comments must be received at the address below on or before February 4, 2013. Submit your comments, identified by Docket ID No. EPA–R09–OAR–2012–0904, by one of the following methods:

- *Federal Rulemaking portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Email: r9azreghaze@epa.gov*.
- *Fax:* 415–947–3579 (Attention: Gregory Nudd).
- *Mail, Hand Delivery or Courier:* Gregory Nudd, EPA Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

EPA's policy is to include all comments received in the public docket without change. We may make comments available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or that is otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* we will include your email address 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 not include special characters or any form of encryption, and be free of any defects or viruses.

C. Submitting Confidential Business Information

Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim as CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. We will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

D. Tips for Preparing Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the identified comment period deadline.

II. Overview of Proposed Actions

A. Regional Haze

EPA is proposing to approve in part and disapprove in part the remaining portion of Arizona's Regional Haze Plan (ARHP) [1] submitted to EPA Region 9 on

[1] ''Arizona State Implementation Plan, Regional Haze Under Section 308 Of the Federal Regional Haze Rule,'' February 28, 2011.

February 28, 2011, to meet the requirements of Section 308 of the Regional Haze Rule (RHR). We propose to take action on Arizona's Best Available Retrofit Technology (BART) control analysis and determinations, Reasonable Progress Goals (RPG) for each of the 12 Class I areas, and Long-term Strategy (LTS). We are also proposing to take action on the requirements that support these major components of the plan, namely, the identification of Class I Areas impaired by Arizona's emissions, estimated visibility conditions, emission inventories, and the State's monitoring strategy. Today's proposal follows our recent final action on three BART sources in Arizona [2] and completes our review of the State's plan. EPA takes very seriously a decision to propose disapproval of provisions in Arizona's plan, as we believe that it is preferable that all emission control requirements needed to protect visibility be implemented through the Arizona State Implementation Plan (SIP). EPA must be able to find that the state plan is consistent with the requirements of the Clean Air Act (CAA). Further, EPA's oversight role requires that we assure fair implementation of CAA requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes this partial approval and partial disapproval is consistent with the CAA at this time, while full approval of the SIP would be inconsistent with the CAA. We look forward to working with ADEQ to address the issues identified in our action. Our proposed actions are summarized as follows:

Supporting Elements: EPA is proposing to approve Arizona's identification of Class I areas that may experience visibility impairment due to emissions from sources within the State; Arizona's estimated visibility conditions for baseline, 2018 and 2064; Arizona's uniform rate of progress for each Class I area; Arizona's emission inventories for 2002 and 2018; and Arizona's identification of the sources of visibility impairment. Because the submittal does not include the most recently available emission inventory, as required under the RHR, we are proposing to disapprove the ARHP with respect to this requirement.

BART-Eligible: EPA is proposing to approve Arizona's determination that specific units at the following six sources are eligible for BART: ASARCO Hayden Smelter (Hayden smelter), Freeport-McMoRan Inc. Miami Smelter (Miami smelter), Chemical Lime (a subsidiary of Lhoist) Nelson Plant (Nelson Lime Plant) Kilns 1 and 2, Arizona Public Service West Phoenix Power Plant (West Phoenix Power Plant) Combined Cycle Units 1 through 3, CalPortland Rillito Cement Plant (Rillito Plant) Kiln 4, and Catalyst Pulp Mill in Snowflake (Catalyst Paper) Power Boiler 2.[3] We propose to disapprove Arizona's determination that Tucson Electric Power Sundt Generating Station (Sundt) Unit 4 is not eligible for BART. Finally, we propose to approve the State's determination that no other units in the State are BART-eligible. In particular, we propose to approve the State's finding that Cholla Power Plant Unit 1 and Sundt Unit I3 are not BART-eligible.

BART-Exempt: EPA is proposing to approve Arizona's decision to set 0.5 dv as the threshold for determining whether sources are subject to BART, but we are seeking comment on whether this threshold is reasonable. We propose to approve Arizona's determination that two eligible sources are exempt from BART based on this threshold. These BART-exempt sources are West Phoenix Power Plant and Rillito Plant. We propose to disapprove Arizona's determination that Nelson Lime Plant is exempt from BART, but we are seeking comment on whether this determination was reasonable and should be approved.

BART-Subject: EPA is proposing to approve Arizona's determination that three eligible sources are subject to BART. These sources are Hayden smelter, Miami smelter, and Catalyst Paper.

BART Determination: EPA is proposing to approve Arizona's BART determinations for NO_X at Hayden smelter, and for PM_{10} at Miami smelter. We propose to disapprove Arizona's conclusion that a BART determination is not required for PM_{10} at the Hayden smelter and for NO_X at the Miami smelter. We are proposing alternatively to approve or disapprove the State's BART determination for SO_2 at the Hayden and Miami smelters depending on a more detailed BART demonstration from the State. We propose not to act on the State's BART determination for Catalyst Paper because this facility is no longer in operation. Further, we propose to disapprove the compliance schedules and requirements for equipment maintenance and operation related to BART controls at the Hayden smelter and the Miami smelter because these were not included in the State's SIP submittal.

Reasonable Progress Goals: EPA is proposing to disapprove Arizona's RPGs for 2018 on the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') days at all of the State's Class I areas. We propose to find that the State has not demonstrated that these goals constitute reasonable progress by 2018 toward the goal of natural conditions by 2064. For both the best and worst days, we expect actual visibility conditions in 2018 to be better than predicted by the State as a result of the economic recession and EPA-required controls.

Long-term Strategy: EPA is proposing to approve Arizona's interstate consultation process, the technical basis for its apportionment of emission reductions, and the identification of all anthropogenic sources of visibility impairment. Regarding the seven mandatory factors a state must consider for the LTS, we propose to find that Arizona considered emissions reductions due to ongoing air pollution control programs, measures to mitigate the impacts of construction activities, source retirement and replacement schedules, smoke management techniques, and the anticipated net effect on visibility due to projected changes in emissions through 2018. However, we propose to find that the Arizona SIP does not include all measures needed to achieve the State's apportionment of emission reduction obligations with respect to out-of-state Class I areas. We also propose to find that Arizona did not adequately consider emissions limitations and schedules of compliance to achieve the RPGs or the enforceability of emissions limits and control measures.

B. Interstate Transport of Pollutants That Affect Visibility

When EPA promulgates a new or revised National Ambient Air Quality Standard (NAAQS), states must submit SIP revisions that, among other things, contain adequate provisions to prohibit the emission of any air pollutant in amounts that will interfere with SIP measures required of other states to protect visibility. CAA section 110(a)(2)(D)(i)(II). In 1997, EPA promulgated a revised NAAQS for 8-hour ozone and a new annual and 24-hour NAAQS for particulate matter less than 2.5 microns ($PM_{2.5}$), and in 2006, EPA revised the 24-hour $PM_{2.5}$ NAAQS. Each of these actions triggered the requirement for states to address the

[2] See 77 FR 72512, December 5, 2012.

[3] We have already approved ADEQ's determination that Arizona Electric Power Cooperative (AEPCO) Apache Generating Station (Apache) Units 1–3, Arizona Public Service Cholla Power Plant (Cholla) Units 2–4, and Salt River Project Coronado Generating Station (Coranado) 1–2 are BART-eligible. See 77 FR 72512.

interstate transport visibility requirement of section 110(a)(2)(D)(i)(II).

In 2007 and 2009, Arizona submitted SIP revisions for the 1997 ozone and $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS, respectively, each of which indicated that it would be appropriate to assess Arizona's interference with other states' measures to protect visibility in conjunction with the state's regional haze SIP. Due to the sequence of Arizona's regional haze submissions, we interpret Arizona's 2007 and 2009 Transport SIPs to mean that Arizona intended its Regional Haze Plan to address the interstate visibility requirement of section 110(a)(2)(D)(i) for the 1997 8-hour ozone, 1997 $PM_{2.5}$ NAAQS, and 2006 $PM_{2.5}$ NAAQS.

As explained elsewhere in this notice, EPA is proposing to disapprove several elements of Arizona's Regional Haze Plan. In a prior final rule, EPA disapproved certain aspects of Arizona's BART determinations for three sources.[4] Accordingly, Arizona's SIP lacks enforceable emissions limitations for certain air pollutants necessary to achieve RPGs for all Class I areas within, or affected by emissions from, Arizona. As such, we are proposing to find that Arizona's 2007 and 2009 Transport SIPs and ARHP do not contain adequate provisions to meet the ''good neighbor'' provisions of section 110(a)(2)(D)(i)(II) with respect to visibility for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS, nor a demonstration that the existing Arizona SIP already includes measures sufficient to meet the interstate transport visibility requirement.

III. Regional Haze Program and Interstate Transport Background

A. Description of Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit fine particulates (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., sulfur dioxide, nitrogen oxides, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks (NPs) and wilderness areas (WAs). The average visual range[5] in many Class I areas (i.e., NPs and memorial parks, WAs, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions.[6]

B. History of Regional Haze Regulations

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas[7] which impairment results from manmade air pollution.'' EPA promulgated regulations on December 2, 1980, to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.''[8] These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

As part of the 1990 Amendments to the CAA, Congress added section 169B to focus attention on regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999.[9] The primary regulatory requirements that address regional haze are found at 40 CFR 51.308 and 51.309 and are summarized below. Under 40 CFR 51.308(b), all states, the District of Columbia and the Virgin Islands are required to submit an initial SIP addressing regional haze visibility impairment no later than December 17, 2007.[10]

C. Roles of Agencies in Addressing Regional Haze

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

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

The Western Regional Air Partnership (WRAP) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the western United

[4] 77 FR 72512.

[5] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[6] 64 FR 35715 (July 1, 1999).

[7] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[8] 45 FR 80084 (December 2, 1980).

[9] 64 FR 35714 (July 1, 1999) codified at 40 CFR part 51, subpart P (Regional Haze Rule).

[10] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

States. WRAP member State governments include: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

D. Interstate Transport of Pollutants

EPA promulgated new NAAQS for 8-hour ozone and fine particulate matter ($PM_{2.5}$) [11] on July 18, 1997, and revised the 24-hour $PM_{2.5}$ NAAQS to a more protective level [12] on September 21, 2006. Section 110(a)(1) requires states to submit a plan to address certain requirements for a new or revised NAAQS within three years after promulgation of such standards, or within such shorter time as EPA may prescribe. Section 110(a)(2) of the CAA lists the elements that such new plan submissions must address, as applicable, including section 110(a)(2)(D)(i), which pertains to the interstate transport of air pollutants.

EPA issued on April 25, 2005, a ''Finding of Failure to Submit SIPs for Interstate Transport for the [1997] 8-hour Ozone and $PM_{2.5}$ NAAQS.'' [13] This included a finding that Arizona and other states had failed to submit SIPs to address interstate transport of emissions affecting visibility and started a two-year clock for EPA to promulgate a FIP, unless the state made a submission to meet the requirements of section 110(a)(2)(D)(i) and EPA approved such submission.[14]

EPA issued guidance on August 15, 2006, entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the [1997] 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (''2006 Guidance''). As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) of the CAA require each state to have a SIP that prohibits emissions that adversely affect other states in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements (or ''prongs'') related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts that will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with SIP measures required of other states to prevent significant deterioration of air quality; or, (4) interfere with SIP measures required of other states to protect visibility.[15]

With respect to the fourth prong regarding interference with other states' measures to protect visibility, the 2006 Guidance recommended that states make a submission indicating that it was premature, at that time, to determine whether there would be any interference with measures in the applicable SIP for another state designed to ''protect visibility'' until the submission and approval of regional haze SIPs. Regional haze SIPs were required to be submitted by December 17, 2007.[16] EPA reiterated this connection between the regional haze and the visibility prong of section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS in guidance entitled ''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)'' (''2009 Guidance''). For instance, the 2009 Guidance noted that states are obliged to submit SIP measures to address regional haze, including a long-term strategy to address Class I area visibility impairment.[17] A state's long-term strategy must address how it will ensure that the emission control assumptions that other states relied on in developing their RPGs are met.

The regional haze program, as reflected in the RHR, recognizes the importance of addressing the long-range transport of pollutants to protect visibility and encourages states to work together to develop plans to address haze. The regulations explicitly require each state to address its ''share'' of the emission reductions needed to meet the RPGs for neighboring Class I areas. Working together through a regional planning process, states are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors.[18] Given these requirements, we anticipated that regional haze SIPs would contain measures that would achieve these emissions reductions, and that these measures would meet the visibility requirements of section 110(a)(2)(D)(i).

As a result of the regional planning efforts in the west, all states in the WRAP region contributed information to a Technical Support System (TSS) which provides an analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The WRAP states consulted in the development of RPGs, using the products of this technical consultation process to co-develop their RPGs for the western Class I areas. The modeling done by the WRAP relied on assumptions regarding emissions over the relevant planning period and embedded in these assumptions were anticipated emissions reductions in each of the states in the WRAP, including reductions from installation of BART at appropriate sources and other measures to be adopted as part of the state's long-term strategy for addressing regional haze. The RPGs in the draft and final regional haze SIPs that have now been prepared by states in the west accordingly are based, in part, on the emissions reductions from nearby states that were agreed on through the WRAP process.

ADEQ submitted on May 24, 2007, its ''Revision to the Arizona State Implementation Plan Under Clean Air Act Section 110(a)(2)(D)(i)—Regional Transport'' (''2007 Transport SIP'') to address the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. EPA approved this submission with respect to the first three transport prongs, but deferred action on the fourth prong (i.e. interference with SIP measures required to protect visibility) until we received Arizona's final Regional Haze SIP.[19]

[11] The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). The annual $PM_{2.5}$ standard was set at 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations from single or multiple community-oriented monitors and the 24-hour $PM_{2.5}$ standard was set at 65 $\mu g/m^3$, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area (62 FR 38652).

[12] The final rule on the 24-hour NAAQS for $PM_{2.5}$ published on October 17, 2006 revised the standard from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ (71 FR 61144).

[13] 70 FR 21147.

[14] *Id.*

[15] EPA previously took final action on SIP revisions from Arizona to address section 110(a)(2)(D)(i) requirements for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but deferred action on the fourth requirement regarding visibility. *See* 72 FR 42629 at 42632–42633 (July 31, 2007). Also, EPA recently finalized action on the first three requirements of section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS. *See* 77 FR 66398.

[16] 74 FR 2392, January 15, 2009.

[17] 2009 Guidance at page 6.

[18] 40 CFR 51.308(d)(3)(ii).

[19] 72 FR 41629, July 31, 2007. In that notice, EPA noted that ''the Arizona [2007 Transport SIP] concurs with EPA in concluding that is currently premature to determine whether or not SIPs for 8-

ADEQ submitted on October 14, 2009, its ''Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); 2006 $PM_{2.5}$ NAAQS, 1997 $PM_{2.5}$ NAAQS, and 1997 8-hour Ozone NAAQS,'' which addressed the requirements of section 110(a)(2)(D)(i) with respect to the 2006 $PM_{2.5}$ NAAQS in Section 2.4 and Appendix B of the submittal (''2009 Transport SIP''). As with the 2007 Transport SIP, EPA acted on the first three prongs, but deferred action on the fourth prong.[20]

Both of these submittals refer to EPA's 2006 Guidance and state that Arizona agrees with the 2006 Guidance inasmuch as it would be appropriate to assess a state's interference with other states' measures to protect visibility in conjunction with the state's regional haze SIPs.[21] For Arizona's regional haze program, the 2007 and 2009 Transport SIPs both indicate that Arizona submitted a regional haze SIP under 40 CFR 51.309 in December 2003 for the four Class I areas on the Colorado Plateau in Arizona and that the State would submit a SIP under 40 CFR 51.309(g) for the remaining eight Class I areas in Arizona.[22] As described in prior sections of this notice, ADEQ ultimately submitted its final regional haze SIP on February 28, 2011 under 40 CFR 51.308.

We interpret Arizona's 2007 and 2009 Transport SIPs to mean that Arizona intended its Regional Haze Plan to address the interstate visibility requirement of section 110(a)(2)(D)(i) for the 1997 8-hour ozone, 1997 $PM_{2.5}$ NAAQS, and 2006 $PM_{2.5}$ NAAQS. Accordingly, our evaluation of Arizona's 2007 and 2009 Transport SIPs and whether they meet the CAA section 110(a)(2)(D)(i) visibility requirements relies on our evaluation of Arizona's 2011 Regional Haze Plan. Specifically, we interpret the ''good neighbor'' provisions of section 110(a)(2)(D)(i) as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the RPGs required to be set to protect visibility in Class I areas in other states, or a demonstration that emissions from the state's sources and activities will not have the prohibited impacts under the existing SIP.

hour ozone or $PM_{2.5}$ contain adequate provisions to prohibit emissions that interfere with measures in other states' SIPs designed to address regional haze.'' 72 FR 41629 at 41632.

[20] 77 FR 66398 (November 5, 2012).

[21] 2007 Transport SIP, p. 12, and 2009 Transport SIP, Appendix B, p. 11.

[22] *Id.*

IV. Requirements for Regional Haze Implementation Plans

A. Regional Haze Rule

The Regional Haze Rule (RHR) sets out specific requirements for states' initial regional haze implementation plans.[23] In particular, each state's plan must establish a long-term strategy that ensures reasonable progress toward achieving natural visibility conditions in each Class I area affected by the emissions from sources within the state. In addition, for each Class I area within the state's boundaries, the plan must establish a reasonable progress goal (RPG) for the first planning period that ends on July 31, 2018. The long-term strategy must include enforceable emission limits and other measures as necessary to achieve the RPG. Regional haze plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962. These sources, where appropriate, are required to install BART controls to eliminate or reduce visibility impairment. Although such BART determinations can be a part of a reasonable progress strategy, BART is also an independent requirement that can be assessed separately from the other requirements of the RHR.

B. Determination of Baseline, Natural and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction to deciviews using a logarithmic function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction because each deciview change is an equal incremental change in visibility as perceived by the human eye. Most people can detect a change in visibility at one deciview.[24]

The deciview is used to express reasonable progress goals, define visibility conditions, and track changes in visibility. To track changes in visibility at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area and periodically review progress midway through each ten-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003,[25] hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'', and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003,[26] hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance''.

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

[23] Pursuant to 40 CFR 51.301, ''implementation plan'' is defined as ''any State Implementation Plan, Federal Implementation Plan, or Tribal Implementation Plan.'' Therefore, although the requirements of the RHR are generally described in relation to SIPs, they are also relevant where EPA is promulgating a regional haze plan.

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

[25] EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf.*

[26] EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaal/tl/memoranda/rh_tpurhr_gd.pdf.*

2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The mechanism for ensuring continuing progress toward achieving the natural visibility goal is the submission of a series of regional haze SIPs that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each ten-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the ten-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1) (''EPA's Reasonable Progress Guidance''). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' (URP) or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the ten-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress that states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I state's areas.[27]

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[28] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

EPA published the Guidelines for BART Determinations under the Regional Haze Rule at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') on July 6, 2005. The Guidelines assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each such ''subject-to-BART'' source. In making BART determinations for fossil fuel-fired electric generating plants with a total generating capacity in excess of 750 megawatts, states must use the approach set forth in the BART Guidelines. States are encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X and PM. EPA has indicated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. In setting their exemption threshold values, states should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. An exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described in the RHR as ''BART-eligible sources,'' and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance assigned to each factor, but must consider all five factors and provide a reasoned explanation for adopting the technology selected as BART, based on the five factors.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART, unless the SIP includes an alternative program that provides greater reasonable progress towards improving visibility than BART and meets the other requirements of 40 CFR 51.308(e)(2). Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date EPA approves the regional haze SIP.[29] The Regional Haze SIP must also contain a requirement for each BART source to maintain the relevant control equipment, as well as procedures to ensure control equipment

[27] 40 CFR 51.308(d)(1)(iv).

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

[29] CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv).

is properly operated and maintained.[30] In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping and reporting for the BART emissions limitations.[31]

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10–15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a long-term strategy in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures needed to achieve the reasonable progress goals'' for all Class I areas within and affected by emissions from the state.[32]

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with contributing states to develop coordinated emissions management strategies.[33] In such cases, the contributing state must demonstrate that it has included in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultation between states may be required to sufficiently address interstate visibility issues (e.g., where two states belong to different RPOs).

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address Reasonably Attributable Visibility Impairment (RAVI); (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS.[34]

F. Coordination of Regional Haze and RAVI

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

G. Monitoring Strategy

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

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

H. SIP Revisions and Progress Reports

The RHR requires control strategies to cover an initial implementation period through 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every ten years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

Each state also is required to submit a report to EPA every five years that evaluates progress toward achieving the RPG for each Class I area within the state and outside the state if affected by emissions from within the state.[35] The first progress report is due five years from submittal of the initial regional

[30] 40 CFR 51.308(e)(1)(v). *See also* CAA section 302(k) (defining ''emission limitation'' as ''a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, *including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction* * * *'') (emphasis added).

[31] *See* CAA section 110(a)(2) (requirements for SIPs).

[32] 40 CFR 51.308(d)(3).

[33] 40 CFR 51.308(d)(3)(i).

[34] 40 CFR 51.308(d)(3)(v).

[35] 40 CFR 51.308(g).

haze SIP revision. At the same time a 5-year progress report is submitted, a state must determine the adequacy of its existing SIP to achieve the established goals for visibility improvement.[36] The RHR contains more detailed requirements associated with these parts of the Rule.

I. State Consultation With Federal Land Managers (FLMs)

The RHR requires that states consult with Federal Land Managers (FLMs) before adopting and submitting their SIPs.[37] States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Furthermore, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

J. The Grand Canyon Visibility Transport Commission and Section 309

In addition to the general requirements of the regional haze program, the RHR also includes 40 CFR 51.309, which contains the strategies developed by the Grand Canyon Visibility Transport Commission (GCVTC), established under Section 169B(f) of CAA.[38] Certain western States and Tribes were eligible to submit implementation plans under section 309 as an alternative method of achieving reasonable progress for Class I areas that were covered by the GCVTC's analysis—i.e., the 16 Class I areas on the Colorado Plateau. In order for States and Tribes to be able to utilize this section, however, the rule provided that EPA must receive an ''Annex'' to the GCVTC's final recommendations. The purpose of the Annex was to provide the specific provisions needed to translate the GCVTC's general recommendations for stationary source SO_2 reductions into an enforceable regulatory program. The rule provided that such an Annex, meeting certain requirements, be submitted to EPA no later than October 1, 2000.[39] The Annex was submitted in 2000, and EPA revised 40 CFR 51.309 in 2003.[40]

V. Overview of State and EPA Actions on Regional Haze

A. EPA's Schedule To Act on Arizona's RH SIP

EPA received a notice of intent to sue in January 2011 stating that we had not met the statutory deadline for promulgating Regional Haze FIPs and/or approving Regional Haze SIPs for dozens of states, including Arizona. This notice was followed by a lawsuit filed by several advocacy groups (Plaintiffs) in August 2011.[41] In order to resolve this lawsuit and avoid litigation, EPA entered into a Consent Decree with the Plaintiffs, which sets deadlines for action for all of the states covered by the lawsuit, including Arizona. This decree was entered and later amended by the Federal District Court for the District of Columbia over the opposition of Arizona.[42] Under the terms of the Consent Decree, as amended, EPA is currently subject to three sets of deadlines for taking action on Arizona's Regional Haze SIP as listed in Table 1.[43]

TABLE 1—CONSENT DECREE DEADLINES FOR EPA TO ACT ON ARIZONA'S RH SIP

EPA Actions	Proposed rule	Final rule
Phase 1:		
BART determinations for Apache, Cholla and Coronado.	July 2, 2012	November 15, 2012.
Phase 2:		
All remaining elements of Arizona's RH SIP.	December 8, 2012	July 15, 2013.
Phase 3:		
FIP for disapproved elements of Arizona's RH SIP (if required).	March 8, 2013	October 15, 2013.

B. Summary of EPA's Final Rule Affecting Three BART Sources

As indicated in Table 1 above, the first phase of EPA's action on Arizona's Regional Haze SIP addressed three BART sources. The final rule for this phase (a partial approval and partial disapproval of the State's plan and partial FIP) was signed by the Administrator on November 15, 2012 and published in the **Federal Register** on December 5, 2012. We estimate that the emission limits on the three sources will improve visibility by reducing NO_X emissions by 22,700 tons per year. Phase 2 is our action on the remainder of the regional haze plan submitted by the State. Phase 3 will be a partial FIP that will address any portions of the State's plan that are disapproved in Phase 2.

C. History of State Submittals and EPA Actions

Since four of Arizona's twelve mandatory Class I Federal areas are on the Colorado Plateau, the State had the option of submitting a Regional Haze SIP under section 309 of the Regional Haze Rule. A SIP that is approved by EPA as meeting all of the requirements of section 309 is ''deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas [on the Colorado Plateau] for the period from approval of the plan through 2018.''[44] When these regulations were first promulgated, 309 submissions were due no later than December 31, 2003. Accordingly, the Arizona Department of Environmental Quality (ADEQ) submitted to EPA on

[36] 40 CFR 51.308(h).

[37] 40 CFR 51.308(i).

[38] 42 U.S.C. 7492(f).

[39] 40 CFR 51.309(d)(4) and 51.309(f).

[40] 68 FR 33764 (June 5, 2003).

[41] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548).

[42] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548), Memorandum Order and Opinion (May 25, 2012) and Minute Order (July 2, 2012).

[43] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548) Minute Order (November 13, 2012).

[44] 40 CFR 51.309(a).

December 23, 2003, a 309 SIP for Arizona's four Class I Areas on the Colorado Plateau. ADEQ submitted a revision to its 309 SIP, consisting of rules on emissions trading and smoke management, and a correction to the State's regional haze statutes, on December 31, 2004. EPA approved the smoke management rules submitted as part of the 2004 revisions,[45] but did not propose or take final action on any other portion of the 309 SIP.

In response to an adverse court decision,[46] EPA revised 40 CFR 51.309 on October 13, 2006, making a number of substantive changes and requiring states to submit revised 309 SIPs by December 17, 2007.[47] Subsequently, ADEQ sent a letter to EPA dated December 14, 2008, acknowledging that it had not submitted a SIP revision to address the requirements of 309(d)(4) related to stationary sources and 309(g), which governs reasonable progress requirements for Arizona's eight mandatory Class I areas outside of the Colorado Plateau.[48]

EPA made a finding on January 15, 2009, that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze.[49] Specifically, EPA found that Arizona failed to submit the plan elements required by 40 CFR 309(d)(4) and (g). EPA sent a letter to ADEQ on January 14, 2009, notifying the state of this failure to submit a complete SIP. ADEQ later decided to submit a SIP under section 308, instead of section 309.

ADEQ adopted and transmitted its Regional Haze SIP under Section 308 of the Regional Haze Rule (hereafter the Arizona Regional Haze Plan or ARHP) to EPA Region 9 in a letter dated February 28, 2011. The plan was determined complete by operation of law on August 28, 2011.[50] The SIP was properly noticed by the State and available for public comment for 30 days prior to a public hearing held in Phoenix, Arizona, on December 2, 2010. Arizona included in its SIP responses to written comments from EPA Region 9, the National Park Service, the U.S. Forest Service, and other stakeholders including regulated industries and environmental organizations. The Arizona Regional Haze Plan (ARHP) is available to review in the docket for this proposed rule.[51]

VI. EPA's Evaluation of Visibility Conditions in Arizona's Class I Areas

A. Affected Class I Areas

Arizona has 12 Class I areas as listed in Table 2. ADEQ identified eighteen other Class I areas located outside the State that may be affected by its emissions. These other Class I areas are in Colorado, New Mexico, and Utah as listed in Table 3. Each Class I area has an associated IMPROVE monitor sited to be representative of visibility conditions in that area. EPA proposes to find that ADEQ has identified all Class I areas within and outside the State that are potentially affected by its emissions, as required pursuant to 40 CFR 51.308(d).

TABLE 2—CLASS I AREAS IN ARIZONA POTENTIALLY AFFECTED BY ARIZONA EMISSIONS

Class I area	IMPROVE monitor code
1 Chiricahua National Monument.	CHIR1
2 Chiricahua Wilderness	CHIR1
3 Galiuro Wilderness	CHIR1
4 Grand Canyon National Park.	GRCA2
5 Mazatzal Wilderness	IKBA1
6 Pine Mountain Wilderness	IKBA1
7 Mount Baldy Wilderness	BALD1
8 Petrified Forest National Park.	PEFO1
9 Saguaro National Park	SAGU1, SAWE1
10 Sierra Ancha Wilderness	SIAN1
11 Superstition Wilderness	TONT1
12 Sycamore Canyon Wilderness.	SYCA1

TABLE 3—CLASS I AREAS OUTSIDE OF ARIZONA POTENTIALLY AFFECTED BY ARIZONA EMISSIONS[52]

Class I area	State	IMPROVE monitor code
Mesa Verde National Park	Colorado	MEVE1
Black Canyon of the Gunnison NP, La Garita WA, Weminuche WA	Colorado	WEMI1
Great Sand Dunes NM	Colorado	GRSA1
Eagles Nest WA, Flat Tops WA, Maroon Bells-Snowmass WA, West Elk WA	Colorado	WHRI1
Gila Wilderness Area	New Mexico	GICL1
Bosque del Apache National Wildlife Refuge	New Mexico	BOAP1
San Pedro Parks Wilderness Area	New Mexico	SAPE1
Bandelier National Monument, Pecos WA	New Mexico	BAND1
Zion NP	Utah	ZION1
Bryce Canyon NP	Utah	BRCA1
Capitol Reef National Park	Utah	CAPI1
Canyonlands NP, Arches NP	Utah	CANY1

B. Determination of Visibility Conditions and Uniform Rate of Progress

ADEQ developed the visibility estimates in the ARHP using models and analytical tools provided by the WRAP. We have reviewed the models and analytical tools used by the WRAP and those used by ADEQ in developing the ARHP. As explained below, we found that the models were used appropriately, and monitoring data were processed appropriately, consistent with EPA guidance in effect at the time of their use. The models used by the WRAP were state-of-the-science at the time the modeling was conducted and model performance was adequate for the purposes for which they were used.[53]

Baseline and Natural Visibility Conditions: Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most

[45] 71 FR 28270 and 72 FR 25973.

[46] *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653 (D.C. Circuit 2005).

[47] 71 FR 60612.

[48] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA (December 14, 2008).

[49] 74 FR 2392.

[50] CAA section 110(k)(1)(B).

[51] ''Arizona State Implementation Plan, Regional Haze Under Section 308 Of the Federal Regional Haze Rule,'' February 28, 2011.

[52] Source ARHP Section 12.4 and Appendix B, Section 2.

[53] For our detailed review and discussion, please see ''Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership in Support of Western Regional Haze Plans'', Final, February 2011 (WRAP TSD).

impaired days for each calendar year from 2000–2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area based on the average of annual values over the five-year period. Chapter 6.2 and Appendix C of the ARHP provide the details of the deciview calculations of the baseline and natural conditions for each Class I area during 2000–2004.

For each Class I area, ADEQ calculated, in deciviews, the current visibility conditions (worst 20 percent of days) for the 2000–2004 baseline period (Table 4, column A) and the future natural conditions for 2064 (Table 4, column D), the long-term goal of the regional haze program. These correspond to tables 6.1 and 6.2 in the ARHP. ADEQ calculated the dv value representing the best visibility days during 2000–2004 baseline conditions, a value that must be maintained in future years.[54] Natural conditions were calculated using a refined approach, as allowed in ''EPA's 2003 Natural Visibility Guidance.'' As discussed in EPA's WRAP TSD, WRAP and others developed the ''Natural Haze Levels II'' approach.[55] This used time-varying Class I area-specific data and more robust statistical assumptions, along with the revised IMPROVE equation [56] for translating pollutant concentrations into extinction, in order to derive more refined visibility estimates that remain consistent with the approach in EPA's Guidance.

TABLE 4—VISIBILITY CALCULATIONS FOR ARIZONA CLASS I AREAS [57]

[20 percent worst days in deciviews]

Class I area	Baseline 2000–2004	Reasonable Progress Goal (RPG) 2018	Uniform Rate of Progress (URP) estimate	Natural conditions 2064	Years required to reach natural conditions at RPG rate of improvement
	A	B	C	D	E
Chiricahua NM, Chiricahua WA, Galiuro WA (CHIR1 monitor)	13.43	13.35	11.98	7.20	1,038
Grand Canyon NP (GRCA2 monitor)	11.66	11.14	10.58	7.04	125
Mazatzal WA, Pine Mountain WA (IKBA1 monitor)	13.35	12.76	11.79	6.68	159
Mount Baldy WA (BALD1 monitor)	11.85	11.52	10.54	6.24	234
Petrified Forest NP (PEFO1 monitor)	13.21	12.85	11.64	6.49	258
Saguaro NP—East Unit (SAGU1 monitor)	16.22	14.82	12.88	6.46	8,370
Saguaro NP—West Unit (SAWE1 monitor)	14.83	15.99	13.90	6.24	624
Sierra Ancha WA (SIAN1 monitor)	13.67	13.17	12.02	6.59	197
Superstition WA (TONT1 monitor)	14.16	13.89	12.38	6.54	401
Sycamore Canyon WA (SYCA1 monitor)	15.25	15.00	13.25	6.65	478

Uniform Rate of Progress Estimate: ADEQ calculated the uniform rate of progress (URP) estimate for each Class I area using the 2000–2004 baseline deciview and 2064 programmatic goal (natural conditions) deciview values. The URP is represented as a straight line drawn between a given Class I area's 2004 baseline value and 2064 natural condition or programmatic goal value. This assumes the same increment of progress every year for 60 years. Table 6.3 of the ARHP shows the results of the uniform rate of progress calculation. In addition, ADEQ also provided uniform rates of progress for the extinction due to each pollutant contributing to visibility impairment. Tables 9.2 through 9.11 and figures 9.1 through 9.10 of the ARHP illustrate a uniform rate of progress calculation and a graphic representation for each Class I area, for all the individual pollutants (sulfate, nitrate, organic carbon, elemental carbon, fine soil, coarse mass, and sea salt). ADEQ then calculated each Class I area's URP estimate for 2018, in Table 6.3 of the ARHP. The URPs for each Class I area are listed in Table 4, column C of this proposal.

In summary, Arizona has produced the following visibility estimates in deciviews for each Class I area: Baseline visibility conditions; a ten-year reasonable progress estimate for 2018; a 2018 uniform rate of progress estimate for comparison purposes; and a 2064 natural conditions estimate. We propose to find that these estimates are consistent with the requirements of the RHR, particularly those requirements at 40 CFR 51.308(d)(2)(i) and (iii). Also, we propose to find that Arizona has produced URP estimates consistent with the requirement in 40 CFR 51.308(d)(1)(i)(B).

Visibility Projections for 2018 and the Reasonable Progress Goals: The RHR requires states to establish goals, expressed in deciviews, for each Class I area within the state that provide for reasonable progress toward achieving natural visibility conditions by 2064. The RPGs must improve provide for an improvement in visibility for the most impaired days, and ensure no degradation in visibility for the least impaired days over the period of the SIP. The RPGs for the ARHP show visibility improvement by 2018 for the ''worst 20 percent of days'' in all Class I areas when compared to the baseline ''worst'' days. The State's RPGs for the worst 20 percent of days can be seen in Table 4, column B. The RPGs for the best 20 percent of days can be seen in Table 5.

[54] See Table 5 of this notice for a comparison of the visibility levels on the ''best 20 percent of days'' between 2000–2004 and projected 2018 deciview values for the same set of days at each Arizona Class I area.

[55] ''Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates; Final Report by the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup'', presentation at WRAP Attribution of Haze Workgroup Meeting, July 26–27, 2006, Denver, CO. Web page: *http://vista.cira.colostate.edu/improve/Publications/GrayLit/gray_literature.htm* direct link: *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[56] *Revised IMPROVE algorithm for Estimating Light Extinction from Particle Speciation Data,* IMPROVE, January 2006. Web page *http://vista.cira.colostate.edu/improve/publications/graylit/gray_literature.htm.*

[57] Source: Tables 6.1, 6.2, 6.3, and 11.9, ARHP.

TABLE 5—BASELINE AND 2018 VISIBILITY CONDITIONS FOR ARIZONA CLASS I AREAS [58]

[Best 20% days in deciviews]

Class I area	2000–04 Baseline	2018 Reasonable Progress Goal (RPG)
Chiricahua NM, Chiricahua WA, Galiuro WA (CHIR1 monitor)	4.91	4.94
Grand Canyon NP (GRCA2 monitor)	2.16	2.12
Mazatzal WA, Pine Mountain WA (IKBA1 monitor)	5.40	5.17
Mount Baldy WA (BALD1 monitor)	2.98	2.86
Petrified Forest NP (PEFO1 monitor)	5.02	4.73
Saguaro NP—East Unit (SAGU1 monitor)	6.94	7.04
Saguaro NP—West Unit (SAWE1 monitor)	8.58	8.34
Sierra Ancha WA (SIAN1 monitor)	6.16	5.88
Superstition WA (TONT1 monitor)	6.46	6.22
Sycamore Canyon WA (SYCA1 monitor)	5.58	5.49

Also, as required by the RHR, Arizona estimated the time each Class I area would take to reach natural conditions under the RPG rate of visibility improvement (see Table 4, column E). While some of the time estimates are close to the 2064 natural conditions goal, none of the estimates shows that natural conditions will be achieved by 2064 in Arizona's Class I areas. EPA's evaluation of these Reasonable Progress Goals can be found in Section VIII of this document.

C. Arizona's Emissions Inventories

The RHR requires a statewide emissions inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area.[59] The ARHP provides an emissions inventory for 2002, representing the mid-point of the 2000–2004 baseline timeframe. Also, to chart progress in each Class I area, the ARHP includes estimated emissions for 2018, the end of the first planning period. The emissions inventories include estimated annual emissions for the following haze producing pollutants: NO_X, SO_2, VOC, $PM_{2.5}$, PM_{coarse} [60] and NH_3. The emissions inventories are summarized below in ten source categories: Point sources, anthropogenic fire, wildfire, biogenic, area sources, on-road mobile, off-road mobile, road dust, fugitive dust and windblown dust. See Tables 6A and 6B.

TABLE 6A—EMISSIONS INVENTORY FOR ARIZONA REGIONAL HAZE POLLUTANTS BY SOURCE CATEGORY FOR 2002 AND 2018

[Tons per year] [61]

Category	SO_2 [tpy]		NO_X [tpy]		VOC [tpy]		NH_3 [tpy]	
	2002	2018	2002	2018	2002	2018	2002	2018
Point Sources	94,716	67,429	69,968	68,748	5,464	9,401	531	729
Anthropogenic Fire	190	181	725	676	855	745	97	73
Wildfire	4,369	4,369	16,493	16,494	36,377	36,381	3,781	3,782
Biogenic [62]	0	0	27,664	27,664	1,576,698	1,576,698		
Area Source	2,677	3,408	9,049	12,783	102,918	170,902	32,713	36,248
On-road Mobile	2,715	762	178,009	53,508	110,424	52,872	5,035	7,606
Off-road Mobile	4,223	546	66,414	43,249	56,901	36,033	48	64
Total	108,890	76,695	368,322	223,122	1,889,637	1,883,032	42,205	48,502

TABLE 6B—EMISSIONS INVENTORY FOR ARIZONA REGIONAL HAZE POLLUTANTS BY SOURCE CATEGORY FOR 2002 AND 2018

[Tons per year] [63]

Category	$PM_{2.5}$ [tpy]		PM_{coarse} [tpy]	
	2002	2018	2002	2018
Point Sources	934	1,421	8,473	8,650
Anthropogenic Fire	1,033	927	17	9
Wildfire	61,225	61,230	10,107	10,108
Area Source	9,400	13,727	1,384	1,766
On-road Mobile	3,344	2,318	1,004	1,258
Off-road Mobile [64]	4,758	3,032		
Road Dust	3,059	4,371	24,381	34,799
Fugitive Dust	7,589	11,425	54,934	91,967

[58] Source: Table 6.3, ARHP.

[59] 40 CFR 51.308(d)(4)(v).

[60] These are particles smaller than 10 microns, but larger than 2.5 microns.

[61] Arizona Regional Haze Plan, Tables 8.1, 8.2, 8.7 and 8.8.

[62] The ARHP did not report any biogenic NH_3.

TABLE 6B—EMISSIONS INVENTORY FOR ARIZONA REGIONAL HAZE POLLUTANTS BY SOURCE CATEGORY FOR 2002 AND 2018—Continued

[Tons per year][63]

Category	$PM_{2.5}$ [tpy]		PM_{coarse} [tpy]	
	2002	2018	2002	2018
Windblown Dust	6,422	6,422	57,796	57,796
Total	97,764	104,873	158,096	206,353

The 2018 inventory is based on assumptions about the rate of population and economic growth between 2002 and 2018. These projections were completed in 2006 and 2007, before the nationwide recession that began in late 2008. The inventory was updated in 2009 with more up-to-date data on projected emissions from electric generating units, but many source categories that are sensitive to economic growth projections (such as area sources, road dust and fugitive dust) were not updated.[65] A reconsideration of the emissions with more current economic data may yield lower emissions totals for some source categories. Nonetheless, the inventory was developed with the best available information at the time. The 2018 projected inventory does not reflect emissions reductions from BART determinations made by EPA.[66]

Since the purpose of the regional haze program is to eliminate human-caused visibility impairment at Class I areas, it is useful to look at the proportion of the total emissions that are anthropogenic. It is also useful to consider the projected change in emissions during the planning period.

TABLE 7—ASSESSMENT OF THE EMISSIONS INVENTORY[67]

Pollutant	Anthropogenic share in 2002 (percentage)	Change in total emissions (2002–2018) (percentage)
NO_X	88.0	−39.4
SO_2	96.0	−29.6
VOC	14.6	−0.3
NH_3	91.0	14.9
$PM_{2.5}$	20.9	−0.7
Fine Soil	59.4	30.1
PM_{coarse}	57.0	30.5

Table 7shows that the majority of VOC and $PM_{2.5}$ emissions in Arizona are not from the anthropogenic share, and thus most of these emissions are from natural or uncontrollable sources. Nearly half of the PM_{coarse} and fine soil emissions are similarly from uncontrollable sources. NO_X, SO_2 and NH_3 are predominantly anthropogenic in origin. Table 7 also shows that inventory projections indicate significant decreases in NO_X and SO_2 emissions. EPA expects that 2018 emissions will be even lower than projected in the plan due to our FIP actions.[68] The VOC emissions are projected to be relatively flat over time, but that is not surprising, given the small portion of the inventory that is anthropogenic. The projected increase in PM_{coarse} emissions is a potential concern. However, EPA concludes that, for the reasons explained above, these 2018 emissions estimates may not be reliable.

The inventories presented in the ARHP were developed by the WRAP. The EPA reviewed the WRAP methodology and assumptions and determined that they were based on the best available science and information at the time they were developed.[69] Based on this analysis, EPA proposes to find that the 2002 and 2018 inventories are adequate for the regional haze plan.

However, the RHR also requires that Arizona to provide the most recent inventory available.[70] Under the Consolidated Emissions Reporting Rule, states are required to compile and submit to EPA comprehensive statewide emissions inventories every three years.[71] Under this emissions reporting rule, the State was required to develop and submit inventories for 2005 and 2008. Both of these inventories were required to have been completed by the time the ARHP was submitted in February 2011. Yet, the State did not submit the most recent inventory with the plan. The lack of this inventory does not affect our ability to evaluate other elements of the plan. Nevertheless, given this omission, EPA proposes to disapprove this element of the plan. However, if the State submits a complete 2008 inventory in a format consistent and comparable with the 2002 and 2018 inventories submitted in the plan, EPA proposes to approve the plan as having met this requirement.

[63] ARHP, Tables 8.3—8.6. For the purposes of this analysis, primary organic aerosols, elemental carbon and fine soil are assumed to be in the $PM_{2.5}$ partition. These were combined for ease of comparison with the IMPROVE monitoring data.

[64] The ARHP did not include any PM_{10} emissions directly attributed to off-road vehicles.

[65] See ERG Technical Memorandum entitled ''WRAP PRP18b Emissions Inventory—Revised Point and Area Source Projections'', October 16, 2009.

[66] 77 FR 72512.

[67] From ARHP, Tables 8.3–8.8. For the purposes of this analysis, primary organic aerosols and elemental carbon are treated as $PM_{2.5}$, but fine soil is listed separately. For this table, we have treated wildfires, biogenic emissions and windblown dust as non-anthropogenic.

[68] 77 FR 72512.

[69] See EPA document ''Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership in Support of Western Regional Haze Plans'', Final, February 2011 (WRAP TSD).

[70] 40 CFR 51.308(d)(4)(v).

[71] 67 FR 39602.

D. Sources of Visibility Impairment

Arizona evaluated the contributions of different components to visibility impairment on the best and worst 20 percent visibility days in chapter seven of the ARHP.[72] In addition to the five-year average of the baseline period (2000–2004), Arizona's analysis included monthly and daily data for some sites that illustrate some seasonal differences as well as the impact observed on organic carbon contributions to visibility impairment due to nearby wildfires.

As explained above, Arizona's visibility projections for the worst 20 percent days in 2018 for all of the State's Class I areas represent a slower rate of improvement in visibility than is needed to attain natural conditions by 2064. In order to better understand why Arizona's Class I areas are not expected to achieve greater progress during this implementation period, EPA conducted an additional analysis of IMPROVE monitoring data for the days with the worst 20 percent visibility impairment, from the 2000–2004 baseline period and from the more recent 2005–2010 period.[73] This analysis confirmed the percent contribution of each component of the aerosol for the 2000–2004 baseline period presented in the ARHP. In addition, the analysis of the more recent data enabled us to evaluate trends in the relative contributions of various components over the first several years of the implementation period. Table 8 shows how much each pollutant contributed to light extinction at each of Arizona's Class I areas during the period from 2000–2004. In most areas, organic carbon, coarse mass and ammonium sulfate are the species that contribute most significantly to visibility impairment. On average, these components account for 72.9 percent of the light extinction. In isolated cases, ammonium nitrate can play a smaller but significant role (10.6–14.3 percent) in visibility impairment. Elemental carbon and fine soil also can have significant contributions in some cases, but in most of those are correlated with organic carbon and coarse mass, respectively, and so are assumed to come from the same sources. That is, the data usually show significant elemental carbon in association with organic carbon, as one would expect from fires. Elevated levels of fine soil are usually associated with elevated levels of coarse mass, which implies a common source of these pollutants as well.

IMPROVE monitoring data from 2005 through 2010 indicate that the amount of light extinction due to aerosol has decreased since the baseline period overall, and the contribution to total light extinction by most pollutants has decreased as well.[74] Most significantly, the contribution from organic carbon has decreased by 2.2 inverse megameters (Mm^{-1})[75] on a statewide average. The exception to this pattern is a very slight but measurable increase in light extinction due to ammonium sulfate, which increased by 0.8 Mm^{-1} statewide, and by 1.0 to 1.7 mM^{-1} at certain monitors. The sections below outline the species-specific contributions to visibility impairment, and the recent trends in more detail.

TABLE 8—PERCENT OF TOTAL AEROSOL LIGHT EXTINCTION CONTRIBUTED BY EACH POLLUTANT

[Worst 20 percent of days, averaged over the baseline period][76]

IMPROVE SITE/Class I area	Ammonium nitrate	Ammonium sulfate	Organic carbon	Elemental carbon	Coarse mass	Fine soil	Sea salt
CHIR1/Chiricahua NM, Chiricahua WA, Galiuro WA	5.0	26.1	22.9	5.8	30.9	8.9	0.5
GRCA2/Grand Canyon NP	11.3	21.5	39.8	9.2	12.6	5.0	0.4
IKBA1/Mazatzal WA, Pine Mountain WA	14.1	22.1	26.3	8.4	20.6	8.3	0.2
BALD1/Mount Baldy WA	4.9	22.0	46.6	10.5	11.3	5.2	0.1
PEFO1/Petrified Forest NP	6.6	20.2	34.4	10.3	21.7	6.7	0.1
SAGU1/Saguaro NP (East)	14.3	19.8	28.6	8.3	19.0	9.4	0.4
SAWE1/Saguaro NP (West)	10.6	16.5	19.4	7.2	31.2	14.5	0.7
SIAN1/Sierra Ancha WA	9.7	20.1	37.0	8.4	18.0	6.5	0.3
SYCA1/Sycamore Canyon WA	5.2	13.0	32.5	9.4	22.6	16.9	0.3
TONT1/Superstition WA	12.2	21.0	29.8	8.8	21.2	6.7	0.3
Mean	9.4	20.2	31.7	8.6	20.9	8.8	0.3

1. Chiricahua National Monument, Chiricahua Wilderness Area and Galiuro Wilderness Area

Visibility impairment at Chiricahua National Monument, and Chiricahua and Galiuro Wilderness Areas are represented by the conditions at the IMPROVE monitor in the Chiricahua National Monument (CHIR1). Average monitored concentrations over the period of 2000–2004 indicate that coarse mass, organic carbon and ammonium sulfate are the most significant contributors to visibility impairment, together accounting for 79.9 percent of the light extinction. Fine soil is the next largest contributor to light extinction with 8.9 percent, and is correlated with periods of high coarse mass impact.

IMPROVE data averaged over 2005–2010 show measurable decreases in the light extinction due to organic carbon and coarse mass of over 3 Mm^{-1} each. There was a slight increase in light extinction due to ammonium sulfate measured during these years of 1.1

[72] Arizona State Implementation Plan: Regional Haze Under Section 308 of the Federal Regional Haze Rule; January 2011.

[73] See EPA Analysis of IMPROVE Monitoring Data From 2000–2010 (December 6, 2012) in the docket for details on the data analysis presented in this section.

[74] See EPA Analysis of IMPROVE Monitoring Data From 2000–2010 (December 6, 2012) Table 5 in the docket, which shows the changes in average light extinction for each aerosol component at each site between the periods 2000–2004 and 2005–2010.

[75] Light extinction is the attenuation of light due to scattering and absorption as it passes through a medium. Reconstructed light extinction (often denoted as bext) is expressed in units of inverse megameters (1/Mm or Mm^{-1}). While the haze index, expressed in deciviews (dv), is a useful measure for tracking progress in improving visibility, light extinction is the most useful measure for evaluating the relative contributions of pollutants to visibility impairment. These metrics are related by the equation HI = 10 ln(bext/10); where: HI is the Haze Index in dv, ln is the natural log, and b_{ext} is the reconstructed light extinction in Mm^{-1}.

[76] Data were extracted from the ''IMPROVE Aerosol, RHR (New Equation)'' dataset from the portal at the Web site: *http://views.cira.colostate.edu/fed/QueryWizard/Default.aspx*. EPA's intermediate data files on IMPROVE Monitoring Data Analysis (December 6, 2012) is available in the docket to today's proposed rule.

mM^{-1}, but overall the total light extinction has decreased significantly between the two periods by 6.7 Mm^{-1}.

2. Grand Canyon National Park

Visibility impairment at Grand Canyon National Park is represented by the conditions at the IMPROVE monitor at Hance Camp (GRCA2). Average monitored concentrations over the period of 2000–2004 indicate that 39.8 percent of the light extinction is due to organic carbon alone. The next significant contributor is ammonium sulfate accounting for 22.1 percent of the light extinction. Coarse mass and fine soils contribute 17.6 percent and ammonium nitrate contributes 11 percent of the light extinction. Elemental carbon accounts for 9.2 percent of light extinction, and is correlated with periods of high organic carbon impact.

IMPROVE data averaged over 2005–2010 show a slight decrease in the light extinction due to organic carbon of 1.1 Mm^{-1}. The changes in contribution to light extinction from the other aerosol components were small or negligible between the two periods, with a very slight decrease in total aerosol light extinction of 0.8 Mm^{-1}.

3. Mazatzal Wilderness Area and Pine Mountain Wilderness Area

Visibility impairment at Mazatzal and Pine Mountain Wilderness Areas is represented by the conditions at the IMPROVE monitor at Ike's Backbone (IKBA1). Average monitored concentrations over the period of 2001–2004 indicate that coarse mass, organic carbon and ammonium sulfate are the most significant contributors to visibility impairment, each contributing similarly to 69.0 percent of the light extinction. Ammonium nitrate contributes 14.1 percent, and fine soil and elemental carbon each contribute about 8 percent, and are correlated with periods of high coarse mass and organic carbon impact, respectively.

IMPROVE data averaged over 2005–2010 show a slight decrease in light extinction due to ammonium nitrate of 1.2 Mm^{-1} and a slight increase in light extinction due to ammonium sulfate of 1.0 Mm^{-1} since the average values of the baseline period.

4. Mount Baldy Wilderness Area

Visibility impairment at Mount Baldy Wilderness Area is represented by the conditions at the IMPROVE monitor in the wilderness area (BALD1). Similar to Grand Canyon National Park, average monitored concentrations over the period of 2000–2004 in Mount Baldy Wilderness indicate that nearly half of the light extinction is due to organic carbon alone and the next significant contributor is ammonium sulfate accounting for 22.0 percent of the light extinction. Coarse mass and fine soils contribute over 16.5 percent of the light extinction. Elemental carbon contributes 10.5 percent to the light extinction and is correlated with periods of high organic carbon impact.

IMPROVE data averaged over 2005–2010 show a measurable decrease in light extinction due to organic carbon of 2.0 Mm^{-1} and a overall decrease in total aerosol light extinction of 1.1 Mm^{-1} since the average values of the baseline period.

5. Petrified Forest National Park

Visibility impairment at Petrified Forest National Park is represented by the conditions at the IMPROVE monitor in the National Park (PEFO1). Average monitored concentrations over the period of 2000–2004 indicate that organic carbon, coarse mass, and ammonium sulfate are the most significant contributors to visibility impairment, together accounting for 76.3 percent of the light extinction. Elemental carbon is the next largest contributor to light extinction at 10.3 percent, and is correlated with periods of high organic carbon impact.

IMPROVE data averaged over 2005–2010 show that light extinction due to organic carbon and coarse mass decreased by 2.6 and 1.2 Mm^{-1}, respectively since the baseline period. Total aerosol light extinction decreased by 3.0 Mm^{-1} since the average values of the baseline period.

6. Saguaro National Park (East Unit and West Unit)

There are IMPROVE monitors in both the East and West Units of Saguaro National Park that represent the visibility impairment throughout the National Park (SAGU1 and SAWE1). Average monitored concentrations over the period of 2002–2004 indicate that organic carbon, coarse mass, and ammonium sulfate are the most significant contributors to visibility impairment, together accounting for 67.0 to 67.5 percent of the light extinction. Ammonium nitrate contributes 10.6 to 14.3 percent and fine soil, correlated with coarse mass, contributes 9 to 15 percent.

IMPROVE data averaged over 2005–2010 show that light extinction due to organic carbon decreased since the baseline period by 5.5 and 2.9 Mm^{-1}, at SAGU1 and SAWE1, respectively. Also, SAGU1 measured a decrease in contribution from ammonium nitrate of 2.2 Mm^{-1} and SAWE1 measured a decrease in contribution of coarse mass and fine soil together of 5.7 Mm^{-1}. These monitors indicate that the total aerosol light extinction has improved at these two areas more than at any area in Arizona, with decreases of 8.2 and 9.8 Mm^{-1} at the East and West Units, respectively.

7. Sierra Ancha Wilderness Area

Visibility impairment at Sierra Ancha Wilderness Area is represented by the conditions at the IMPROVE monitor in the Wilderness Area (SIAN1). Average monitored concentrations over the period 2001–2004 indicate that 37.0 percent of the light extinction is due to organic carbon. Coarse mass and fine soil together account for almost 24.4 percent and ammonium sulfate accounts for 20.1 percent of the light extinction.

IMPROVE data averaged over 2005–2010 show that light extinction due to ammonium nitrate and coarse mass decreased by 1.3 and 1.5 Mm^{-1}, respectively since the baseline period. Slight increases in the contribution from ammonium sulfate, as well as from organic and elemental carbon lead to a total aerosol light extinction that is decreased only slightly, by 1.3 Mm^{-1}, since the average values of the baseline period.

8. Sycamore Canyon Wilderness Area

Visibility impairment in the Sycamore Canyon Wilderness Area is represented by the conditions at the IMPROVE monitor in the Wilderness Area (SYCA1). Average monitored concentrations over the period 2001–2004 indicate that 32.5 percent of the light extinction is due to organic carbon. Other significant contributors are coarse mass (22.6 percent), fine soil (16.9 percent), and ammonium sulfate (13.0 percent). Fine soil is often correlated with coarse mass, but there are also times when the two are not correlated. For example, July 13 and November 22, 2002 have high concentrations of fine soil but not coarse mass. Elemental carbon contributes 9.4 percent to the light extinction and is correlated with periods of high organic carbon impact.

IMPROVE data averaged over 2005–2010 show that light extinction due organic carbon and fine soil decreased by 1.3 and 1.2 Mm^{-1}, respectively since the baseline period. The contribution from coarse mass increased between the two time periods by 1.4 Mm^{-1}. Total aerosol light extinction decreased only slightly, by 0.8 Mm^{-1}, since the baseline period.

9. Superstition Wilderness Area

Visibility impairment in the Superstition Wilderness Area is

represented by the conditions at the IMPROVE monitor in the Tonto National Monument (TONT1). Average monitored concentrations between 2001 and 2004 indicate that 30 percent of the light extinction is due to organic carbon. Coarse mass and fine soil together account for 27.9 percent and ammonium sulfate accounts for 21.0 percent of the light extinction. Finally, ammonium nitrate contributes 12.2 percent of the light extinction.

IMPROVE data averaged over 2005–2010 show that light extinction due organic carbon and ammonium nitrate decreased by 4.1 and 1.0 Mm^{-1}, respectively since the baseline period. This site exhibited the largest increase in light extinction from ammonium sulfate in Arizona: 1.7 Mm^{-1}. However, total aerosol light extinction still decreased by 3.4 Mm^{-1}, since the baseline period.

VII. EPA's Evaluation of Arizona's BART Analyses and Determinations

A. Arizona's Identification of BART Sources

Pursuant to Section 169A of the CAA and 40 CFR 51.308(e), states are required to evaluate the use of retrofit controls at certain larger, older stationary sources in order to address visibility impacts from these sources. The best available retrofit technology (BART) process, as set forth in the RHR and the final BART Guidelines, consists of three steps. First, states identify those stationary sources that are eligible for BART using criteria set forth in the RHR, such as industrial source category, dates of initial construction and operation, and potential to emit. For those sources that are considered BART-eligible, states then determine if they ''cause or contribute'' to visibility impairment at a Class I area through the use of visibility modeling. For those sources that cause or contribute to Class I visibility impairment, states must then perform a case-by-case determination of what retrofit control measures are appropriate as BART. This determination is performed on a pollutant-by-pollutant basis for each visibility affecting pollutant.

1. Arizona's Identification of Sources Potentially Eligible for BART

The first step of the BART process is to identify all of the BART-eligible sources within the jurisdiction of the State and using the following criteria: (1) One or more emission units at the facility are classified in one of the 26 industrial source categories listed in CAA section 169A(g)(7); (2) the emission unit(s) did not operate before August 7, 1962, but was in existence on August 7, 1977; and (3) the total potential to emit of any visibility impairing pollutant from the eligible emission units at a single source is greater or equal to 250 tons per year.

Using these criteria, the Stationary Sources Joint Forum (SSJF) of the WRAP identified units at several facilities under the jurisdiction of state and local agencies in Arizona that were considered potentially BART-eligible. Using this information, ADEQ developed an initial list of fourteen facilities that it identified as ''potentially subject-to-BART.''[77] Based on CALPUFF modeling performed by WRAP, ADEQ refined this initial list to include only those facilities considered to contribute to impairment of visibility in a Class I area within 300 kilometers.[78] These facilities are listed in Table 9 below.

TABLE 9—POTENTIALLY BART-ELIGIBLE SOURCES IN ARIZONA

Facility name	Source category	Number of BART-eligible units
Tucson Electric Power (TEP) Sundt Generating Station	Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input.	1
Arizona Electric Power Cooperative (AEPCO) Apache Generating Station.		3
Arizona Public Service (APS) Cholla Power Plant		3
Salt River Project (SRP) Coronado Generating Station		2
APS West Phoenix Power Plant		3
CalPortland Rillito Cement Plant	Portland cement plant	1
Chemical Lime Nelson Plant	Lime Plant	2
Catalyst Paper Snowflake Mill	Fossil-fuel boilers of more than 250 million British thermal units per hour heat input.	1
ASARCO Hayden Smelter	Primary Copper Smelter	10
Freeport McMoRan (FMMI, formerly Phelps-Dodge) Miami Smelter.		9

Please note that we have addressed ADEQ's BART determinations for Apache Units 1–3, Cholla Units 2–4 and Coronado Units 1 and 2 in a separate action.[79] As a result, the BART determinations for these three facilities are not discussed in today's proposal.

2. Arizona's Determination of Sources Not BART-Eligible

ADEQ contacted the potentially BART-eligible facilities identified by SSJF in order to inform them of their status and to obtain confirmation or, where necessary, more information. ADEQ received responses and additional information from multiple facilities, and subsequently revised this initial list of BART-eligible sources. These revisions primarily affected the BART-eligibility status of two facilities as described below.

Hayden Smelter: ADEQ sent a letter to ASARCO on June 13, 2007 indicating that 10 units at the Hayden smelter, including five converters and three anode furnaces, were BART-eligible for SO_2 and PM_{10} emissions. In response, ASARCO provided a letter to ADEQ on October 1, 2007, in which it stated that only three converters and two anode furnaces were BART-eligible based on operation dates prior to 1962 in the case of two converters, and a construction (''in existence'') date of 2001 in the case of one of the anode furnaces. In addition, ASARCO stated that ADEQ's estimate of its potential to emit (PTE) was overestimated, as it was based on

[77] As identified in Table 1 of ''Summary of WRAP RMC BART Modeling for Arizona'' Draft No. 5, May 7, 2005. Initial draft released on April 4, 2005.

[78] Arizona Regional Haze SIP, Appendix D (Technical Support Document), page 13.

[79] See proposal at 77 FR 42834 and final action at 77 FR 72512.

facility-wide PTE estimates which included the PTE of non BART-eligible sources. In its letter, ASARCO provided information re-apportioning the fraction of the facility-wide PTE attributable to the BART-eligible sources.

ADEQ performed its own research of historical smelter logs and agreed with ASARCO's assertion that only three converters and two anode furnaces are BART-eligible. It took no action regarding ASARCO's PTE apportionment information, citing a lack of documentation. However, as part of the Title V permit renewal process, ADEQ subsequently revised its estimate of facility-wide PM_{10} PTE downward. ADEQ concluded that the BART-eligible units do not have a PM_{10} PTE greater than 250 tpy, and determined that the units at the Hayden smelter are not BART eligible for PM_{10}.[80] This did not alter ADEQ's determination that the Hayden smelter was subject to BART for SO_2.

Sundt Generating Station: ADEQ identified Units 3 and 4 at Sundt as potentially BART-eligible units. On January 2, 2007, Tucson Electric Power (TEP) provided a letter to ADEQ indicating that Unit I3 was not a BART-eligible unit because it commenced commercial operation on June 26, 1962, which is prior to the August 7, 1962 ''in operation'' date.[81] In addition, TEP provided information indicating that Unit I4 was reconstructed in 1987 as part of a coal conversion project. Under the BART Guidelines, reconstructed sources are generally considered new sources at the time of reconstruction.[82] However, although Unit I4 was reconstructed in 1987, the reconstruction was undertaken as the result of an order issued pursuant to Section 301(c) of the Power Plant and Industrial Fuel Use Act of 1978 and, under Arizona's PSD rule (AAC R9–3–304), a project undertaken pursuant to such an order did not constitute a major modification at the time that reconstruction occurred. As a result, the reconstruction of Unit I4 did not undergo PSD review. TEP indicated that it considers PSD to be immaterial to BART eligibility, stating that the RHR does not require PSD review as a condition of being considered reconstructed.

ADEQ agreed with the documentation TEP supplied indicating that Unit I3 began operation prior to August 7, 1962, and is therefore not BART-eligible. ADEQ also concurred with TEP's position that Unit I4 is not a BART-eligible source, stating that based on a plain reading of EPA's guidance regarding the issue of reconstruction, it considered it appropriate to treat reconstructed sources as new sources at the time of reconstruction. As a result, ADEQ concurred that the reconstructed Unit I4 at Sundt was not ''in existence'' prior to August 7, 1977.

3. Arizona's Identification of Sources Exempt From BART

The second step of the BART process is to determine which BART-eligible facilities may be exempted from further review because they are not reasonably anticipated to cause or contribute to visibility impairment at any Class I areas.[83] ADEQ initially relied upon visibility modeling performed by the WRAP's Regional Modeling Center (RMC) in order to assess the potential of BART-eligible sources to cause or contribute to Class I visibility impairment. ADEQ also provided each of the BART-eligible sources the opportunity to demonstrate, through the use of visibility modeling, that it does not cause or contribute to visibility impairment at surrounding Class I areas.

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that a state must establish a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.''[84] The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.''[85] Further, in setting a contribution threshold, states should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. For determining whether a source is subject to BART, ADEQ used a contribution threshold of 0.5 dv, based on a 3-year average of 98th percentile impacts.

The BART Guidelines provide that states may choose to use the CALPUFF modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area, and determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas (i.e., visibility impacts below the 0.5 dv threshold). The Guidelines state that we believe CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment.[86] The WRAP Regional Modeling Center (RMC) developed a modeling protocol, entitled ''CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States.'' The WRAP RMC used this protocol to perform CALPUFF modeling for each of the western states in which it assessed the visibility impact of each of the sources initially identified as BART-eligible by the SSJF. Certain sources that were identified as causing or contributing to Class I visibility impairment (and therefore subject to BART) based on WRAP RMC results performed their own CALPUFF modeling in order to provide results indicating they were not subject to BART. This modeling was performed in accordance with the WRAP protocol and primarily consisted of different estimates of source emission rates during the baseline period.

Based on CALPUFF modeling performed in accordance with the WRAP protocol, ADEQ determined that the facilities in Table 10 had visibility impacts below the contribution threshold of 0.5 dv, and were therefore exempt from BART.

[80] Arizona Regional Haze SIP, page 150.

[81] Letter from Cosimo DeMasi, TEP, to Nancy Wrona, ADEQ (January 2, 2007), Attachment A (June 29, 1962).

[82] 40 CFR part 51, appendix Y, section II.A.2. (''What is a 'reconstructed source?'').

[83] Alternatively, a state may make BART determinations for all of its BART-eligible sources, if those sources collectively cause or contribute to visibility impairment at one or more Class I areas. 40 CFR part 51, appendix Y, section III.

[84] 40 CFR part 51, appendix Y, section III.A.1.

[85] *Id.*

[86] 70 FR 39162.

TABLE 10—SOURCES EXEMPT FROM BART (ADEQ)

Facility	Class I area with highest impact	Visibility impact at 98th percentile (dv)				Notes
		2001	2002	2003	Average	
Nelson Lime Plant	Grand Canyon National Park	0.452	0.419	0.624	0.498	1
West Phoenix Power Plant	Superstition Wilderness	0.28	0.21	0.23	0.24	2
Rillito Cement Plant	Saguaro National Monument	0.37	0.48	0.34	0.40	3

[1] Based on September 21, 2007 modeling report provided by Chemical Lime.
[2] Based on October 4, 2007 modeling report provided by Arizona Public Service.
[3] Based on May 25, 2007 WRAP RMC BART Modeling Results for Arizona.

Based upon CALPUFF modeling performed by WRAP, the remaining BART-eligible sources from Table 9 were determined to have visibility impacts greater than 0.5 dv.

4. Sources Subject to BART in Arizona

Following the elimination of those sources that it determined were not BART-eligible or that it found to have visibility impacts below the 0.5 dv contribution threshold, ADEQ determined that the remaining BART-eligible sources were subject to BART for the one or more pollutants. These sources are summarized in Table 11.

TABLE 11—SOURCES SUBJECT TO BART (ADEQ)

Facility	BART emission units	Source category	Pollutants evaluated
Catalyst Paper	Power Boiler 2	Fossil-fuel boilers of more than 250 million British thermal units per hour heat input.	NO_X, SO_2.
Hayden Smelter	Anode Furnaces 1 and 2, Converters 1, 2, and 4.	Primary Copper Smelter	SO_2.
Miami Smelter	Converters 1–5, Anode Furnace, Shaft Furnace, Fugitives.		SO_2, PM_{10}.

A summary of the BART-eligible sources ADEQ determined not subject to BART is in Table 12 below.

TABLE 12—SOURCES NOT SUBJECT TO BART (ADEQ)

Facility name	Source category	Reason
Sundt	Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input.	Unit 3 commenced operation prior to August 7, 1962 Unit 4 reconstructed after August 7, 1977.
West Phoenix Power Plant		Exempt (visibility impact <0.5 dv).
Rillito Cement Plant	Portland cement plant	Exempt (visibility impact <0.5 dv).
Nelson Lime Plant	Lime Plant	Exempt (visibility impact <0.5 dv).

B. EPA's Evaluation of ADEQ's Subject-to-BART Analysis

Hayden Smelter: We propose to approve ADEQ's determination that the Hayden smelter is a BART-eligible source and that a BART determination is required for SO_2, but is not required for NO_X. We propose to disapprove ADEQ's determination that a BART determination is not required for PM_{10}. In its SIP submittal, ADEQ determined that a BART determination for PM_{10} was not required because the facility's potential to emit PM_{10} is less than 250 tons per year.[87] This is inconsistent with the Regional Haze Rule. As defined in the Regional Haze Rule, a BART-eligible facility is one that, among other criteria, ''has the potential to emit 250 tons per year or more of *any* air pollutant.'' [88] Once a facility has been determined to be BART-eligible, BART must then be determined for all visibility-impairing pollutants.[89] However, a state is not required to make a BART determination for SO_2 or for NO_X if a BART eligible source has the potential to emit less than 40 tons per year of such pollutant(s), or for PM_{10} if a BART-eligible source has the potential to emit less than 15 tons per year of such pollutant.[90] For Hayden, the potential to emit PM_{10} of the BART-eligible sources is 70 tpy.[91] While we do not necessarily agree that this figure encompasses the full potential to emit of all BART-eligible units at Hayden, even ADEQ's estimate of 70 tpy exceeds the PM_{10} exception threshold of 15 tpy. As a result, we propose to find that a BART determination for PM_{10} is required. We intend to propose BART requirements for PM_{10} at Hayden as part of our Phase 3 proposal. At minimum, we expect that BART would require compliance with the NESHAP MACT Subpart QQQ control requirements and emission limits.

Miami Smelter: We propose to approve ADEQ's determination that the Miami smelter is a BART-eligible source, and that a BART determination is required for SO_2 and PM_{10}. We propose to disapprove ADEQ's determination that a BART

[87] Page 23 of 115, Arizona RH SIP, Appendix D. See Docket Item B–01.

[88] 40 CFR 51.301.

[89] 40 CFR 51.308(e)(1)(ii).

[90] 40 CFR 51.308(e)(1)(ii)(C).

[91] Per Table 6.5, Arizona RH SIP, Appendix D. See Docket Item B–01.

determination is not required for NO_X. In its SIP submittal, ADEQ did not address NO_X emissions from the Miami smelter. As part of the visibility modeling performed for the Miami smelter, WRAP identified an annual NO_X emission rate of 158 tpy for the units constituting the BART-eligible source.[92] This exceeds the NO_X exception threshold of 40 tpy. As a result, a BART determination for NO_X is required.

Sundt: We propose to approve ADEQ's determination that Sundt Unit I3 is not BART-eligible based on the startup date prior to August 7, 1962. We propose to disapprove ADEQ's determination that Sundt Unit I4 is not BART-eligible. Although we accept that the unit was reconstructed in 1987, we have determined that because the unit did not undergo PSD review as part of reconstruction that it is subject to BART.

Under the RHR, ''BART-eligible source'' means any stationary source of air pollutants in one the 26 BART categories, ''including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. * * *''[93] As ADEQ noted in its RH SIP, the BART Guidelines state:

> The ''in operation'' and ''in existence'' tests apply to reconstructed sources. If an emissions unit was reconstructed and began actual operation before August 7, 1962, it is not BART-eligible. Similarly, any emissions unit for which a reconstruction ''commenced'' after August 7, 1977, is not BART-eligible.[94]

However, as explained in the preamble to the Guidelines, Congress intended ''that the BART provision apply to sources which had been 'grandfathered' from the new source review permit requirements in parts C and D of title I of the CAA.''[95] Consistent with this approach, footnote 9 of the preamble to the BART Guidelines notes that, ''sources reconstructed after 1977, *which reconstruction had gone through NSR/PSD permitting,* are not BART-eligible.''[96] By implication, reconstructed sources that did not go through NSR/PSD permitting, *are* BART-eligible. Therefore, EPA concludes that, even accepting ADEQ's determination that TEP Sundt Unit I4 was ''reconstructed'' after August 7, 1977, the Unit remains BART-eligible because it did not go through NSR/PSD permitting.[97]

Threshold for Subject-to-BART: Arizona set a 0.5 dv as the threshold for determining whether a source ''contributes'' to visibility impairment. The BART Guidelines state that ''[as] a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.[98] In setting a threshold, states should consider the number of BART-eligible sources within the state and the magnitude of each source's impacts.[99] Arizona did not provide a rationale for choosing 0.5 dv as the threshold for determining BART eligibility. We note that the WRAP's SSJF identified fourteen sources that it initially considered BART eligible, and that ADEQ determined that seven of these fourteen do not contribute to visibility impairment based on visibility impacts below 0.5 dv. The source with a modeled impact closest to the 0.5 dv threshold is the Chemical Nelson Lime Plant facility with a modeled average 98th high impact of 0.498 dv at Grand Canyon NP.[100] As we discuss below, this is very close to the 0.5 dv threshold and, depending on how that threshold is interpreted, may exceed it. The source with the next highest impact is Rillito Cement Plant with a modeled maximum impact of 0.40 dv at Saguaro NP.[101] The source with the next highest impact is Salt River Project San Tan with a modeled maximum impact of 0.31 dv at Superstition WA. Given that reducing the threshold to 0.3 dv would not result in bringing into BART a significant number of sources impacting the same Class I area, the use of the 0.5 dv threshold may be appropriate. Therefore, EPA proposes to approve Arizona's decision to set 0.5 dv as the threshold for determining whether sources are subject-to-BART. However, given that the modeled average 98th high impact of one BART-eligible source, the Nelson Lime Plant, is within 0.002 dv of 0.5 dv, EPA is also seeking comment on whether it was unreasonable for ADEQ to set a threshold of 0.5 dv. If, after taking into consideration any comments received, we determine that the State's determination was unreasonable, then we may disapprove the State's decision to set a threshold of 0.5 dv.

West Phoenix Power Plant: As seen in Table 10, the visibility modeling performed by APS indicates that the 98th percentile impact from the West Phoenix Power Plant is below 0.5 dv at the most affected Class I area. Based on our review of the visibility modeling performed by APS, we propose to approve ADEQ's determination that the West Phoenix Power Plant is exempt from BART.

Rillito Cement Plant: As seen in Table 10, the visibility modeling performed by CalPortland indicates that the 98th percentile impact from the Kiln 4 at the Rillito Cement Plant is below 0.5 dv at the most affected Class I area. Based on our review of the visibility modeling, we propose to approve ADEQ's determination that the Rillito Cement Plant is exempt from BART.

Nelson Lime Plant: As seen in Table 10, the visibility modeling performed by Chemical Lime indicates that the average 98th percentile impact from the Nelson Lime Plant is below 0.5 dv at the most affected Class I area. However the 98th percentile impact for a single year, 2003, exceeds 0.5 dv. ADEQ based its BART-exemption determination on the 3-year average of 98th percentile impact. When the 2003 value is averaged with the 2001 and 2002 values, the facility's visibility impact is below the exemption threshold of 0.5 dv. This interpretation of the 0.5 dv threshold differs from the interpretation used in a similar type of analysis, namely the Prevention of Significant Deterioration (PSD) Class I visibility analysis. For example, the CALPUFF model is often used for certain aspects of the PSD Class I visibility analysis, and the Federal Land Managers (FLMs), who have the affirmative responsibility to protect visibility at Class I areas, also use 0.5 dv as a threshold.[102] Guidance issued by the FLMs indicates that they interpret this threshold to be exceeded if the 98th percentile values for change in light extinction are equal to or greater than 0.5 dv for *any* year.[103] Typically, the PSD-style method has been used to determine if a source exceeds the BART threshold. However, the BART Guidelines and the preamble to the Regional Haze Rule do not specify the

[92] As described in ''Summary of WRAP RMC BART Modeling for Arizona'', Draft#5, May 25, 2007.

[93] 40 CFR 51.301.

[94] 40 CFR part 51, appendix Y, § II.A.2, ''What does 'in existence on August 7, 1977' mean?''

[95] 70 FR at 39111.

[96] 70 FR at 39111 (July 6, 2005) (emphasis added).

[97] See ''TEP Sundt Unit I4 BART Eligibility Memo'' (November 21, 2012) for a more detailed discussion of the BART eligibility of Unit I4.

[98] BART Guidelines, 40 CFR part 51, appendix Y, section III.A.1.

[99] *Id.*

[100] From visibility modeling performed by the source, see ARHP Appendix D, Table 6.9.

[101] See ''Summary of WRAP RMC BART Modeling for Arizona'' Draft No. 5, May 7, 2005. Initial draft released on April 4, 2005.

[102] Specifically, the FLM's threshold for concern is a 5% change in light extinction, which is equivalent to 0.5 dv.

[103] Federal Land Managers' Air Quality Related Values Work Group (FLAG) Phase I Report—Revised (2010) (FLAG 2010), Page 23.

interpretation of this threshold to the same level of detail as the FLM's guidance for the PSD program, nor do they specify a rounding convention under these circumstances. Nonetheless, in this instance, given that the 98th percentile impact for a single year clearly exceeds 0.5 dv and that the average of the three years is within 0.002 dv of 0.5 dv, EPA proposes to determine that it was not reasonable for the State to find the Nelson Lime Plant is not subject to BART. Therefore, we propose to disapprove the State's determination and find that Nelson Lime Plant is subject to BART. However, we are seeking comment on whether the State's decision was, in fact, reasonable and should be approved. If, based on comments received, we determine that the State's determination was reasonable, then we may approve the State's decision to find this source not subject-to-BART. In addition, EPA also seeks comments on whether there are cost effective pollution controls at Nelson Lime Plant.

Cholla Unit 1: As discussed previously, we have addressed the BART determinations for Cholla Units 2, 3, and 4 in a separate action. For Unit 1, ADEQ determined it is not BART-eligible because it was in existence prior to August 7, 1962. The WRAP's ''Arizona BART Eligibility TSD'' further explains that:

> [Cholla] Unit 1 is listed as potentially date eligible as information shows that the emissions unit was in service only 2 months prior to the cut-off date. Recommend requesting additional supporting documentation for final determination.[104]

ADEQ requested and later received this additional documentation from APS in August 2007 in the form of a document dated May 23, 1962 entitled ''Operating Notes For May 1962.'' [105] This document indicates that, ''[o]n Tuesday, May 1, 1962, unit [#1 was] placed into commercial operation.'' [106] After reviewing this documentation, ADEQ concurred that Unit 1 was not BART eligible.[107] We have requested and received from APS a copy of the ''Operating Notes For May 1962'' along with additional information concerning the operation of Cholla Unit 1.[108] We have placed these materials in the docket and, based on our review, we consider this documentation to be sufficient to confirm ADEQ's determination that this unit is not BART-eligible. As a result, we propose to approve ADEQ's determination that Cholla Unit 1 is not among the units that constitute the BART-eligible source at Cholla.

C. Arizona's BART Control Analysis

The third step of the BART process is to perform the BART analysis and make a final determination. The BART Guidelines (70 FR 39164) describe a step-by-step procedure for performing the BART analysis. In performing this analysis, 40 CFR 51.308(e)(1)(ii)(A) requires that states consider the following factors: (1) The costs of compliance of each technically feasible control technology, (2) the energy and non-air quality environmental impacts of compliance of the control technologies, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. These factors are frequently referred to as the ''five-factor analysis'' for the RHR BART determination.

The BART Guidelines recommend that a BART analysis include the following five steps. The Guidelines provide detailed instructions on how to perform each of these steps.[109]

- Step 1—Identify All Available Retrofit Control Technologies,
- Step 2—Eliminate Technically Infeasible Options,
- Step 3—Evaluate Control Effectiveness of Remaining Control Technologies,
- Step 4—Evaluate Impacts and Document the Results,[110] and
- Step 5—Evaluate Visibility Impacts.

ADEQ's BART analyses mostly followed this approach, with the addition of a step to identify existing control technologies and a step concluding ''selection of BART.'' ADEQ identified a seven step process in its SIP submittal for determining BART:

- Step 1: Identify the Existing Control Technologies in Use at the Source
- Step 2: Identify All Available Retrofit Control Options
- Step 3: Eliminate All Technically Infeasible Control Options
- Step 4: Evaluate Control Effectiveness of Remaining Technologies
- Step 5: Evaluate the Energy and Non-Air Quality Environmental Impacts and Document Results [111]
- Step 6: Evaluate Visibility Impacts
- Step 7: Select BART

In the cases of the Hayden and Miami smelters, ADEQ performed a streamlined BART analysis in which it examined controls required by New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants. In the case of PM_{10}, ADEQ examined control requirements from NESHAP Maximum Achievable Control Technology (MACT) Subpart QQQ (Primary Copper Smelters) in its streamlined analysis. In the case of SO_2, ADEQ examined control requirements from NSPS Subpart P (Primary Copper Smelters).

EPA Evaluation: This seven step BART determination process was also used to determine BART for the Apache, Cholla, and Coronado. As noticed in the separate action addressing BART for these facilities, while we found that this overall approach to the five-factor analysis is generally reasonable and consistent with the RHR and the BART Guidelines, we identified certain areas of this approach that were not consistent with RHR and the BART Guidelines.[112] This process was used for the BART determination for Catalyst Paper. However, as explained in further detail below, we are not proposing to take action on the facility's BART determinations at this time. As a result, we are not taking action to identify any areas of the BART determination process for Catalyst Paper that may not be consistent with RHR.

We propose to approve the use of a streamlined BART analysis for the copper smelters. The use of such a streamlined analysis is consistent with the RHR, which provides for streamlined analyses in certain instances when the affected source is subject to a MACT standard or other emission limitation required under the Clean Air Act. Our evaluation of the streamlined analyses and resulting determinations for the smelters are discussed in further detail below.

D. Arizona's BART Determinations

A summary of the ADEQ's BART determinations is contained in Table 13. Our evaluation of ADEQ's BART determinations is organized by source.

[104] ''Supporting Documentation on Emissions Unit Bart Eligibility Analysis'', section 5.1.2.

[105] Arizona Regional Haze SIP at page 155.

[106] *Id.*

[107] *Id.*

[108] Email from Sue Kidd, APS, to Colleen McKaughan, EPA (October 10, 2012, 9:17 a.m.) and attachments.

[109] 40 CFR part 51, appendix Y, § IV.D.

[110] Step 4 includes evaluating the cost of compliance, energy impacts, non-air quality environmental impacts, and remaining useful life.

[111] We note that, while ADEQ refers to its Step 5 as an evaluation of energy and non-air quality environmental impacts, this step also includes consideration of the costs of compliance and the remaining useful life of the source, consistent with the BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.4.

[112] 77 FR 42841.

TABLE 13—SUMMARY OF ARIZONA'S BART DETERMINATIONS

Unit No.	Description	NO_X		PM_{10}		SO_2	
		Controls	Emission limit lb/MMBtu	Controls	Emission limit lb/MMBtu	Controls	Emission limit lb/MMBtu
Catalyt Paper, Unit 2.	1132 MMBtu/hr Coal-fired Boiler.	No controls (existing).	0.7	None		Partial FGD (existing).	0.80
Hayden Smelter	3 converters and 2 anode smelters.	None		None		Existing Controls—NSPS	
Miami Smelter ...	Electric furnace, 4 converters, remelt/mold pouring vessel.	None		Existing Controls—NESHAP		Existing Controls—NSPS	

1. Catalyst Paper

On July 30, 2012, Catalyst Paper publicly announced the permanent closure of the mill in Snowflake, which includes the Unit 2 power boiler.[113] At present, however, Catalyst Paper has not yet canceled its operating permits and therefore still maintains the ability to operate the mill. For this reason, we are not proposing to take action on ADEQ's BART determinations for Catalyst Paper. Instead, we intend to require that Catalyst Paper notify us prior to resuming operation of mill, at which point we will review ADEQ's BART determination and, if necessary, propose a FIP in accordance with regional haze requirements, including the BART provisions in 40 CFR 51.308(e).

2. Miami Smelter

ADEQ's Analysis: For PM_{10}, ADEQ performed a streamlined analysis in which it examined cost information and control requirements associated with NESHAP MACT Subpart QQQ (Primary Copper Smelters), which uses PM_{10} as a surrogate for certain particulate HAP emissions. ADEQ notes that there are currently three operating copper smelters: the Kennecott smelter in Utah, the ASARCO smelter in Hayden, Arizona, and the Freeport McMoRan Inc. smelter in Miami, Arizona, with the other previously operating facilities having been shut down or permanently dismantled. ADEQ noted that the Kennecott smelter was constructed in the mid-1990s and uses a flash copper converting technology that allows copper to be produced on a continuous basis. ADEQ determined that the Kennecott smelter is not comparable to the Miami smelter, which operates as batch process rather than as a continuous process. A review of EPA's RACT/BACT/LAER Clearinghouse (RBLC) revealed that there are no emission limitations or air pollution control devices that have been approved for anode furnace operations. As a result, ADEQ determined that the most stringent control available to control PM_{10} emissions from primary copper smelting are those required by NESHAP MACT Subpart QQQ.

For SO_2, ADEQ indicated it had performed a ''streamlined'' BART determination in which it examined control requirements and emission standards associated with NSPS Subpart P (Primary Copper Smelters). Again, ADEQ noted that only three copper smelters are currently operating: the Kennecott smelter in Utah, the in Hayden smelter and the Miami smelter, with the other facilities having been shut down or permanently dismantled. Again, ADEQ also noted that the Kennecott smelter was constructed in the mid 1990s and uses a flash copper converting technology that allows copper to be produced on a continuous basis. ADEQ determined that the Kennecott smelter is not comparable to the ASARCO Hayden smelter, which operates as a batch process rather than as a continuous process. ADEQ reviewed EPA's RBLC and concluded that there are no emission limitations or air pollution control devices that have been required as BACT or LAER for anode furnace operations. Based only on this limited information, ADEQ's streamlined analysis found that the most stringent control available for SO_2 emissions from primary copper smelting operations is the existing double contact acid plant and that compliance with NSPS Subpart P constitutes BART for SO_2.

EPA's Evaluation: We propose to approve ADEQ's BART determination for PM_{10} at the Miami smelter. As noted in the BART Guidelines, ''unless there are new technologies subsequent to the MACT standards which would lead to cost effective increases in the level of control, you may rely on the MACT standards for purposes of BART.'' [114] Although MACT Subpart QQQ was promulgated more than 10 years ago,[115] we have not identified any new control technologies for the Miami smelter that would achieve more stringent emission control. In addition, we consider ADEQ's exclusion of controls in place at the Kennecott smelter from consideration to be appropriate for purposes of BART.[116] The BART Guidelines state that ''[w]e do not consider BART as a requirement to redesign the source when considering available control alternatives.'' [117] Given the fundamental differences between operating a copper smelter (or any kind of manufacturing unit) as a batch process and a continuous process, we do not consider it appropriate to include this as a potential control option.

At this time, we are proposing to disapprove ADEQ's SO_2 BART determination or, in the alternative, approve the SO_2 BART determination if we receive adequate additional information during the comment period to support the appropriateness of the streamlined analysis in the SIP and that the control requirements and emissions standards from NSPS Subpart P are enforceable at all units as BART. We agree with ADEQ that the Miami smelter is comparable only to the Hayden smelter. We also note that the Miami

[113] *http://catalystpaper.com/media/news/community/catalyst-permanently-close-snowflake-recycle-paper-mill.*

[114] 40 CFR part 51, appendix Y, section IV.C.

[115] 67 FR 40478 (June 12, 2002) (codified at 40 CFR part 63, subpart QQQ).

[116] This conclusion does not impact whether or not the level of control for Kennecott should be considered in a best available control technology analysis under the Act's prevention of significant deterioration program.

[117] 40 CFR part 51, appendix Y, section IV.D.5.

smelter is operating the sulfuric acid plant at the facility as a control device rather than as a stand-alone facility.

The BART Guidelines allow streamlined analyses that rely on emission standards established under other provisions of the CAA. For example, the BART Guidelines provide that generally states may rely on MACT standards for purposes of BART (70 FR 39164), but should consider other standards, such as the NSPS, only as starting points in streamlined analyses.[118] When relying upon an NSPS in performing a streamlined analysis, the BART Guidelines indicate that additional analysis must be performed to determine if better control technology performance can be achieved since the promulgation of the NSPS. The BART Guidelines state ''where you are relying on these standards to represent a BART level of control, you should provide the public with a discussion of whether any new technologies have subsequently become available.''

We are proposing to disapprove ADEQ's BART determination, in part, because ADEQ did not provide information demonstrating that NSPS Subpart P meets the requirements for a streamlined BART determination. At the time NSPS Subpart P was promulgated, the control technology known to be capable of meeting the SO_2 standard was a sulfuric acid plant, which is the current control technology in place at the Miami smelter. ADEQ did not analyze whether the acid plant was operating at an optimal control level or if it could be retrofitted to operate at a lower emissions level. ADEQ identified the flash copper converting technology in place at the Kennecott smelter, but appropriately excluded it from consideration as a control option.[119] However, we find that it was not reasonable for ADEQ to limit its analysis to those facilities that are specifically subject to the NSPS Subpart P, rather than considering emission levels that are being achieved at other acid plants.

ADEQ's analysis did not examine whether acid plants in operation at a copper smelter (either at Miami or at Hayden) have demonstrated an ability to achieve, in practice, better levels of control since the promulgation of NSPS Subpart P. We note that multiple industries operate acid plants. An acid plant at a copper smelter, for example, uses the SO_2 in process offgas to produce sulfuric acid product, whereas an acid plant at a stand-alone sulfuric acid plant, for example, may use SO_2 from elemental sulfur and from spent sulfuric acid to produce sulfuric acid product. However, regardless of the source of the sulfur or the physical location of the plant, both facilities may be using the double contact acid plant process in which SO_2 in the feed stream is converted to SO_3 through double contact/double absorption converters. ADEQ has not provided any basis for limiting its examination of acid plant performance to only those acid plants operating at copper smelters.

In addition, ADEQ does not specify whether its BART determination would require that all of the BART-subject gas streams at the Miami smelter meet all of the relevant control requirements and emissions standards in Subpart P. NSPS Subpart P provides that no owner or operator of an affected facility ''shall cause to be discharged into the atmosphere * * * any gases which contain sulfur dioxide in excess of 0.065 percent by volume.''[120] This requirement extends to all of the emissions released by the subject facilities, which include smelting furnaces and copper converters, and not just to those emissions that are vented to and controlled by an acid plant. To provide an adequate BART determination, ADEQ should include a finding about the amount of emissions being controlled by the acid plant and a clarification that the NSPS would apply to all emissions discharged from the BART-eligible units to the atmosphere.

Therefore, we are proposing to disapprove ADEQ's streamlined determination that SO_2 BART is the existing double contact acid plant with the NSPS Subpart P emission standard of 650 ppm. We are disapproving this determination because ADEQ's streamlined analysis does not demonstrate that the NSPS Subpart P level of control represents the best level of control. We are also proposing to disapprove the BART determination because it does not require that all of the BART-eligible units meet the control requirements and emissions standards in NSPS Subpart P. Finally, we are proposing to disapprove the lack of enforceability and compliance requirements for this BART determination.

In the alternative, we are proposing to approve ADEQ's determination that compliance with NSPS Subpart P constitutes BART for SO_2 provided ADEQ or other commenters submit additional information demonstrating that the sulfuric acid plant cannot achieve a lower level of SO_2 emissions. ADEQ's use of NSPS Subpart P in its streamlined analysis must be supported by additional information because, while the BART Guidelines provide that states generally may rely on MACT standards for purposes of BART, the same is not true for NSPS standards. NSPS standards may be outdated and may not represent current pollution control technology performance from acid plants operating at smelters and other industries.[121] As a result, we propose to approve ADEQ's reliance on NSPS Subpart P in its streamlined analysis as a starting point provided we receive additional information showing the emission limit remains the most appropriate as BART, that the sulfuric acid plant cannot be operated cost-effectively at a lower level of SO_2 emissions, and that all other SO_2 emissions from the BART-eligible units meet BART. Commenters should not rely solely on the information regarding copper smelters in the RBLC but should include information from other acid gas plants.

Finally, Regional Haze SIPs must include requirements to ensure that BART emission limits are enforceable. In particular, the RHR requires inclusion of (1) A schedule for compliance with BART emission limitations for each source subject to BART; (2) a requirement for each BART source to maintain the relevant control equipment and (3) procedures to ensure control equipment is properly operated and maintained.[122] General SIP requirements also mandate that the SIP include all regulatory requirements related to monitoring, recordkeeping and reporting for the BART emissions limitations.[123] ADEQ did not provide any explanation of how the Arizona SIP addresses these requirements for the

[118] BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.1, stating: ''[w]e do not believe that technology determinations from the 1970s or early 1980s, including new source performance standards (NSPS), should be considered to represent best control for existing sources, as best control levels for recent plant retrofits are more stringent than these older levels.''

[119] We consider ADEQ's decision to not consider this technology to be appropriate. The BART Guidelines state that ''[w]e do not consider BART as a requirement to redesign the source when considering available control alternatives.''[119] Given the fundamental differences between operating a copper smelter (or any kind of manufacturing unit) as a batch process and a continuous process, we do not consider it appropriate to include this as a potential control option. As a result, we conclude that in this instance, ADEQ's reliance on NSPS Subpart P in its streamlined analysis was appropriate.

[120] 40 CFR 60.163(a).

[121] BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.1, n. 13, stating: ''EPA no longer concludes that the NSPS level of controls automatically represents 'the best these sources can install.' ''

[122] 40 CFR 51.308(e)(1)(iv), (v).

[123] See, e.g. CAA section 110(a)(2)(F) and 40 CFR 51.212(c).

Miami smelter.[124] Therefore, we can fully approve ADEQ's BART determinations for this source only if they are accompanied by adequate compliance requirements, including a clearly defined scope for the applicable BART requirements, compliance deadlines, operation and maintenance procedures, and monitoring, recordkeeping and reporting requirements for all of the BART-eligible units.[125]

3. Hayden Smelter

ADEQ's Analysis: For SO_2, ADEQ identified some existing control technologies (i.e., primary and secondary hooding, double contact acid plant) currently installed and operating for the units that comprise the BART-subject source at the Hayden smelter. ADEQ indicated it had performed a ''streamlined'' BART determination in which it examined control requirements and emission standards associated with NSPS Subpart P (Primary Copper Smelters). ADEQ noted that only three primary copper smelting facilities are currently operating: the Kennecott smelter in Utah, the ASARCO smelter in Hayden, Arizona, and the Freeport McMoRan Inc. smelter in Miami, Arizona. In addition, ADEQ also noted that the Kennecott smelter was constructed in the mid 1990s and uses a flash copper converting technology that allows copper to be produced on a continuous basis. ADEQ determined the Kennecott smelter was not comparable to the Hayden smelter, which operates a batch process rather than a continuous process. ADEQ reviewed EPA's RBLC and concluded that there are no emission limitations or air pollution control devices that have been required as BACT or LAER for anode furnace operations. Based only on this limited information, ADEQ's streamlined analysis found that the most stringent control available for SO_2 emissions from primary copper smelting operations is the existing double contact acid plant and that compliance with NSPS Subpart P constitutes BART for SO_2.

EPA's Evaluation: At this time, we are proposing to disapprove ADEQ's BART determination or, in the alternative, to approve the BART determination, if we receive adequate additional information and analysis during the comment period to support the appropriateness of the streamlined analysis in the SIP. We are also proposing to disapprove the lack of compliance requirements, including a compliance deadline, operation and maintenance requirements, and monitoring, recordkeeping and reporting requirements sufficient to ensure that the BART requirements are enforceable at all units. We agree with ADEQ that the Hayden smelter is comparable only to the Miami smelter. We also note that the Hayden smelter is operating the sulfuric acid plant at the facility as a control device rather than a stand-alone facility.

The BART Guidelines allow streamlined analyses that rely on emission standards established under other provisions of the CAA. For example, the BART Guidelines provide that generally states may rely on MACT standards for purposes of BART (70 FR 39164), but should consider other standards, such as the NSPS, only as starting points in streamlined analyses.[126] When relying upon an NSPS in performing a streamlined analysis, the BART Guidelines indicate that additional analysis must be performed to determine if better control technology performance can be achieved since the promulgation of the NSPS. The BART Guidelines state ''where you are relying on these standards to represent a BART level of control, you should provide the public with a discussion of whether any new technologies have subsequently become available.''

We are proposing to disapprove ADEQ's BART determination, in part, because ADEQ did not provide information demonstrating that NSPS Subpart P meets the requirements for a streamlined BART determination. At the time NSPS Subpart P was promulgated, the control technology known to be capable of meeting the SO_2 NSPS was an acid plant, which is the current control technology in place at the Hayden smelter.[127] ADEQ did not analyze whether the acid plant was operating at an optimal control level or if it could be retrofitted to operate at a lower emissions level. ADEQ identified the flash copper converting technology in place at the Kennecott smelter, but appropriately excluded it from consideration as a control option.[128] However, we find that it was not reasonable for ADEQ to limit its analysis to those facilities that are specifically subject to the NSPS Subpart P, rather than considering emission levels that are being achieved at other acid plants. In addition, ADEQ's analysis did not examine whether acid plants in operation at a copper smelter (either at Hayden or at Miami) have demonstrated an ability to achieve, in practice, better levels of control since the promulgation of NSPS Subpart P. We note that multiple industries operate acid plants. An acid plant at a copper smelter, for example, uses the SO_2 in process offgas to produce sulfuric acid product, whereas an acid plant at a stand-alone sulfuric acid plant, for example, may use SO_2 from elemental sulfur and from spent sulfuric acid to produce sulfuric acid product. However, regardless of the source of the sulfur or the physical location of the plant, both facilities may be using the double contact acid plant process in which SO_2 in the feed stream is converted to SO_3 through double contact/double absorption converters. ADEQ has not provided any basis for limiting its examination of acid plant performance to only those acid plants operating at copper smelters.

In addition, ADEQ does not specify whether its BART determination would require that all of the BART-subject gas streams at the Hayden smelter meet all of the relevant control requirements and emissions standards in Subpart P. NSPS Subpart P provides that no owner or operator of an affected facility ''shall cause to be discharged into the atmosphere * * * any gases which contain sulfur dioxide in excess of 0.065

[124] NSPS Subpart P includes some provisions concerning monitoring, recordkeeping and reporting but ADEQ did not indicate whether its BART determination would require compliance with these provisions. EPA is also aware that the Arizona SIP currently includes R18–2–175. Standards of Performance for Existing Primary Copper Smelters; Site Specific Requirements. This SIP-approved rule contains requirements for the Miami smelter, including enforcement and compliance provisions. ADEQ did not demonstrate that compliance with this rule would constitute BART for the Miami smelter.

[125] We also note that our proposed approval, in the alternative, for regional haze requirements purposes should not be taken as a statement regarding the acceptability of this level of SO_2 emissions at this facility or as an indication of the facility's compliance with other regulatory requirements. In addition, we wish to clarify that if we receive additional information adequate to finalize our proposed approval for BART for SO_2, the BART determination does not foreclose a more stringent BACT limitation should this source be required to obtain a PSD permit in the future for any reason.

[126] BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.1, stating: ''[w]e do not believe that technology determinations from the 1970s or early 1980s, including new source performance standards (NSPS), should be considered to represent best control for existing sources, as best control levels for recent plant retrofits are more stringent than these older levels.''

[127] Specifically, ASARCO currently operates a double contact acid plant, which replaced the original single contact acid plant in 1983.

[128] We consider ADEQ's decision to not consider this technology to be appropriate. The BART Guidelines state that ''[w]e do not consider BART as a requirement to redesign the source when considering available control alternatives.'' Given the fundamental differences between operating a copper smelter (or any kind of manufacturing unit) as a batch process and a continuous process, we do not consider it appropriate to include this as a potential control option. As a result, we conclude that in this instance, ADEQ's reliance on NSPS Subpart P in its streamlined analysis was appropriate.

percent by volume.'' [129] This requirement extends to all of the emissions released by the subject facilities and not just to those emissions that are vented to and controlled by an acid plant. To provide an adequate BART determination, ADEQ should include a finding about the amount of emissions being controlled by the acid plant and a clarification that the NSPS would apply to all emissions discharged from the BART-subject units to the atmosphere.

Finally, Regional Haze SIPs must include requirements to ensure that BART emission limits are enforceable. In particular, the RHR requires inclusion of (1) A schedule for compliance with BART emission limitations for each source subject to BART; (2) a requirement for each BART source to maintain the relevant control equipment and (3) procedures to ensure control equipment is properly operated and maintained.[130] General SIP requirements also mandate that the SIP include all regulatory requirements related to monitoring, recordkeeping and reporting for the BART emissions limitations.[131] ADEQ did not provide any explanation of how the Arizona SIP addresses these requirements for the Hayden smelter.[132]

Therefore, we are proposing to disapprove ADEQ's streamlined determination that SO_2 BART is the existing double contact acid plant with the NSPS Subpart P emission standard of 650 ppm. We are disapproving this determination because ADEQ's streamlined analysis does not demonstrate that the NSPS Subpart P level of control represents the best level of control. We are also proposing to disapprove the BART determination because it does not require that all of the BART-eligible units meet the control requirements and emissions standards in NSPS Subpart P. Finally, we are proposing to disapprove the lack of enforceability and compliance requirements for this BART determination.

In the alternative, we are proposing to approve ADEQ's determination that compliance with NSPS Subpart P constitutes BART for SO_2, provided ADEQ or other commenters submit additional information demonstrating that the sulfuric acid plant cannot achieve a lower level of SO_2 emissions. ADEQ's use of NSPS Subpart P in its streamlined analysis must be supported by additional information because, while the BART Guidelines provide that states generally may rely on MACT standards for purposes of BART, the same is not true for NSPS standards. NSPS standards may be outdated and may not represent current pollution control technology performance from acid plants operating at smelters and other industries.[133] As a result, we propose to approve ADEQ's reliance on NSPS Subpart P in its streamlined analysis as a starting point, provided we receive additional information showing the emission limit remains the most appropriate as BART, that the sulfuric acid plant cannot be operated cost-effectively at a lower level of SO_2 emissions, and that all other SO_2 emissions from the BART-eligible units meet BART. Commenters should not rely solely on the information regarding copper smelters in the RBLC but should include information from other acid gas plants.

Finally, we can fully approve ADEQ's BART determination for this source only if ADEQ also submits adequate compliance requirements, including a clearly defined scope for the applicable NSPS requirements, compliance deadlines, operation and maintenance procedures, and monitoring, recordkeeping and reporting requirements.[134]

VIII. EPA's Evaluation of Arizona's Reasonable Progress Goals

A. Reasonable Progress Goals for the Best Days

The RHR requires that the RPGs ensure that there is no degradation on the best 20 percent of days.[135] The projected visibility levels for 2018 (shown in Table 5) raise some concerns about some of the Class I areas on the best days. The Class I areas represented by CHIR1 are projected to have an increase in visibility impairment of 0.03 dv. Saguaro NP—East Unit (SAGU1) is projected to have an increase of 0.10 dv.

The species-specific results of the 2018 projections provide more details about what the computer model shows to be the driver of the apparent increase in degradation at these two monitors. Table 14 provides this data.

TABLE 14—POLLUTANT-SPECIFIC CONTRIBUTION TO VISIBILITY IMPAIRMENT ON THE BEST 20 PERCENT OF DAYS AT CHIR1 AND SAGU1 [136]

Pollutant	CHIR1		SAGU1	
	2000–2004 baseline conditions [Mm–1]	2018 projected conditions [Mm–1]	2000–2004 baseline conditions [Mm–1]	2018 projected conditions [Mm–1]
Sulfate	2.28	2.29	2.67	2.65
Nitrate	0.53	0.49	0.99	1.04
Organic Carbon	1.40	1.41	2.18	2.30
Elemental Carbon	0.67	0.57	1.27	0.88
Fine Soil	0.33	0.44	1.10	1.77

[129] 40 CFR 60.163(a).

[130] 40 CFR 51.308(e)(1)(iv), (v).

[131] See, e.g. CAA section 110(a)(2)(F) and 40 CFR 51.212(c).

[132] NSPS Subpart P includes some provisions concerning monitoring, recordkeeping and reporting but ADEQ did not indicate whether its BART determination would require compliance with these provisions. Additionally, ADEQ did not specify when any BART-eligible units not currently subject to NSPS Subpart P at the Hayden Smelter would be required to comply with its control requirements and emissions standards. EPA is also aware that the Arizona SIP currently includes R18–2–175. Standards of Performance for Existing Primary Copper Smelters; Site Specific Requirements. This SIP-approved rule contains requirements for the Miami smelter, including enforcement and compliance provisions. ADEQ did not demonstrate that compliance with this rule would constitute BART for the Hayden smelter.

[133] BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.1, n. 13, stating: ''EPA no longer concludes that the NSPS level of controls automatically represents 'the best these sources can install.' ''

[134] We also note that our proposed approval, in the alternative, for regional haze requirements purposes should not be taken as a statement regarding the acceptability of this level of SO_2 emissions at this facility or as an indication of the facility's compliance with other regulatory requirements. In addition, we wish to clarify that if we receive additional information adequate to finalize our proposed approval for BART for SO_2, the BART determination does not foreclose a more stringent BACT limitation should this source be required to obtain a PSD permit in the future for any reason. Also, EPA is currently investigating the compliance status of this facility for other provisions of the CAA.

[135] 40 CFR 51.308(d)(1).

[136] Source: WRAP TSS, *http://vista.cira.colostate.edu/tss/Results/HazePlanning.aspx,* Best 20% of days, (plan02d_rev and prp18b).

TABLE 14—POLLUTANT-SPECIFIC CONTRIBUTION TO VISIBILITY IMPAIRMENT ON THE BEST 20 PERCENT OF DAYS AT CHIR1 AND SAGU1 [136]—Continued

Pollutant	CHIR1		SAGU1	
	2000–2004 baseline conditions [Mm–1]	2018 projected conditions [Mm–1]	2000–2004 baseline conditions [Mm–1]	2018 projected conditions [Mm–1]
Coarse Material	1.22	[137] No change	1.83	No change
Sea Salt	0.01	No change	0.11	No change

At both CHIR1 and SAGU1, the increase in visibility impairment is caused primarily by the projected increase in impairment due to fine soil.

The monitoring data trends are not consistent with what the model is projecting. As shown in the Arizona IMPROVE trend analysis conducted by EPA,[138] the monitors representing these areas showed the greatest improvement in visibility on the worst days when one compares monitored data in 2005–2010 to monitored data in the base period of 2000–2004. Significantly, there is no indication of increased impairment due to fine soil. Given these facts, and the relatively small amount of projected degradation, EPA is not overly concerned with the model results.

However, these projected visibility conditions on the 20 percent least impaired days do not account for benefits from EPA's BART determinations for Apache, Cholla and Coronado.[139] EPA expects the visibility on the least impaired days to be better than projected in the ARHP. Therefore, we propose disapproval of the RPGs for the 20 percent best days.

B. Reasonable Progress Goals for the Worst Days

Because Arizona's RPG estimates provide for a rate of improvement in visibility slower than the rate needed to show attainment of natural conditions by 2064, the RHR requires the state to demonstrate why its RPGs are reasonable and why a rate of progress leading to attainment of natural visibility conditions by 2064 is not reasonable.[140] The RHR specifies that RPGs, as well as the demonstration of the reasonableness of attainment beyond 2064, are to be established and evaluated taking into consideration four factors: costs of compliance; time necessary for compliance; energy and non-air quality environmental impacts of compliance; and remaining useful life of any potentially affected sources.[141] As explained below, we propose to find that the State did not conduct an adequate analysis of these four factors. However, based on our supplementary analysis, we have come to the same conclusion as Arizona for some visibility impairing pollutants.

Focus on NO_X and SO_2: The State elected to focus its reasonable progress analysis on NO_X and SO_2. EPA concurs that these are the primary pollutants of concern. EPA also concurs that it is not appropriate to focus on primary organic aerosols or sources of VOC emissions at this time. The WRAP emissions inventories demonstrate that the vast majority of these emissions are not controllable by the State. However, we disagree with the state's decision to exclude coarse mass and fine soil from their reasonable progress analysis. According to the State's own analysis, 57 percent of coarse mass emissions and 60 percent of fine soil emissions in 2002 were anthropogenic.[142] We propose to disapprove the State's finding that it was not reasonable to require additional reductions of coarse mass or fine soil emissions, given that the State did not conduct an analysis for these pollutants, given that they contribute significantly to visibility impairment and are mostly from anthropogenic sources.

Mobile Sources: Emissions of SO_2, NO_X and VOC from on-road and off-road mobile sources are projected to drop significantly over the planning period (2002–2018). This is due to the impact of EPA requirements for cleaner vehicles and cleaner fuels.[143] Given these large reductions in emissions of these pollutants, we propose to approve the State's decision to not consider further control measures for SO_2, NO_X and VOC from mobile sources.

Fires: EPA proposes to agree with the State that emissions from fires should not be considered for further controls in the reasonable progress analysis. Efforts to reduce visibility impacts from fires are appropriately addressed by the smoke management plans, rather than in a reasonable progress analysis. EPA's analysis of the smoke management plans may be found in our evaluation of the State's Long Term Strategy in Section IX of this plan.

Area Sources: The State did not complete an adequate analysis of the potential for reasonable controls from area sources of NO_X and SO_2. While a number of source categories are listed in Chapter 11 of the ARHP, in the case of area sources, the state typically judged that it was too resource intensive to conduct the analysis. Given the lack of supporting analysis, the EPA proposes to disapprove the State's finding that there are no reasonable controls for NO_X or SO_2 on area sources.

Point Sources of SO_2: The vast majority of SO_2 emissions in Arizona are from point sources.[144] Therefore, this is the most important source category to consider for this pollutant. Over 99 of percent point source SO_2 emissions in Arizona are from 10 stationary sources. These sources are shown in Table 15. Some of these facilities are subject to BART (noted below). For the others, the State did not adequately consider the possibility of additional controls, so EPA conducted its own analysis.

[137] WRAP elected to hold the coarse mass and sea salt visibility impairment levels constant.

[138] See Table 5 of EPA Analysis of IMPROVE Monitoring Data From 2000–2010 in the docket.

[139] 77 FR 72512.

[140] The RHR also requires that the state provide to the public an assessment of the number of years it will take to reach natural visibility conditions. 40 CFR 51.308(d)(1)(ii). Arizona's estimates were included in its proposed SIP, which was provided to the public during the public review and comment process prior to ADEQ's adoption of the ARHP.

[141] 40 CFR 51.308(d)(1)(i)(A); 51.308(d)(1)(ii).

[142] Tables 8.5 and 8.6 of the ARHP.

[143] See ARHP page 173.

[144] Table 8.1 of the ARHP.

TABLE 15—LARGEST SOURCES OF SO_2 IN ARIZONA [145]

Source	SO_2 emissions in 2002 (tons per year)
Cholla Power Plant	20,770
Tucson Electric Power Springerville	19,862
Hayden Smelter	18,439
Coronado Generating Station	17,741
Miami Smelter	5,667
Apache Generating Station	5,167
Sundt Generating Station	3,119
Catalyst Paper Mill	1,519
Nelson Lime Plant	893
Douglas Lime Plant	755

The sources that ADEQ found subject to BART are described in Section VII of this notice. These are: Cholla (Units 2–4 only), Hayden smelter, Coronado, Miami smelter, Apache plant (Units 1–3 only), and the Catalyst Paper. EPA is proposing to find that the Sundt Generating Station Unit 4 is BART-eligible and the Nelson Lime Plant is also subject to BART.[146] Therefore, EPA's reasonable progress analysis will focus on those remaining sources and units that we expect to emit significant quantities of SO_2: TEP Springerville, Sundt Units 1–3, and the Douglas Lime Plant.[147] For each source, we have evaluated each of the four statutory reasonable progress factors. In addition, where we found that there were additional potentially cost-effective controls available (using an initial screening level of $5,000/ton), we conducted visibility modeling to assess the potential benefits of those controls.[148] These analyses are set forth in Tables 16A–16C below.

TABLE 16A—SO_2 REASONABLE PROGRESS ANALYSIS FOR TEP SPRINGERVILLE (UNITS 1 AND 2)

Costs of Compliance	These coal-fired units are already equipped with dry flue gas desulfurization (FGD) units. Therefore, they are already well controlled for SO_2. While it is possible to remove the dry FGD units and replace them with more effective wet FDG units, we estimate the incremental cost effectiveness of such an effort to be approximately $17,000 to $22,000/ton, which is a range of values that we do not consider cost effective.[149]
Time Necessary for Compliance	Any new control device would need to be installed by 2018. There would be sufficient time to comply.
Energy and Non-Air Quality Environmental Impacts of Compliance.	A wet FGD would require more energy than the existing dry FGD. In addition, it would create a new water waste stream at the facility.
Remaining Useful Life	EPA assumes that the facility has a remaining useful life in excess of 20 years, allowing time to amortize the cost of any new controls.
Conclusion	Given that the facility is already well controlled, EPA proposes to find that it is not reasonable to require more stringent SO_2 controls on this facility at this time.

TABLE 16B—SO_2 REASONABLE PROGRESS ANALYSIS FOR SUNDT UNITS 1–3

Costs of Compliance	These units are all fired with pipeline-quality natural gas. Their SO_2 emissions are low and will remain low. 99.9 percent of the SO_2 emissions from this facility are from Unit 4.[150] Given the very low emission rates from these units—there are no cost-effective controls.
Time Necessary for Compliance	Any new control device would need to be installed by 2018. There would be sufficient time to comply.
Energy and Non-Air Quality Environmental Impacts of Compliance.	Any post-combustion control, such as FGD would reduce the thermodynamic efficiency of the plant and increase fuel consumption.
Remaining Useful Life	EPA assumes that the facility has a remaining useful life in excess of 20 years, allowing time to amortize the cost of any new controls.
Conclusion	Given that the low SO_2 emissions from this non-BART units at this facility, EPA proposes to find that it is not reasonable to require more stringent SO_2 controls on this facility at this time.

TABLE 16C—SO_2 REASONABLE PROGRESS ANALYSIS FOR DOUGLAS LIME PLANT

Costs of Compliance	Emissions inventory data indicates that production at the Douglas Lime Plant essentially stopped during the recession. SO_2 emissions from the facility were 1,013 tpy in 2008, 42 tpy in 2009 and 0 tpy in 2010. Given the lack of emissions from the plant, EPA proposes to find that requiring controls would not be reasonable at this time.
Time Necessary for Compliance	Any controls would need to be installed by 2018. There is adequate time to install controls.
Energy and Non-Air Quality Environmental Impacts of Compliance.	A wet FGD would increase energy consumption at the plant and would create a new waste water stream.
Remaining Useful Life	EPA assumes that the facility has a remaining useful life in excess of 20 years, allowing time to amortize the cost of any new controls.
Conclusion	Given the current lack of SO_2 emissions, EPA proposes to find that it is not reasonable to require additional controls on this plant at this time. This plant should be considered for SO_2 controls in future planning periods, as it may return to its previous levels of emissions.

[145] Source: WRAP 2002 Arizona Point Source Emissions.

[146] If EPA determines that the Nelson Lime Plant is not subject-to-BART, we will evaluate it for cost effective SO_2 controls for reasonable progress.

[147] We have not considered potential SO_2 controls at Cholla Unit 1 and Apache Unit 4, since these units have relatively low SO_2 emissions. Cholla Unit 1 currently uses lime injection to remove at least 80 percent of SO_2 as a result of New Source Review (Installation Permit #1247) and Apache Unit 4 may only be operated on pipeline quality natural gas, except during periods of gas curtailment not to exceed 600 hours per year (title V operating permit #35043). These permits can be accessed at *http://www.azdeq.gov/environ/air/permits/title_v/index.html.*

[148] While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the point of additional controls is to make reasonable progress toward natural visibility conditions. Therefore, the projected visibility benefit of the controls should be taken into account when determining if the controls are needed to make reasonable progress.

[149] See ''Springerville FGD costs.xls'' for a summary of preliminary cost estimates.

[150] Source: WRAP 2002 Arizona Point Source Emissions.

Based on our supplemental analyses provided in the tables above, EPA proposes to approve ADEQ's conclusion that it is not reasonable to require additional SO_2 controls on non-BART sources at this time.

Point Sources of NO_X: The State's analysis of point sources to justify its RPGs did not provide sufficient supporting information to demonstrate the requirements of the RHR have been met. For example, the State's analysis of internal combustion engines and combustion turbines stated that ''the Department has determined that it is not possible to complete a four-factor analysis without a major investment of resources * * * which is beyond the scope and effort required in this first Regional Haze SIP and therefore no further analysis was conducted.'' Similarly, with respect to cement kilns, the ARHP contends that the Rillito Cement Plant does not ''appreciably diminish or impair visibility'', but the plan does not provide technical documentation of that assertion. Given the slow rate of visibility improvement on the worst days at all Class I areas, a thorough analysis is required before concluding that nothing more can be done to improve visibility. Therefore, EPA proposes to disapprove the State's finding that it is not reasonable to require additional NO_X controls on non-BART point sources in Arizona.

C. Summary of EPA's Evaluation

EPA proposes to find that State did not demonstrate that its RPGs for the worst 20 percent of days in 2018 constitute reasonable progress toward the goal of natural visibility impairment by 2064. Specifically, EPA proposes to find that the State did not perform an adequate analysis for reasonable controls for fine soil and coarse mass. EPA furthermore proposes to find that the State did not perform an adequate analysis justifying its decision that it is not reasonable to require additional NO_X controls on non-BART point sources. Based on these shortcomings, EPA proposes to disapprove the State's RPGs for the worst 20 percent days at all Class I Areas in the state.

EPA also proposes to disapprove the State's RPGs for the best 20 percent of days. We expect that visibility on these days will be better than the State projects, given additional controls required by the EPA.

IX. EPA's Evaluation of Arizona's Long-term Strategy

Under section 51.308(d)(3) of the RHR, Arizona must include a 10 to 15-year long-term strategy (LTS) as part of its regional haze plan (RHP). Arizona's LTS should compile all control measures the State will use through 2018 to meet the regional haze plan's RPGs, including BART required by the RHR. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures needed to achieve the reasonable progress goals'' for all Class I areas within and affected by emissions from Arizona.[151] There are five general requirements for Arizona's LTS. The first general requirement concerns the interstate consultation process.[152] The second concerns allotted emission reductions for out-of-state Class I areas.[153] A third and related requirement concerns documenting the technical basis for determining the apportionment of emission reduction obligations needed for reasonable progress in reducing visibility impairment in the State's affected Class I areas.[154] The fourth general requirement is to identify anthropogenic emissions sources causing visibility impairment considered by the State in developing its RHP.[155] Finally, the fifth general requirement is for the State to consider the following factors within the LTS:

(A) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;

(B) Measures to mitigate the impacts of construction activities;

(C) Emissions limitations and schedules for compliance to achieve the reasonable progress goal;

(D) Source retirement and replacement schedules;

(E) Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes;

(F) Enforceability of emissions limitations and control measures; and

(G) The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.[156]

We have reviewed Arizona's LTS against these five general requirements.

A. Interstate Consultation on Emission Management Strategies

Under 40 CFR 51.308(d)(3)(i), Arizona is required to consult with another state if Arizona's emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area and must consult with other states, if emissions from those other states are reasonably anticipated to contribute to visibility impairment Class I areas in Arizona. To meet these regulatory requirements for interstate consultation and coordination, Arizona consulted with other states and tribes using the WRAP forums and processes. In particular, Arizona consulted with California, Colorado, New Mexico, and Utah using the primary vehicle of the WRAP Implementation Work Group (IWG). Arizona describes their WRAP participation in Chapters 2, 12.2, 13.2, and Appendix C of the RHP.

While Nevada was not a formal member of the WRAP and was not listed with WRAP member states in Arizona's discussion of interstate consultation, we note that Nevada did participate in WRAP workgroups and utilized WRAP technical analyses and source apportionment modeling in producing the Nevada RHP. Nevada used the WRAP's source apportionment modeling to demonstrate Nevada's minimal contribution of the State's sulfate and nitrate emissions to light extinction at 25 Class I areas in Nevada's five neighboring states. Based on consultation through the WRAP, Nevada identified no major contributions that supported developing new interstate strategies, mitigation measures, or emissions reduction obligations.[157]

In addition to participating with WRAP member states and Nevada in the WRAP forums and using WRAP analytical tools and procedures, Arizona provided a 30 day public comment period and a public hearing on December 2, 2010 to receive oral and written comments on its proposed RHP. No other states submitted oral or written comments or requested additional consultation during Arizona's public review process, including Nevada. See Appendix E of the RHP for the public hearing transcript and submitted written comments.

B. Measures To Obtain Allotted Emissions Reductions

Pursuant to 40 CFR 51.308(d)(3)(ii), Arizona is required to demonstrate, where its emissions cause or contribute to impairment in another state's Class I area, that it has included in its RHP all measures needed to obtain its share of the emission reductions for meeting the progress goal for that state's Class I area. Also, since Arizona participated in a regional planning process through the WRAP, Arizona is required to include in

[151] See 40 CFR 51.308(d)(3).

[152] See 40 CFR 51.308(d)(3)(i).

[153] See 40 CFR 51.308(d)(3)(ii).

[154] See 40 CFR 51.308(d)(3)(iii).

[155] See 40 CFR 51.308(d) (iv).

[156] See 40 CFR 51.308(d)(3)(v).

[157] For our review and discussion of the Nevada RHP and approval of Nevada's consultation procedures, see our proposed rule at 76 FR 36450, (June 22, 2011) and our final rule at 77 FR 17334, (March 26, 2012).

the LTS all measures needed to achieve its allotment of emission reductions agreed upon through the WRAP process.[158]

Arizona's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the State from the end of the baseline period starting in 2002 through 2018.[159] Coordinating with the WRAP, ADEQ developed its LTS using the following components: WRAP emission inventories for a 2002 baseline and a 2018 projection (including emission reductions from WRAP member states); controls required or expected under federal and state regulations and BART; modeling to determine visibility improvement and apportion individual state contributions; state consultation; and application of the long-term strategy factors. Arizona accepted and incorporated the WRAP-developed visibility modeling within the ARHP. However, as explained above, we have disapproved the State's BART determinations for NO_X at the following units: Apache Units 2 and 3; Cholla Units 2, 3, and 4; Coronado Units 1 and 2.[160] In addition, as described in section VII of this document, we are proposing to disapprove certain elements of the state's BART determinations at other sources. Accordingly, the LTS, as approved into the applicable Arizona SIP, will not include all of the emissions reductions that were assumed in the WRAP-developed visibility modeling. Accordingly, Arizona's LTS does not include all measures needed to achieve its allotment of emission reductions agreed upon through the WRAP process. Therefore, we propose to determine that the LTS does not meet the requirements of 40 CFR 51.308(d)(3)(ii).

C. Technical Basis for Apportionment of Emission Reductions

Pursuant to 40 CFR 51.308(d)(3)(iii), Arizona is required to document the technical basis that it relied upon to determine its share of emission reduction obligations needed to achieve reasonable progress in each mandatory Class I Federal area it affects, including modeling, monitoring, and emissions information. The State may meet this requirement by relying on technical analyses developed by the WRAP and approved by all State participants. Arizona must also identify the baseline emissions inventory on which its strategies are based.

To meet these requirements, Arizona relied on several WRAP data and analytical systems and technical centers, such as the Technical Support System, the Regional Modeling Center, the Visibility Information Exchange Web System, the Causes of Haze Assessment Project, and the Emission Data Management System. Arizona provided a general overview of the WRAP policy and technical assistance in Chapter 12.2 and more specific and detailed documentation in Appendix C of the ARHP. Specifically, to determine the significant sources contributing to haze in Arizona's Class I areas, Arizona relied upon two source apportionment analysis techniques developed by the WRAP. The first technique was regional modeling using the Comprehensive Air Quality Model (CAMx) and the PM Source Apportionment Technology (PSAT) tool, used for the attribution of sulfate and nitrate sources. The second technique was the Weighted Emissions Potential (WEP) tool, used for attribution of sources of organic carbon, elemental carbon, $PM_{2.5}$, and PM_{10}. The WEP tool is based on emissions and residence time, not modeling. WEP is a screening tool that helps to identify source regions that have the potential to contribute to haze formation at specific Class I areas. Unlike PSAT, this method does not account for chemistry or deposition. More information on the WRAP modeling methodologies is available in Appendix C of the RHP.

As directed by the WRAP Modeling Forum, the Regional Modeling Center at the University of California at Riverside performed modeling for the WRAP member states, including Arizona. The Regional Modeling Center primarily used the CMAQ photochemical grid model to estimate 2018 visibility conditions in Arizona and all western Class I areas, based on application of the regional haze strategies in the various state plans, including assumed controls on BART sources. The Regional Modeling Center developed air quality modeling inputs, including annual meteorology and emissions inventories for the following: (1) A 2002 actual emissions base case; (2) a planning case to represent the 2000–2004 regional haze baseline period using averages for key emissions categories; and, (3) a 2018 base case of projected emissions determined using factors known at the end of 2005. All emission inventories were spatially and temporally allocated using the SMOKE modeling system. These inventories were revised several times throughout the development process to arrive at the final versions used in CMAQ modeling. The photochemical modeling of regional haze for 2002 and 2018 for the WRAP-member states was conducted on the 36-kilomenter resolution national regional planning organization domain that covered the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Again, a more detailed description of the CMAQ modeling performed for the WRAP can be found in Appendix C of the RHP.

To summarize, as described in Chapters 11 and 12 and Appendix C of the ARHP, Arizona used the technical tools and outputs provided by the WRAP, including the WRAP's 2002 baseline inventory, to produce the State's LTS. In EPA's evaluation of the WRAP's technical tools, we found these tools to be adequate for the analytical task to which they were applied and consistent with EPA guidance and suggested practice at the time of their use by the WRAP for its member states.[161] Therefore, we propose to determine that the ARHP meets the requirements of 40 CFR 51.308(d)(iii).

D. Anthropogenic Sources of Visibility Impairment

Pursuant to 40 CFR 51.308(d)(3)(iv) Arizona is required to identify all anthropogenic sources of visibility impairment it considered in developing its LTS, including major and minor stationary sources, mobile sources, and area sources. As described earlier, Arizona used emissions inventories for 2002 and 2018 provided by the WRAP. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from federal and state regulations. The ARHP emission inventories were developed by WRAP and distributed to Arizona via the Technical Support System. These emission inventories were calculated using approved EPA methods and we found them to be adequate for their use by the WRAP.[162]

Across all visibility-related pollutants, there are 11 different emission

[158] 40 CFR 51.308(d)(3)(ii).

[159] See the ARHP at page 201 for examples of federal and state programs providing emission reductions; e.g., federal low sulfur diesel fuel requirement and the Arizona vehicle emissions inspection program (AVEIP). For our approval of the AVEIP into the Arizona SIP, see 68 FR 2912; (January 22, 2003). Later in this review, we discuss several other state and local regulations that have been approved into the SIP.

[160] See our proposed rule at 77 FR 42834, (July 20, 2012) and our final rule at 77 FR 72512, (December 5, 2012) which addressed these units.

[161] See ''Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans,'' February 28, 2011, at pages 57–58 for a summary of our review of the WRAP's analytical work.

[162] We found the WRAP emission inventories to be complete, recent, and accurate, as well as, consistent with EPA Guidance; see EPA's February 28, 2011 TSD at page 58.

inventory source categories identified in Arizona's RHP: point, anthropogenic fire, natural fire, area, WRAP region oil and gas, on-road mobile, off-road mobile, biogenic, road dust, fugitive dust, and windblown dust. Tables 8.1 through 8.8 of the ARHP show Arizona's 2002 baseline emissions, the 2018 projected emissions, and net changes of emissions for SO_2, NO_X, organic carbon, elemental carbon, $PM_{2.5}$, PM_{10}, NH_3, and VOC by their respective source category. In our discussion of the ARHP's emission inventories in section VI, we provide a summary of the relative contribution of anthropogenic sources for these pollutants; see Table 7. Furthermore, as part of its reasonable progress demonstration, Arizona identified the following specific source categories, totaling 48 facilities, as producing anthropogenic emissions worthy of consideration: internal combustion engines and turbines; external combustion boilers; asphalt plants; lime plants; primary copper smelters; and, nitric acid plants; see chapter 11.3 of the ARHP. The methods that the WRAP used to develop these emission inventories are described in more detail in Chapters 8, 9 and Appendix C of the RHP and are evaluated in the EPA's February 28, 2011 TSD.

In summary, Arizona utilized the 2002 and 2018 WRAP emission inventories developed according to EPA guidance and presented those inventories in the RHP. Also, Arizona identified all anthropogenic sources of visibility impairment it considered in developing the LTS. Therefore, we propose to determine that the ARHP meets the requirements of 40 CFR 51.308(d)(3)(iv). It should be noted that our proposed approval for this element is based on our finding that Arizona identified the sources of impairment that it actually considered in developing the LTS. This proposed approval does not imply that Arizona fully or appropriately considered all anthropogenic sources of visibility impairment in establishing its RPGs.

E. Mandatory Factors To Consider for the Long-Term Strategy

Pursuant to 40 CFR 51.308(d)(3)(v), Arizona must consider and address the following seven factors within its LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes; (6) enforceability of emissions limitations and control measures; and, (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS.

1. Ongoing Air Pollution Control Programs

Arizona's LTS cites on-going air pollution control programs assumed within the RHP as part of the 2002 base year inventory and projected through 2018, such as Arizona's Vehicle Emissions Inspection Program and federal diesel fuel standards for low diesel fuels; see the RHP at pages 201–202. Mobile source emission reductions through 2018 are due to ''on-the-books'' federal controls applied to on-road mobile sources and non-road mobile sources and equipment; see chapter 11.4.4, page 173 for the list of assumed federal controls.

The LTS also lists 10 PM_{10} nonattainment and maintenance plan areas in Arizona; see page 202 of the RHP and Table 12.55. Arizona asserts that the emission reduction programs in these areas provide significant emission reduction benefits. Several fugitive dust rules have been approved into the SIP and are cited as providing the emission reductions within these areas: A.C.C. R18–2–602, A.C.C. R18–2–608, Maricopa County Rule 310.01, and the Agricultural Best Practices Program.[163] The LTS does not describe ongoing state or local stationary source emission reduction programs or regulations in detail; however, the LTS mentions the New Source Review and the Prevention of Significant Deterioration stationary source programs as they relate to visibility impact assessment.[164] Regarding specific stationary source requirements, Arizona's BART reviews and determinations are discussed elsewhere in the ARHP, such as Chapter 10 and Appendix D.

The RHR also requires consideration of emission reductions due to ongoing air pollution control programs such as those derived from the Act's section 169A requirement for Arizona to reduce emissions from sources determined to cause reasonably attributable visibility impairment at Class I areas in the State (the RAVI program). Arizona has no ongoing air pollution programs providing emission reductions due to specific requirements of the RAVI program. In the late 1980s and early 1990s, EPA implemented a FIP to address the requirements of section 169A and EPA's RAVI rules.[165] Ultimately, EPA found that certain episodes of visibility impairment at the Grand Canyon National Park were reasonably attributable to the Navajo Generating Station (NGS) and required implementation of controls at NGS to reduce oxides of sulfur emissions.[166] Because NGS is located on the Navajo Indian Reservation, Arizona has no ongoing responsibility for regulating this source.

We propose to find that Arizona has met the requirement of 40 CFR 51.308(d)(3)(v)(A) to consider emission reductions due to ongoing air pollution control programs, including measures to address RAVI.

2. Construction Activities

The LTS cites Maricopa County Rules 300 and 310 as rules for controlling fugitive dust emissions from construction activities. Maricopa County Rule 310, Fugitive Dust from Dust Generating Operations has been approved as a Best Available Control Measure-level rule for serious PM_{10} nonattainment areas.[167] Also, we approved into the SIP Pinal County Rule 4–7, Construction Sites in Nonattainment Areas—Fugitive Dust.[168] Rule 300 has not been approved into the SIP.

We propose to find that Arizona has met the requirement of 40 CFR 51.308(d)(3)(v)(B) to consider measures to mitigate the impacts of construction activities.

3. Emissions Limitations and Schedules for Compliance

The LTS states that, ''implementation of BART will contain emission limits and schedules of compliance for those sources either installing BART controls or taking federally enforceable permit limitations.'' [169] However, as noted above, we have already disapproved the State's BART determinations for NO_X at

[163] These rules were approved into the Arizona SIP as follows: R18–2–602 at 71 FR 28270, May 16, 2006; R18–2–608 at 47 FR 17485, April 23, 1982 (renumbered from R18–2–408 and R9–3–408); Maricopa County Rule 310.01, Fugitive Dust from Non-Traditional Sources of Fugitive Dust, at 75 FR 78167, December 15, 2010; and, the Agricultural Best Practices Program in R18–2–610 and R18–2–611 at 68 FR 51873, October 11, 2001.

[164] ARHP Chapter 12.7.1.1 at pages 198–199.

[165] See our rulemaking actions at: 52 FR 45134, (November 24, 1987); 53 FR 35956, (September 15, 1988); and, 56 FR 50172, (October 3, 1991) (codified at 40 CFR 52.145). Also, see the summary discussion in the RHP at pages 199–200.

[166] 40 CFR 52.145(d).

[167] For the most recent SIP incorporated version of Rule 310, see 75 FR 78167; (December 15, 2010).

[168] See 75 FR 17307; (April 6, 2010). Pinal County also adopted and in this rulemaking we approved several other rules related to controlling fugitive dust from unpaved roads and parking areas.

[169] ARHP section 12.7.3, page 203.

the following units: Apache Generating Station Units 2 and 3; Cholla Generating Station Units 2, 3, and 4; Coronado Units 1 and 2.[170] As described in section VII of this document, we are also proposing to disapprove certain elements of the state's BART determinations at other sources. In addition, all of Arizona's BART determinations lack the necessary compliance schedules and requirements for operation and maintenance of control equipment and monitoring, recordkeeping and reporting.

The LTS also states that Arizona ''did not identify any additional measures that were appropriate for this first Regional Haze plan. As a result, no other emission limitations or schedules of compliance are included in this plan.'' [171] As explained in section VIII above, we are proposing to disapprove the State's reasonable progress analysis and its conclusion that no additional emissions controls can be reasonably implemented. Based on these shortcomings in the State's BART and Reasonable Progress analyses, we do not believe that Arizona has adequately considered the emission limits and schedules of compliance necessary to achieve reasonable progress. Therefore, we propose to determine that the ARHP does not meet the requirements of 40 CFR 51.308(d)(3)(v)(C).

4. Source Retirement and Replacement Schedules

Chapter 12.7.4 of the LTS refers to an evaluation of sources to provide a schedule of shutdowns, source retirements, and equipment replacement in an earlier section of the LTS; however, no such evaluation is found within Chapter 12.7.1.[172] Appendix C of the ARHP does, however, discuss the 2002 and 2018 emissions inventories developed by the WRAP for Arizona; see pages 9—11 of Appendix C. The base case 2018 projected emissions inventories developed by the WRAP considered and accounted for source retirement and replacement for point and area sources.[173] These projections were updated in 2009 to include new information about projected changes in electric demand and the resultant impact on emissions from electric generating units.[174] In a similar manner, the WRAP used EPA's MOBILE emissions model and this model projected on-road mobile source fleet turnover and replacement in Arizona over the 2002 to 2018 timeframe and these emissions inventory estimates were incorporated in later visibility modeling.

We propose to find that the ARHP meets the requirements of 40 CFR 51.308(d)(3)(v)(D) because it has considered adequately source retirement and replacement.

5. Smoke Management Programs

Arizona adopted rules consistent with a state certified smoke management program. EPA has reviewed and approved the following rules in the SIP: Rule R18–2–602, Unlawful Open Burning; Rule R18–2–1501, Definitions; Rule R18–2–1502, Applicability; Rule R18–2–1503, Annual Registration, Program Evaluation and Planning; Rule R18–2–1504, Prescribed Burn Plan; Rule R18–2–1505, Prescribed Burn Requests and Authorization; Rule R18–2–1506, Smoke Dispersion and Evaluation; Rule R18–2–1507, Prescribed Burn Accomplishment, Wildfire Reporting; Rule R18–2–1508, Wildland Fire Use: Plan, Authorization, Monitoring, Inter-agency Consultation, Status Reporting; Rule R18–2–1509, Emission Reduction Techniques; Rule R18–2–1510, Smoke Management Techniques; Rule R18–2–1511, Monitoring; Rule R18–2–1512, Burner Qualifications; and, Rule R18–2–1513, Public Notification Program, Regional Coordination.[175] Arizona believes these rules meet WRAP criteria for an enhanced smoke management program; see Table 12.56, page 205 of the RHP.

We propose to find that the ARHP meets the requirement of 40 CFR 51.308(d)(3)(v)(E) to consider smoke management techniques for agricultural and forestry management purposes.

6. Enforceability of Measures in the Long-Term Strategy

The RHR requires that the State consider the enforceability of emissions limitations and control measures included in its plan, as part of the LTS.[176] Arizona has adopted and submitted, and EPA has approved into the SIP many rules supporting the ARHP. Maricopa County Rule 310 and the smoke management program rules listed above are examples of the federally enforceable rules supporting the reasonable progress goals of the ARHP.

As noted earlier, however, we are have determined that Arizona's BART determinations lack provisions to ensure their enforceability. In our recent Phase 1 final rule, we found that the ARHP lacked the necessary compliance deadlines and requirements for equipment maintenance and operation, including monitoring, recordkeeping and reporting requirements for all pollutants at all of the eight BART units covered by that action.[177] In today's action, we are proposing to disapprove the lack of such ''enforceability requirements'' for ADEQ's BART determinations at the two BART-subject copper smelters. As explained above, we are also proposing to disapprove other elements of the State's BART and reasonable progress analyses. Therefore, we propose to determine that the ARHP does not meet the requirement of 40 CFR 51.308(d)(3)(v)(F).

7. Net Effect on Visibility Impairing Emissions Through 2018

Pursuant to 40 CFR 51.308(d)(v)(F), the State must consider as part of its LTS, the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. Using WRAP-provided resources as described in the ARHP, Arizona estimated the net effect on visibility through 2018 due to changes in point, area, stationary and mobile source emissions. Those visibility changes within each Class I area are presented in detail in chapter 9.3 and are discussed in aggregate in chapter 11 of the ARHP. In sum, 2018 visibility is projected to improve in all Arizona Class I areas on the worst impaired days compared to baseline conditions and 2018 visibility is projected to improve in all but two Class I areas on the least impaired days compare to baseline conditions. We, therefore, propose to determine that the ARHP meets the requirement of 40 CFR 51.308(d)(3)(v)(G).

F. Summary of EPA's Evaluation of the LTS

We propose to approve in part and disapprove in part the LTS portion of the ARHP. Arizona has submitted an LTS addressing visibility impairment due to regional haze within Class I areas, both inside and outside of the

[170] See our proposed rule at 77 FR 42834, (July 20, 2012) and our final rule at 77 FR 72512, (December 5, 2012) which addressed these units.

[171] ARHP section 12.6.3, page 204.

[172] See page 204 of the ARHP.

[173] See ''WRAP Point and Area Source Emissions Projection for the 2018 Base Case Inventory'', Version 1, January 25, 2006 at Chapters 4 and 5. Chapter 4 discusses projected growth to 2018, including EGUs. Chapter 5 discusses point source retirement and replacement rates used in the analysis. See: *http://wrapair.org/forums/ssjf/documents/eictts/docs/WRAP_2018_EI-Version_1-Report_Jan2006.pdf.*

[174] See ERG Technical Memorandum entitled ''WRAP PRP18b Emissions Inventory—Revised Point and Area Source Projections'', October 16, 2009.

[175] See 71 FR 28270; (May 16, 2006).

[176] 40 CFR 51.308(d)(3)(v)(F).

[177] 77 FR 72512, (December 5, 2012).

state. We review our proposed approvals and disapprovals below.

Through participation in the WRAP, Arizona consulted with neighboring states and coordinated the ARHP, as well as developed and documented the technical basis for the ARHP. The State has estimated the 2002 base year and 2018 emissions inventories and the emission reductions resulting from the ARHP's control measures. The State identified all anthropogenic sources of visibility impairment it considered in developing the ARHP and LTS. The State has considered and addressed measures to mitigate the impacts of construction activities and to provide for smoke management from agricultural and forestry practices. Through the WRAP and its analyses, Arizona considered and estimated the net effect of the LTS on 2018 visibility levels. Consequently, we propose to find that the LTS meets the requirements of 40 CFR 51.308(d)(3)(i), (iii), (iv), (v)(A), (v)(B), (v)(D), (v)(E), and (v)(G) and we propose to approve the ARHP with respect to these requirements.

Because we have disapproved certain elements of the ARHP in our Phase 1 final rule and are proposing to disapprove other elements related to the implementation of enforceable BART controls and enforceable controls for reasonable progress, we are also proposing to determine that the LTS does not meet the requirements of 40 CFR 51.308(d)(3)(ii), (v)(C) and (v)(F). Therefore, we propose to find that the LTS does not meet the requirements of 40 CFR 51.308(d)(3)(ii), (v)(C), and (v)(F) and we propose to disapprove the ARHP with respect to these requirements.

X. Monitoring Strategy and Other Requirements

A. Monitoring Strategy

Arizona has elected to fulfill the requirements for a monitoring strategy through participation in the IMPROVE network, as permitted under the RHR.[178] Arizona relies on the IMPROVE monitoring program to collect and report data for reasonable progress tracking for all Class I Areas in the state.[179] Consequently, we propose to find that the state has met the requirements of 40 CFR 51.308(d)(4) for a monitoring strategy.

B. State and Federal Land Manager Coordination

Arizona participated fully in the WRAP, the primary forum for consultation among western states, tribal nations, federal agencies, stakeholder groups and the public. FLMs from the National Park Service (NPS), U.S. Fish and Wildlife Service, Bureau of Land Management and the U.S. Forest Service (USFS) were actively engaged in the WRAP's development of technical analyses and reports that formed the basis of Arizona's and other western state's regional haze plans. To facilitate consultation as required in 51.308(i)(2), ADEQ provided a list of its agency contacts to the FLMs followed by its draft RH SIP on September 20, 2010. Arizona ensured that the FLMs had an opportunity for consultation in person and at least 60 days prior to the public hearing that was held in Phoenix, Arizona, on December 2, 2010, which was also the deadline for public comments. NPS submitted comments dated November 29 and December 1, 2010. The USFS submitted comments dated November 29, 2010. ADEQ responded to the FLMs' comments through its Responsiveness Summary in Appendix E of the Arizona RH SIP. ADEQ outlined procedures for continuing consultation with the FLMs in its RH SIP[180] and committed to provide the FLMs an opportunity to review and comment on future SIP revisions, the 5-year progress reports, and the implementation of other programs that may contribute to visibility impairment in Arizona's Class I areas. EPA proposes to find that Arizona has met the requirements for coordination with the FLMs under 40 CFR 51.308(i)(1–4).

C. Periodic SIP Revisions and 5-Year Progress Reports

In the ARHP, Arizona affirmed its commitment to submit a comprehensive SIP revision by July 31, 2018, and every ten years thereafter as required in 40 CFR 51.308(f). In these comprehensive revisions, the State must evaluate and reassess all of the elements required in 40 CFR 51.308(d), taking into account improvements in monitoring data collection and analysis techniques and control technologies. The State must also address current visibility conditions, actual progress toward natural conditions, effectiveness of the long-term strategy, and the reasonable progress goals. Arizona also confirmed it commitment to submit a report on reasonable progress every five years that will evaluate progress toward meeting the RPGs for its 12 Class I area as well as Class I areas outside the State that may be affected by emissions from within the State as required in 40 CFR 51.308(g). The first report is due five years after the State's submittal, which is February 28, 2016.

XI. EPA's Evaluation of Arizona's Provisions for Interstate Transport of Pollutants

Section 110(a)(2)(D)(i)(II) requires that each SIP contain ''adequate provisions * * * prohibiting * * * any source or other types of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State * * * to protect visibility.'' EPA is proposing to find that Arizona's 2007 and 2009 Transport SIPs and Regional Haze Plan do not contain adequate provisions to meet the ''good neighbor'' provisions of section 110(a)(2)(D)(i)(II) with respect to visibility for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS, nor a demonstration that the existing Arizona SIP already includes measures sufficient to meet the interstate transport visibility requirement.

Our 2006 Guidance recommended that a state could meet the visibility prong of the transport requirements for section 110(a)(2)(D)(i)(II) with an approved regional haze SIP.[181] EPA's reasoning was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. In fact, in developing their respective RPGs, WRAP states consulted with each other through the WRAP's work groups. As a result of this process, the common understanding was that each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the RHR. Thus, we interpret the ''good neighbor'' provisions of section 110(a)(2)(D)(i) as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the RPGs to protect visibility in Class I areas in other states, or a demonstration that emissions from the state's sources and activities will not have the prohibited impacts under the existing SIP. This interpretation is consistent with the requirement of the RHR that a state

[178] 40 CFR 51.308(d)(4).

[179] ARHP, Chapter 4, ''Regional Haze Monitoring Network'', and Section 12.7, pages 200–201.

[180] ARHP, Chapter 13, page 209.

[181] ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the [1997] 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (August 15, 2006); see also ''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)'' (''2009 Guidance'').

participating in a regional planning process must include ''all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.'' [182]

Since Arizona's 2007 and 2009 Transport SIPs did not specify which parts of the State's regional haze program should be considered as meeting the visibility requirement of section 110(a)(2)(D)(i)(II), we considered the 2011 Regional Haze SIP as a whole in assessing whether Arizona has met the visibility requirement of section 110(a)(2)(D)(i)(II). As discussed in sections VII (''EPA's Evaluation of Arizona's BART Analyses and Determinations'') and VIII (''EPA's Evaluation of Arizona's Reasonable Progress Goals'') of this proposed rule, EPA is proposing to disapprove several aspects of Arizona's BART and Reasonable Progress Analyses. Also, as previously noted, EPA has already disapproved Arizona's determinations for NO_X emission limits at most of the units at Apache, Cholla, and Coronado.[183] The emissions from each of these sources affect visibility in at least one Class I area in another state.[184] The proposed partial disapprovals in today's notice, if finalized, and the final partial disapprovals for Apache, Cholla, and Coronado mean that these portions of Arizona's Regional Haze Plan will not become part of the Arizona SIP.

Accordingly, Arizona's long-term strategy (i.e., the compilation of all control measures that Arizona will implement to meet the relevant RPGs) lacks enforceable emissions limitations for certain air pollutants as necessary to achieve RPGs for all Class I areas affected by emissions from Arizona, as required by 40 CFR 51.308(d)(3). As noted above, we interpret the ''good neighbor'' provisions of section 110(a)(2)(D)(i) as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the RPGs required to be set to protect visibility in Class I areas in other states or a demonstration that emissions from the state's sources and activities will not have the prohibited impacts under the existing SIP. Because we partially disapproved Arizona's BART provisions for three sources (Apache, Cholla, and Coronado) and are proposing in this notice to partially disapprove Arizona's BART and reasonable progress analyses, we propose to conclude that the Arizona SIP does not include sufficient measures to prohibit emissions that would interfere with the RPGs for Class I areas in other states. Furthermore, Arizona has not made a demonstration that emissions from the state's sources and activities will not have the prohibited impacts under the existing SIP.

Thus, we propose to find that Arizona's 2007 and 2009 Transport SIPs and Regional Haze Plan do not contain adequate provisions to prohibit emissions that interfere with SIP measures required of other states to protect visibility.[185] Accordingly, we propose to disapprove these SIP revisions for the visibility requirement of section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS.

XII. EPA's Proposed Action

A. Regional Haze

EPA is proposing to approve in part and disapprove in part the remaining portions of Arizona's RH SIP. Specifically, we are proposing to approve the technical basis for the State's plan, most of the analyses regarding which sources are eligible and which sources are subject to BART, the BART determination for PM_{10} at the Miami smelter and parts of the long-term strategy. We are proposing alternatively to approve or disapprove the State's BART determination for SO_2 at the Hayden and Miami smelters, and whether the Nelson Lime Plant is subject to BART.

We are proposing to disapprove the State's BART determinations for PM_{10} at the Hayden smelter and for NO_X at the Miami smelter as well as the State's finding that Unit 4 at Sundt is not BART-eligible. In addition, we are proposing to disapprove the visibility goals for the most and least impaired days, which set the targets for evaluating progress. Moreover, we propose to disapprove that part of the long-term strategy that requires enforceable emission limits and compliance schedules that were not included in the SIP, and were not adequately considered in setting the visibility goals. Our consent decree deadline for taking final action on Arizona's RH SIP is July 15, 2013.

EPA is legally obligated to issue a FIP for the disapproved parts of Arizona's RH SIP pursuant to CAA section 110(c)(1) and the court's orders under the consent decree. Accordingly, we included a FIP in our recently published final rule regarding three of Arizona's BART sources. For today's proposed action on the SIP, we have a separate court-ordered schedule for a FIP to address any disapproved elements of the SIP. The consent decree deadlines for this FIP are to propose by March 8, 2013, and take final action by October 15, 2013. Our obligation to promulgate a FIP for those parts of the State's plan that we are unable to approve is based on the State's failure to submit a required SIP, and our subsequent failure to issue a FIP within two years of our finding of failure to submit. EPA takes very seriously a decision to disapprove all or part of a state plan. In this instance, we believe that Arizona's SIP meets some, but not all of the RHR requirements under the CAA. As a result, EPA considers that proposing to disapprove portions of the State's plan is the only path that is consistent with the Act at this time.

B. Interstate Transport of Visibility

As discussed in section XI (''EPA's Evaluation of Arizona's Provisions for Interstate Transport of Pollutants'') of this proposed rule, EPA proposes to find that Arizona's 2007 and 2009 Transport SIPs and Regional Haze Plan do not contain adequate provisions to prohibit emissions that interfere with SIP measures required of other states to protect visibility. Therefore, we propose to disapprove Arizona's 2007 and 2009 Transport SIPs and Regional Haze Plan for the visibility requirement of section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS.

C. Sanctions and FIP Duties

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Arizona's 2007 and 2009 Transport SIPs and Regional Haze Plan were not submitted to meet either of these requirements. Therefore, any action we take to finalize the described partial disapproval will not trigger mandatory sanctions under CAA section 179. In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP within two years after finding that a State has failed to make a required submission or disapproving a State

[182] 40 CFR 51.308(d)(3)(ii).

[183] 77 FR 42834 (July 20, 2012) (proposal), 77 FR 72512, (December 5, 2012) (final).

[184] For example, Cholla Power Plant has been determined by Arizona and EPA to affect visibility in Class I areas in Colorado, New Mexico, and Utah. *See* 77 FR 42834 at 42861. Also, Arizona's RHP discusses Arizona's contributions to visibility impairment in Colorado, New Mexico, and Utah (see pages 179–181).

[185] As noted above, we previously acted on these submissions with respect to the other three prongs. See 72 FR 41629 (July 31, 2007) and 77 FR 66398 (November 5, 2012). Therefore, today's action, if finalized, will complete our action on these submissions.

implementation plan submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. Thus, our proposed disapproval of Arizona's 2009 Transport SIP with respect to the visibility requirement of section 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ NAAQS, if finalized, will establish a deadline two years from the effective date of such final rule for EPA to promulgate a FIP for this requirement, unless a SIP revision is submitted by ADEQ and approved by EPA by that deadline.[186] We anticipate that any FIP designed to remedy the proposed disapprovals described in this notice, if finalized, along with the already-finalized partial BART FIP for Apache, Cholla, and Coronado, would also remedy the disapproval, if finalized, for the interstate transport visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS.

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' This action proposes to approve certain preexisting requirements, and to disapprove certain other 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 proposed action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action. However, this action creates the basis for future action which could impact a tribally-owned source. EPA will engage in consultation with the affected tribe to ensure that any concerns are considered during that process. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval under section 110 of the Clean Air Act will not in-and-of itself create any new

[186] As described above, EPA is already subject to a FIP duty for Regional Haze in Arizona. In addition, due to a previous finding of failure to submit, 70 FR 21147, we are already subject to a FIP duty for the 2007 Transport SIP.

regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 7, 2012.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2012–30702 Filed 12–20–12; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0334; FRL–9725–9]

RIN 2060–AQ89

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; lift stay of final rule.

SUMMARY: On January 30, 2012, the EPA proposed revisions to several provisions of the final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources. The proposed revisions were made, in part, in response to a petition for reconsideration received by the Administrator following the promulgation of the October 29, 2009, final rule (''2009 final rule''). In this action, the EPA is finalizing those amendments, lifting the stay of the title V permit requirement issued on March 14, 2011, and lifting the stay of the final rule issued on October 25, 2012. In addition, this final action includes revisions to the EPA's approach for addressing malfunctions and standards applicable during startup and shutdown periods. This final action also includes amendments and technical corrections to the final rule to clarify applicability and compliance issues raised by stakeholders subject to the 2009 final rule. The revisions to the final rule do not reduce the level of environmental protection or emissions control on sources regulated by this rule but provide flexibility and clarity to improve implementation. This action also extends the compliance date for existing sources and the EPA's final response to all issues raised in the petition for reconsideration.

DATES: The stay of subpart VVVVVV and the stay of paragraph (e) of 40 CFR 63.11494 are lifted as of December 21, 2012. This final rule is effective on December 21, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0334. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

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:

Acronyms and Abbreviations. Several acronyms and terms used to describe industrial processes are included in this final action. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

CAA Clean Air Act
CEMS Continuous Emission Monitoring System
CFR Code of Federal Regulations
CMAS Chemical Manufacturing Area Source
CMPU Chemical Manufacturing Process Unit
COMS Continuous Opacity Monitoring System
CPMS Continuous Parameter Monitoring System
EPA Environmental Protection Agency
FESOP Federally Enforceable State Operating Permit
GACT Generally Available Control Technology
HAP Hazardous Air Pollutants
HON National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
ICR Information Collection Request
lb/yr Pounds Per Year
MACT Maximum Achievable Control Technology
MON National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
MSDS Material Safety Data Sheet
NESHAP National Emissions Standards for Hazardous Air Pollutants
NOCS Notice of Compliance Status
NTTAA National Technology Transfer and Advancement Act
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
ppmv Parts Per Million by Volume
RCRA Resource Conservation and Recovery Act
SARU Sulfuric Acid Regeneration Unit
SSM Startup, Shutdown and Malfunction
tpy Tons Per Year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
VCS Voluntary Consensus Standards
VOC Volatile Organic Compound
WWW World Wide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

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K. Congressional Review Act

A red-line version of the regulatory language that incorporates the changes in this action is available in the docket.

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The EPA issued the NESHAP for the nine chemical manufacturing area source categories (40 CFR part 63, subpart VVVVVV) on October 29, 2009 (74 FR 56008). Pursuant to CAA section 307(d)(7)(B), the EPA received a petition for reconsideration on February 12, 2010. The petitioners requested that the EPA reconsider six provisions in the final rule. In response to this petition, the EPA proposed revisions to several provisions of the final rule on January 30, 2012 (77 FR 4522).

This final action addresses the public comments on the proposal and finalizes amendments to subpart VVVVVV. The amendments relate to issues raised in the petition for reconsideration and also include technical corrections that clarify applicability and compliance issues of the final rule. This action also lifts the stay of the title V permit requirement that was issued on March 14, 2011 (76 FR 13514) and the stay of the final rule that was issued on October 25, 2012 (77 FR 65135). This action also provides an extension of the compliance date for existing sources.

2. Summary of Major Provisions

The revised final rule lifts the stay on the title V permitting requirement and requires that certain chemical manufacturing synthetic area sources that installed controls obtain a title V permit. The EPA continues to believe that the additional protections provided by a title V permit are warranted for the sources subject to title V pursuant to this rule for the reasons stated in the rulemaking record. See 74 FR 56013–56014, 56034–56039 (October 29, 2009); 77 FR 4525–4527 (January 30, 2012).

The EPA is also finalizing several revisions to the final rule to improve clarity and provide facilities with greater flexibility. The leak inspection requirements are revised such that facilities conduct quarterly sensory inspections instead of ''direct and proximal (thorough)'' inspections, and that leak inspections may be conducted while equipment is in VOC service instead of in organic HAP service. The final rule also allows facilities to remove the required cover or lid on a process vessel when access is required during manual operations. Several definitions, including ''in organic HAP service,'' ''in metal HAP service,'' ''metal HAP process vent'' and ''family of materials'' are clarified and/or revised in the final rule. The EPA is also finalizing several technical corrections. Finally, the EPA is extending the compliance date for existing sources until March 21, 2013.

3. Costs and Emissions Reductions

The costs and emissions reductions associated with this rule have not changed from the October 29, 2009, final rule. Table 1 below summarizes the costs and emissions reductions of 40 CFR part 63, subpart VVVVVV. See section VI of the preamble to the October 29, 2009 final rule (74 FR 56039–56040) for further discussion of the costs and impacts.

TABLE 1—SUMMARY OF THE COSTS AND EMISSIONS REDUCTIONS OF 40 CFR PART 63, SUBPART VVVVVV

Requirement	Capital costs ($)	Annualized costs ($/yr)	Emissions reductions (tpy)
Batch process vents	$390,000	$370,000	<43
Continuous process vents	170,000	85,000	<29
Metal HAP process vents	690,000	1,700,000	41
Storage tanks	85,000	15,000	5
Heat exchange systems	640,000	280,000	79
Transfer operations	75,000	10,000	1
Wastewater systems	210,000	79,000	51
Management practices	540,000	685,000	N/A
Total	2,800,000	3,200,000	248

B. Does this action apply to me?

The regulated categories and entities potentially affected by this action include:

Industry category	NAICS code [1]	Examples of regulated entities
Chemical Manufacturing	325	Chemical manufacturing area sources that use as feedstock, generate as by-product or produce as product, any of the hazardous air pollutants (HAP) subject to this subpart except for: (1) Processes classified in NAICS Code 325222, 325314 or 325413; (2) processes subject to standards for other listed area source categories [2] in NAICS Code 325; (3) certain fabricating operations; (4) manufacture of photographic film, paper and plate where material is coated or contains chemicals (but the manufacture of the photographic chemicals is regulated); and (5) manufacture of radioactive elements or isotopes, radium chloride, radium luminous compounds, strontium and uranium.

[1] North American Industry Classification System.
[2] The source categories in NAICS Code 325 for which other area source standards apply are: Acrylic Fibers/Modacrylic Fibers Production, Chemical Preparation, Carbon Black, Chemical Manufacturing: Chromium Compounds, Lead Oxide Production, Polyvinyl Chloride and Copolymers Production, Paint and Allied Coatings and Mercury Cell Chlor-Alkali Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this reconsideration action. To determine whether your facility may be affected by this final rule, you should examine the applicability criteria in 40 CFR 63.11494 of subpart VVVVVV (National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources). If you have any questions regarding the applicability of the final rule to a particular entity, consult either the air permit authority for the entity or your EPA regional representative, as listed in 40 CFR 63.13.

C. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final rule (40 CFR part 63, subpart VVVVVV) is Docket ID No. EPA–HQ–OAR–2008–0334.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action is available on the WWW through the Technology Transfer Network (TTN) Web site. Following signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

D. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), 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 February 19, 2013. Under section 307(b)(2) of the CAA, 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. Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may 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 EPA 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 this rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both 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), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background Information

Section 112(d) of the CAA requires the EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source is any stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

On October 29, 2009 (74 FR 56008), the EPA issued the NESHAP for the nine chemical manufacturing area source (CMAS) categories that were listed pursuant to CAA sections 112(c)(3) and 112(k)(3)(B). The nine area source categories are Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing, Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production and Synthetic Rubber Manufacturing.

Section 112(k)(3)(B) of the CAA directs the EPA to identify at least 30 HAP that, as a result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. The EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999) (Strategy). Specifically, in the Strategy, the EPA identified 30 HAP that pose the greatest potential health threat in urban areas and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) of the CAA requires the EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 urban HAP are subject to regulation. The EPA completed this requirement in 2011 (76 FR 15308, March 21, 2011). The nine CMAS categories were listed to satisfy this requirement for 15 of the 30 urban HAP.[1] Pursuant to CAA section 112(d)(5), the NESHAP reflect generally available control technologies or management practices (GACT). The NESHAP apply to each chemical manufacturing process unit (CMPU) that uses, generates or produces any of the 15 urban HAP for which the area source categories were listed (collectively

[1] The 15 urban HAP for which the chemical manufacturing area source categories were listed under CAA section 112(c) are identified in table 1 of the final rule.

''chemical manufacturing urban HAP'' or ''Table 1 HAP'').

On February 12, 2010, following promulgation of the 2009 final rule, the EPA received a petition for reconsideration from the American Chemistry Council and the Society of Chemical Manufacturers & Affiliates (''Petitioners''). A copy of this petition is provided in the docket (see Docket Item No. EPA–HQ–OAR–2008–0334–0098). Petitioners, pursuant to CAA section 307(d)(7)(B), requested that the EPA reconsider six provisions in the rules: (1) The requirement that major sources that installed air pollution controls after 1990, and, as a result, became area sources, obtain a title V permit; (2) the requirement that sources subject to the final rule and any overlapping provision in another rule comply with each provision independently, or with the most stringent requirements of each rule; (3) the requirement that leak inspections include direct and proximal (thorough) inspection of all areas of potential leak within the CMPU; (4) the requirement that process vessels in HAP service be equipped with a cover or lid that must be in place at all times when the vessel contains HAP, except for material addition and sampling; (5) the requirement to conduct leak inspections while the equipment is in HAP service; and (6) the requirement that a CMPU include all equipment and processes used to produce a ''family of materials.'' [2] The arguments in support of these requests are provided in the petition and in the preamble to the reconsideration proposed rule revisions (77 FR 4525–4530, January 30, 2012). Petitioners also requested that the EPA stay the effectiveness of these provisions of the rule to save many facilities from needlessly having to file the initial notifications required by the final rule.

On June 15, 2010, the EPA sent a letter to the Petitioners informing them that the EPA was granting the request for reconsideration on at least one of the issues raised in the petition, and that the agency would identify the specific issue or issues for which it was granting reconsideration in the reconsideration notice that would be published in the **Federal Register**. The letter also indicated that the EPA considered the request for a stay to be moot because the due date for initial notifications had already passed.

On January 30, 2012, the EPA published proposed rule revisions that included six provisions for which reconsideration was requested. Specifically, the EPA: (1) Proposed to narrow the requirement for sources to obtain a title V permit to only those synthetic area sources that installed a federally-enforceable control device on an affected CMPU; (2) sought comment on the overlapping provisions requirement; (3) proposed to remove the requirement to conduct direct and proximal (thorough) leak inspections; (4) proposed to allow sources to remove the cover or lid on a process vessel when manual access is necessary; (5) sought comment on allowing leak inspections to be conducted when equipment is in volatile organic compound (VOC) service; and (6) proposed to clarify the family of materials concept. In addition, the EPA also proposed clarifying revisions to the requirements for metal HAP process vents, the addition of the affirmative defense provisions and numerous technical corrections.

On October 25, 2012, the EPA published a 60-day stay of the final CMAS rule (77 FR 65135). The compliance date for the final CMAS rule was October 29, 2012, and it was the EPA's expectation that the reconsideration would be finalized in advance of that date. However, the EPA was still in the process of finalizing the reconsideration action. For that reason, a short stay of the final rule was appropriate to allow the EPA the time necessary to complete the reconsideration action.

III. Summary of Final Rule Revisions

A. Applicability of the Family of Materials Concept

The final rule revises the definition of ''family of materials'' in 40 CFR 63.11502(a) by removing the definition that was incorporated by reference to the Miscellaneous Organic Chemical Manufacturing NESHAP (MON) and replacing it with a definition in 40 CFR 63.11502(b) specific to the CMAS rule. The definition clarifies that the family of materials concept applies only to those products whose production involves emission of the same Table 1 HAP.

B. Title V Permitting Requirements

The revised final rule requires synthetic area sources that installed a federally-enforceable control device on at least one affected CMPU to obtain a title V permit. The final rule lifts the stay on the title V permitting requirement (76 FR 13514, March 14, 2011) and requires such sources to submit their title V permit application by December 21, 2013 or on such earlier date as the title V permitting authority requires.

C. Requirements When Other Rules Overlap With the Final Rule

The revised final rule requires that facilities comply with the most stringent requirements when there are overlapping provisions in the CMAS rule and other NESHAP. Sources are required to determine which of the overlapping requirements applicable to the source are more stringent.

D. Requirement To Conduct Direct and Proximal Leak Inspections

The revised final rule removes the requirement in 40 CFR 63.11495(a)(3) that facilities conduct a ''direct and proximal (thorough)'' leak inspection, and instead requires that facilities conduct quarterly sensory inspections of all equipment and process vessels, provided that these methods are capable of detecting leaks within the CMPU (*i.e.,* the inspector is within sufficient proximity to the equipment that leaky equipment can be detected by sight, sound or smell). The revised final rule also allows affected facilities to conduct leak inspections of equipment in VOC service instead of in organic HAP service, provided that leaks can be detected while in VOC service. A CMPU that contains metal HAP as particulate must conduct leak inspections while the equipment is in metal HAP service.

E. Requirement for Covers or Lids on Process Vessels

The final rule requires in 40 CFR 63.11495(a)(1) that a cover or lid must be in place and closed at all times when a process vessel is in organic HAP service or in metal HAP service, except when access is required during manual operations such as material addition, removal, inspection, sampling and cleaning. Process vessels containing metal HAP that are in a liquid solution or other form that will not result in particulate emissions of metal HAP (*e.g.,* metal HAP that is in ingot, paste, slurry or moist pellet form or other form) are not subject to this requirement.

The definitions of ''in organic HAP service'' and ''in metal HAP service'' in 40 CFR 63.11502(b) have been revised to state that a process vessel is no longer considered to be in organic HAP service or in metal HAP service once it has been emptied to the extent practicable and any cleaning has been completed.

[2] The petition also requested that the EPA take comment on three additional issues: (1) A *de minimis* exemption for all sources; (2) a revision of the definition of laboratory analysis unit to include commercial development activities; and (3) a pollution prevention alternative. The EPA did not seek comment on these issues in reconsideration as explained below in section VI of this preamble.

F. Requirement To Conduct Leak Inspections When Equipment Is in HAP Service

The final rule requires in 40 CFR 63.11495(a)(3) that leak inspections be conducted while the subject CMPU is operating in organic HAP service or in metal HAP service. This provision also allows CMPU that do not contain metal HAP as particulate to conduct leak inspections when the subject CMPU is in VOC service, provided that leaks can be detected while in VOC service. A CMPU that contains metal HAP as particulate must conduct leak inspections while the equipment is in metal HAP service.

G. Requirements During Periods of Startup, Shutdown and Malfunction

The EPA is adding to the final rule an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions. During the comment period of the October 6, 2008, proposed rule (''2008 proposal''), the United States Court of Appeals for the District of Columbia Circuit vacated two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of startup, shutdown and malfunction (SSM). *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, the exemption in these two provisions exempts sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM.

The 2008 proposal contained references to the vacated provisions. Because the provisions were vacated, we removed the references in the 2009 final rule, and, consistent with *Sierra Club* v. *EPA,* established standards that applied at all times. In the vacated provisions' place, we included alternative standards for startup and shutdown periods for continuous process vents. Table 3 to 40 CFR part 63, subpart VVVVVV. For batch process vents, we determined that startup and shutdown periods were already accounted for in the existing standard and we determined that the remaining equipment did not have periods of startup and shutdown. See 74 FR 56013, October 29, 2009. We declined to establish a different standard for malfunctions, as suggested by commenters. See 74 FR 56033, October 29, 2009.

Further, as explained in the preamble to the 2009 final rule (74 FR 56033, October 29, 2009), periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. There is nothing in section 112 that directs the agency to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emission standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the section 112 case law, nothing in that case law requires the agency to consider malfunctions as part of that analysis. Section 112 uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events. Similarly, although standards for area sources are not required to be set based on ''best performers,'' we believe that what is ''generally available'' should not be based on periods in which there is a ''failure to operate.''

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the categories and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999) (the EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail, and that such failure can sometimes cause a violation of the relevant emission standard. (See, *e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (September 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (February 15, 1983)).

The EPA is therefore adding to the final rule an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions, consistent with other recent actions by the EPA (*e.g.,* the NESHAP for Group I Polymers and Resins and the NESHAP for Pharmaceuticals Production. 76 FR 22566 (April 21, 2011)). See 40 CFR 63.11502 (defining ''affirmative

defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also have added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.11501(e). See 40 CFR 22.24. The criteria ensure that the affirmative defense is available only where the event that causes a violation of the emission standard meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that the violations ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner* * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with CAA section 63.11501(e), and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when a violation occurred* * *'' and that ''[a]ll possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health* * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense, and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR 22.77).

The EPA included an affirmative defense in this final rule in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be violated under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). See, generally, *Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008). Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. See generally, *Luminant Generation Co. LLC* v. *United States EPA,* 2012 U.S. App. LEXIS 21223 (5th Cir. Oct. 12, 2012) (upholding EPA's approval of affirmative defense provisions in a CAA State Implementation Plan). While ''continuous'' limitations, on the one hand, are required, there is also case law indicating that, in many situations, it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973), the DC Circuit acknowledged that, in setting standards under CAA section 111, ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973). Though intervening case law such as *Sierra Club* v. *EPA* and the CAA 1977 amendments call into question the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for violations that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). See also, *Mont. Sulphur & Chem. Co.* v. *EPA,* 2012 U.S. App. LEXIS 1056 (January 19, 2012) (rejecting industry argument that reliance on the affirmative defense was not adequate). But see, *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

In addition to the affirmative defense provisions described above, we are also making several changes throughout the rule and in Table 9 (the table that specifies applicability of General Provisions to subpart VVVVVV of 40 CFR part 63) to specify applicable requirements during periods of startup and shutdown and periods of malfunction. For example, we are adding new paragraphs in 40 CFR 63.11501(c)(1)(vii) and (viii) that would require records of the occurrence and duration of malfunctions, as well as records of actions taken to minimize emissions during these periods and to fix malfunctioning equipment. We are also adding a paragraph in 40 CFR 63.11501(d)(8) that would require reporting of information related to each malfunction. Table 9 in the final rule states that 63.6(e)(1)(i) does not apply to subpart VVVVVV. We are also adding a new paragraph in 40 CFR 63.11495(d) that specifies the general duty to minimize emissions applies at all times. In addition to the changes in the text of the rule, we are revising the entries for 40 CFR 63.6(e)(1)(i), 63.10(b)(2) and 63.10(d)(5) to reference the new paragraphs in 40 CFR 63.11495(d), 63.11501(c) and 63.11501(d). Finally, we are revising Table 9 to state that the performance testing requirements in 40 CFR 63.7(e)(1) do not apply. The comments to Table 9 for that provision identify the location of the applicable performance testing requirements for sources subject to the CMAS rule.

H. Requirements for Metal HAP Process Vents

The revised final rule defines a ''metal HAP process vent'' to include only those streams which contain at least 50 parts per million by volume (ppmv) metal HAP. Process vents from CMPU that only contain metal HAP in a liquid solution or other form that will not result in particulate emissions of metal HAP (*e.g.,* metal HAP that is in ingot, paste, slurry or moist pellet form or other form) are not required to comply with the metal HAP process vent requirements.

I. Extension of the Compliance Date

The EPA is extending the compliance date for existing sources until March 21, 2013.

J. Technical Corrections

The final rule provides several technical corrections. These

amendments are being finalized to correct inaccuracies and oversights that were previously promulgated. These changes are described in Table 2 of this preamble. Several of these issues were identified through the public comments and the EPA identified others.

TABLE 2—MISCELLANEOUS TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART VVVVVV

Section of subpart VVVVVV	Description of correction
40 CFR 63.11494(a)(3)	We are finalizing several changes to this paragraph. First, we are clarifying that the 0.1-percent and 1.0-percent concentration thresholds are on a mass basis of the individual Table 1 HAP. Second, we are clarifying that all Table 1 HAP, except for quinoline, manganese, and trivalent chromium compounds, are considered carcinogenic, probably carcinogenic or possibly carcinogenic. Therefore, the concentration threshold of 1.0 weight percent applies only to quinoline, manganese, and trivalent chromium compounds, and the threshold of 0.1 weight percent applies to all other Table 1 HAP. Third, we are clarifying applicability of CMPU that generate a Table 1 HAP byproduct. If Table 1 HAP are generated as a byproduct, the changes clarify that the CMPU is subject to the rule if the concentration of the Table 1 HAP in any liquid stream in the CMPU exceeds the same thresholds that apply to feedstocks. Specifically, if quinoline is generated as a byproduct, then the CMPU is subject if the quinoline concentration in any liquid stream in the CMPU exceeds 1.0 percent by weight. Similarly, if hydrazine or any other organic Table 1 HAP is generated as a byproduct, then the process is subject if the individual concentration of these compounds in any liquid stream is greater than 0.1 percent by weight. In addition, we are clarifying that if hydrazine or any other organic Table 1 HAP is generated as a byproduct, then the process is subject if the individual concentration of these compounds in any batch process vent or continuous process vent is greater than 0.1 percent by weight. Finally, we are consolidating paragraphs (a)(1) and (3) to eliminate redundancy.
40 CFR 63.11494(c)(1)(vii)	We are adding a new paragraph that lists lead oxide production at lead acid battery manufacturing facilities in those operations for which this subpart does not apply. These sources are covered by 40 CFR part 63, subpart PPPPPP—NESHAP for Lead Acid Battery Manufacturing Area Sources.
40 CFR 63.11494(d)	We are clarifying that a CMPU using only Table 1 metal HAP is not subject to any requirements for wastewater systems or heat exchange systems. Only organic HAP are subject to wastewater and heat exchange system requirements.
40 CFR 63.11495(a)(3)	We are splitting this section into an introductory section with five subsections. One sentence that contains two concepts has also been split into two separate sentences. The requirements, however, have not changed.
40 CFR 63.11496(c)	We are adding an example of emission contributions to subtract when determining the TRE index value of individual streams before they are combined.
40 CFR 63.11496(d)	We are revising the title of this paragraph and clarifying that the mass emission rate of halogen atoms must be calculated in accordance with § 63.115(d)(2)(v), or alternatively you may designate an emission stream as halogenated.
40 CFR 63.11496(e)	We are adding a new paragraph that clarifies that CEMS requirements and data reduction requirements for CEMS specified in § 63.2450(j) apply.
40 CFR 63.11496(f)(3)(i)(C)	We are editing this paragraph to add the acronym ''CMS.''
40 CFR 63.11496(f)(3)(ii)	We are editing the first sentence in this paragraph to remove the unnecessary word ''report.''
40 CFR 63.11496(f)(3)(ii)	We are clarifying that if a source elects to conduct an engineering assessment to demonstrate initial compliance with the standards for metal HAP process vents, then the design evaluation must be conducted at representative operating conditions for the CMPU.
40 CFR 63.11494(g)(2)	We are clarifying that you may elect to conduct a design evaluation instead of a performance test to determine initial compliance with an outlet concentration emission limit.
40 CFR 63.11494(g)(4)(i)	We are clarifying that you may measure caustic strength of the scrubber effluent for any halogen scrubber within a CMPU subject to this rule.
40 CFR 63.11494(g)(5)	We are clarifying that 40 CFR 63.996(c)(2)(ii) and 63.998(c)(1)(ii)(E) do not apply for the purposes of this subpart.
40 CFR 63.11494(g)(8)	We are adding a new paragraph that clarifies when the initial demonstration requirements for process condensers applies.
40 CFR 63.11497	We are adding a paragraph to this section clarifying that the halogenated vent stream provisions also apply to affected storage tanks.
40 CFR 63.11498(a)(2), 63.11502(b), and Table 6.	We are adding a definition of ''hazardous waste treatment'' in 40 CFR 63.11502(b) to mean treatment in either (1) a RCRA-permitted incinerator, process heater, boiler, or underground injection well, or (2) an incinerator, process heater, or boiler complying with 40 CFR part 63, subpart EEE. We are also adding corresponding changes to Table 6 to subpart VVVVVV. Specifically, for each wastewater stream, Item 1.a would require either wastewater treatment or hazardous waste treatment. In addition, Item 2.b would be edited to use the new term ''hazardous waste treatment'' and to allow for hard piping of wastewater streams to a point of transfer to onsite hazardous waste treatment. The changes to Item 1.a also make it clear that the treatment conducted to meet Item 2.b would satisfy the requirements of Item 1.a.
40 CFR 63.11500(a) and Table 5	We are adding a paragraph to 40 CFR 63.11500(a) to clarify that that offsite reloading and cleaning facilities that are subject to 40 CFR 1253(f) and comply with the monitoring, recordkeeping, and reporting requirements in any other subpart of part 63 are considered to be in compliance with the monitoring, recordkeeping, and reporting requirements of 40 CFR 63.1253(f)(7)(ii) or (iii). We are also adding corresponding changes to Table 5 to subpart VVVVVV to clarify which requirements apply to owners or operators of offsite cleaning or reloading facilities.
40 CFR 63.11501(b)	We are revising this paragraph to allow sources to submit their notice of compliance status (NOCS) reports no later than 60 days after the applicable compliance date.
40 CFR 63.11501(c)(4)(i)	We are replacing the incorrect word ''dimension'' with the correct word ''dimensions.''

TABLE 2—MISCELLANEOUS TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART VVVVVV—Continued

Section of subpart VVVVVV	Description of correction
40 CFR 63.11502(a)	We are inserting references to the definitions of the terms ''batch operation,'' ''continuous operation,'' and ''isolated intermediate'' in 40 CFR 63.2550 of the MON. We are also inserting a reference to the definition of ''control device'' in 40 CFR 63.111 of the Hazardous Organic Chemical Manufacturing NESHAP (HON).
40 CFR 63.11502(b)	We are modifying the definition of ''batch process vent'' to clarify that vents from batch operations are considered to be batch process vents.
40 CFR 63.11502(b)	We are adding a definition for the term ''engineering assessment'' consistent with 40 CFR 63.1257(d)(2)(ii), but which has been revised to include the appropriate references for this rule.
40 CFR 63.11502(b)	We are adding a definition for the term ''point of determination'' consistent with 40 CFR 63.111 of the HON, but which has been revised to include the appropriate references for this rule.
40 CFR 63.11502(b)	We are modifying the definition of ''product'' to remove ''isolated intermediates'' from the list of materials that are not considered products.
40 CFR 63.11502(b)	We are adding a definition for the term ''uncontrolled emissions'' that reads: ''Uncontrolled emissions means organic HAP or metal HAP process vent emissions, as applicable, at the outlet of the last recovery device, if any, and prior to any control device. In the absence of both recovery devices and control devices, uncontrolled emissions are the emissions discharged to the atmosphere.''
Table 3	We are replacing the reference to 40 CFR 63.982(c)(2) in item 1.a with the correct reference to 40 CFR 63.982(c).
Table 3	We are adding an item to this table for continuous process vents with a TRE >1.0 but ≤4.0. This item clarifies that these continuous process vents are required to comply with 40 CFR 63.982(e) if a recovery device is used to maintain a TRE >1.0 but ≤4.0.
Table 5	We are replacing the reference to 40 CFR 63.982(c)(1) in item 1.b with the correct reference to 40 CFR 63.982(c). We are also removing the requirement in item 1.b.ii to comply with the inspection requirements in 40 CFR 63.11495 for closed vent systems.
Table 8	We are revising item 1.a.i to clarify that the reference to monthly monitoring for the first 6 months in 40 CFR 63.104(b)(1) does not apply.
Table 9	We are revising the entry to 40 CFR 63.8(c)(4) to state that this paragraph does apply, but only for CEMS. The requirements for CPMS are contained in 40 CFR part 63, subpart SS, and requirements for COMS do not apply.
Table 9	We are revising the entry for 40 CFR 63.8(g)(5) to clarify that the data reduction requirements for CEMS are specified in 40 CFR 63.2450(j) and that CPMS requirements are specified in 40 CFR part 63, subpart SS.
Table 9	We are adding an entry for 40 CFR 63.9(i) to state that this paragraph applies to subpart VVVVVV.

IV. Summary of Major Changes Since Proposal

The EPA received 19 public comment letters on the proposed revisions to the CMAS final rule. In addition, the EPA received six comments and sets of materials from industry representatives following the close of the comment period. After consideration of these comments, the EPA is making several changes to the final rule. Following are the major changes to the standards since the proposal. The rationale for these and other significant changes can be found in this section, in section V of this preamble, and in the National Emission Standards for Hazardous Air Pollutant Emissions for Chemical Manufacturing Area Source—Reconsideration: Summary of Public Comments and Responses, in the CMAS rule docket (EPA–HQ–OAR–2008–0334).

A. Title V Permitting Requirements

In the proposed rule revisions, we proposed to narrow the applicability of title V permitting requirements for certain synthetic area sources subject to the final rule. Specifically, under the proposal, only those sources that installed a federally-enforceable control device on an affected CMPU in order to become an area source would be subject to the requirement to obtain a title V permit. The EPA received public comments on this issue from industry representatives and two states during the public comment period. Public commenters were generally opposed to the EPA requiring any affected source to obtain a title V permit. The commenters were concerned that the burden of obtaining a title V permit was not warranted given the level of public participation already required by, and other requirements associated with, a Federally Enforceable State Operating Permit (FESOP) that sources with a federally-enforceable control device must already obtain. However, commenters stated that if the EPA should choose to require certain sources to obtain a title V permit, then they supported limiting the requirement to apply to only those sources that installed a federally-enforceable control device on an affected CMPU.

As a preliminary matter, we note that section 502(a) of the CAA requires all area sources subject to CAA section 112 standards to obtain a title V permit unless the EPA makes a finding that title V is impracticable, infeasible or unnecessarily burdensome. The EPA did not exempt CMAS synthetic area sources that installed controls to limit HAP emissions because we believe that the limited burden resulting from the applicability of title V to these area sources is outweighed by the benefits of the title V permit. The EPA also continues to maintain that ''while there is some burden on the affected facilities, we think that the burden is not significant because these facilities are generally larger and more sophisticated than the natural area sources and sources that took operational limits to become area sources.'' 74 FR 56014.

In the final rule revisions, we have made slight revisions to the proposed changes to the title V permit requirement to further clarify the applicability of title V to CMAS sources. Specifically, we have revised the rule to make clear that the installation of a federally-enforceable air pollution control device on an affected CMPU triggers the title V permit requirement for any synthetic area source subject to the final rule if the air pollution controls installed on the affected CMPU are required to maintain the source's emissions at area source levels. The EPA continues to believe that the additional protections provided by a title V permit

are warranted for CMAS synthetic area sources that installed controls because they are generally larger, more sophisticated and have higher HAP emissions before control than natural area sources and synthetic area sources that took operational limits. See 74 FR 56013–56014, 56034–56039 (October 29, 2009); 77 FR 4525–4527 (January 30, 2012).

If a synthetic area source is subject to the CMAS rule and it has installed a federally-enforceable control device on an affected CMPU in order to become an area source, it is subject to title V and it must obtain a permit. Under 40 CFR 70.3(c)(2), for any non-major source subject to title V, the permitting authority must include in the permit all applicable requirements that apply to emissions units (i.e., the CMPU) that trigger applicability of title V. 40 CFR 70.3(c)(2); see also 40 CFR 70.2 (defining ''applicable requirement''). Thus, the state title V permitting authority may require a source subject to title V pursuant to the CMAS rule to include in the title V permit only the applicable requirements that apply to the CMPU(s) that cause the source to be subject to title V.

Additionally, based on the comments submitted by industry, we appreciate industry's concern that, due to the nature of chemical manufacturing, specifically specialty and batch chemical manufacturing, the industry needs operational flexibility and that some types of operational changes involving the affected CMPU could be subject to frequent title V revisions. There are several flexible permitting techniques available to sources through the title V permitting program, such as Alternative Operating Scenarios and Approved Replicable Methodologies. See 74 FR 51418 (October 6, 2009). We therefore encourage sources to consider the viability of establishing flexibility upfront in their respective title V permits as a way to avoid permit revisions, without sacrificing compliance assurance or operational flexibility.

B. Requirement for Covers or Lids on Process Vessels

In the proposed rule revisions, we requested comment on whether a change was needed for the definition of ''in metal HAP service'' to make it consistent with the proposed revisions to the definition of ''in organic HAP service.'' Public commenters were generally in favor of these proposed revisions.

In the final rule revisions, we have revised the definition of ''in metal HAP service'' to state that, consistent with the revised definition of ''in organic HAP service,'' a process vessel is no longer in metal HAP service after the vessel has been emptied to the extent practicable (*i.e.,* a vessel with liquid left on process vessel walls or as bottom clingage, but not in pools, due to floor irregularity, is considered completely empty) and any cleaning has been completed. We have also revised the requirement that a cover or lid must be in place and closed at all times when a process vessel is in organic HAP service or in metal HAP service to not apply for CMPU using only metal HAP that are in a liquid solution or other form that the source determines will not result in particulate emissions of metal HAP (*e.g.,* metal HAP that is in ingot, paste, slurry or moist pellet form or other form).

C. Requirement To Conduct Leak Inspections When Equipment Is in HAP Service

We solicited comment on whether to permit leak inspections to be conducted when equipment was in VOC service, rather than just when it was in organic HAP service or in metal HAP service. Public commenters were generally in favor of allowing leak inspections to be conducted while equipment was in VOC service.

In the final rule revisions, we are allowing facilities to conduct leak inspections of equipment in VOC service, provided that leaks can be detected while in VOC service. A CMPU that contains metal HAP as particulate must conduct leak inspections while the equipment is in metal HAP service. We have also added a corresponding definition of ''in VOC service'' to mean that a process vessel or piece of equipment either contains or contacts a fluid that contains VOC.

D. Requirements for Metal HAP Process Vents

In the proposed rule revisions, we solicited comment on whether the definition of ''metal HAP process vent'' was applicable to all types of equipment from which metal HAP are emitted. The original rule defined a metal HAP process vent as ''the point of discharge to the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any CMPU at an affected source,'' regardless of the concentration of metal HAP in the stream. Public commenters were generally in favor of defining a metal HAP process vent as containing at least 50 ppmv metal HAP, consistent with the MON.

In the final rule revisions, we have revised the definition of ''metal HAP process vent'' to include only those streams which contain at least 50 ppmv metal HAP. We have also revised the final rule to state that process vents from CMPU that only contain metal HAP in a liquid solution or other form that will not result in particulate emissions of metal HAP (*e.g.,* metal HAP that is in ingot, paste, slurry or moist pellet form or other form) are not required to comply with the metal HAP process vent requirements.

E. Extension of the Compliance Date

In the proposed rule revisions, we did not propose to revise the compliance date for the final rule, which was October 29, 2012. Under CAA section 112, the compliance date may be no more than 3 years after the effective date of the final rule, which for the CMAS rule was October 29, 2009. Public commenters were concerned that due to the expected short period of time between the promulgation of the final rule amendments and the existing October 29, 2012, compliance date, there would not be sufficient time for facilities to review the revised rule requirements and certify compliance by the compliance date. The commenters were particularly concerned with determining compliance because the proposed changes to the family of materials concept may affect applicability of the final standards to CMPU located at sources subject to the CMAS rule. It was the EPA's expectation that the reconsideration would be finalized in advance of October 29, 2012, compliance date. However, the EPA was still in the process of finalizing the reconsideration action, and on October 25, 2012, the EPA published a 60-day stay of the final CMAS rule (77 FR 65135).

In the final rule, the EPA is extending the compliance date for existing sources until March 21, 2013. We agree that existing sources should have additional time to evaluate applicability in light of the amendments to the rule since publication of the final reconsideration action is occurring so close to the existing source compliance date. We think this short extension will provide sources the necessary time to determine applicability and take the actions necessary to comply with the final rule. The EPA is not revising the compliance date for new sources.

F. Technical Corrections

In the proposed rule revisions, we proposed in 40 CFR 63.11494(a)(3) a technical correction that the concentration thresholds for applicability of Table 1 HAP present in feedstocks or any liquid streams (process or waste) were to be

determined on a collective Table 1 HAP basis. In addition, we also proposed to specify that a CMPU is subject to the CMAS rule if the collective concentration of Table 1 HAP exceeded 50 ppmv in any process vent stream. Public commenters were concerned that by revising the rule to determine applicability based on collective Table 1 HAP concentration and a 50 ppmv threshold, the applicability of the rule would be greatly expanded beyond its original scope.

In the final rule revisions, we have revised this language to clarify that the concentration thresholds for applicability of Table 1 HAP are to be determined on an individual Table 1 HAP concentration, rather than a collective concentration. In addition, we have also clarified that the 0.1 percent by weight threshold for Table 1 HAP present in liquid streams (process or waste) also applies to Table 1 HAP present in any continuous process or batch process vent, rather than the proposed 50 ppmv threshold.

We are not finalizing this proposed change because we did not fully consider the implications of the proposed change. We included the proposed change in the technical corrections section of the proposed rule on the belief that it was a technical change, but, in fact, the change, if finalized, would have had significant consequences. The proposed change would have likely lead to a considerable expansion of the applicability of the rule. In addition, sources would no longer have been able to determine applicability by reviewing their Material Safety Data Sheets (MSDS) as the 2009 final rule provides because the MSDS does not indicate the amount of emissions below the 0.1 percent threshold. This would mean that sources would have to go to considerable lengths at considerable cost in testing very low levels of HAP to even determine whether the final rule applies to their CMPUs, which is not what the EPA intended.

V. Summary of Comments and Responses

This section contains a summary of major comments and responses and rationale for changes made to the proposed rule. The EPA received many comments covering numerous topics. The EPA's responses to those comments can be found either in this preamble or in the National Emission Standards for Hazardous Air Pollutant Emissions for Chemical Manufacturing Area Source—Reconsideration: Summary of Public Comments and Responses, in the CMAS rule docket (EPA–HQ–OAR–2008–0334).

A. Title V Permitting Requirements

Comment: Eight commenters objected to the requirement that certain synthetic area sources subject to the CMAS rule be required to obtain a title V permit. The commenters stated that the requirement would be overly burdensome and that it would impose significant additional costs on facilities while achieving no additional environmental benefit or gains in compliance. The commenters estimate that it will cost a facility $25,000–$100,000 to obtain a title V permit.

In contrast, one commenter stated that the cost of obtaining a title V permit instead of a synthetic area source permit in their area is comparable due to associated permit fees for synthetic area source permits and emission fees for title V permits.

Response: The EPA disagrees with the commenters that the requirement to obtain a title V permit is overly burdensome and we maintain that title V is appropriate for the sources that will be subject to title V pursuant to this final rule. In the preamble to the final rule, we determined that ''requiring additional public involvement and compliance assurance requirements through title V is important to ensure that these sources are maintaining their emissions at the area source level, and, while there is some burden on the affected facilities, we think that the burden is not significant because these facilities are generally larger and more sophisticated than the natural area sources and sources that took operational limits to become area sources.'' 74 FR 56014. The cost estimates provided by the commenters are very broad and the commenters do not provide any information to support the cost estimates that were provided; therefore, the EPA is unable to evaluate the validity of these estimates.

Comment: Three commenters expressed concern with the impacts that the title V program requirements might impose on a source subject to the CMAS rule. In particular, they expressed concern with the ability of batch operations that have the need for quick changes to their production processes to be able to make such changes rapidly and with the necessary permitting flexibility. The commenters stated that by requiring a title V permit, the facility will be required to apply for a permit modification every time they wanted to manufacture a new product, costing them both time and money and placing them at a competitive disadvantage.

Response: We appreciate that the commenters want to maintain operational flexibility, but title V permits can and do accommodate provisions that provide operational flexibility for batch processing (and other) operations. In fact, permitting authorities have been incorporating operational flexibility for batch processes into title V permits through a variety of mechanisms provided under existing rules. These flexibilities have eliminated the need to modify permits when new products are manufactured. For example, since 2003, a number of specialty chemical manufacturers, who use batch processing, are subject to title V permitting under the Miscellaneous Organic NESHAP (MON). To accommodate the need for frequent operational changes at these facilities, states have issued flexible operating permits that provide these sources with the ability to obtain approval in advance for a variety of alternative operating scenarios, categories of changes, plant-wide applicability limits, or other operating flexibilities that enable them to operate in the most effective way while still complying with the requirements of the title V program. As the CMAS rule notes, batch CMAS sources, like MON sources, can take advantage of similar flexibilities and set their continuous monitoring parameters based on their projected range of batch scenarios.

This type of flexibility has been effectively incorporated into title V permits to sources in the semiconductor industry for many years. Just like the specialty chemical manufacturing industry, the semiconductor industry operates in a rapidly changing environment, requiring flexibility to make quick changes without the need to go through permit modifications. Through the use of advance approvals and flexible permits, companies such as Intel have been able to operate in a quickly changing environment while complying with the requirements of the title V program. Intel currently introduces a new generation of semiconductor chips every 12 to 24 months, with each new product cycle supported by a major facility revamp. These operational changes are time sensitive to meet product release schedules from computer and electronics manufacturers and involve highly interdependent and sequenced steps. Intel also reported a need to make rapid (and sometimes iterative) process and equipment adjustments in production processes to improve yield, lower costs, reduce chemical usage, and otherwise improve operations. The

advance approved changes in Intel's flexible permit likely saved the plant hundreds of business days associated with making operational and process changes to ramp up production for new products, respond to market demands, and optimize production processes. Industry estimates of the opportunity costs of production downtime and time delays run as high as several million dollars in just a few days due to lost sales to computer makers and other factors. The estimated 150 to 200 changes per year, combined with the otherwise normally expected approval time frame of up to 60 days per change, indicate that there would likely have been significant delay under a conventional permitting approach. Intel has in the past cited its flexible air permit as a vital element enabling Intel to double employment during the permit term and to transfer and scale-up production of next generation computer chips at plants throughout the U.S., retaining and creating thousands of additional jobs.

The EPA is willing to work with companies and state permitting authorities to ensure they are aware of the flexibilities already available under the title V permitting program that address the concerns of the small number of CMAS synthetic area sources that must obtain a title V permit.

Comment: Four commenters stated that the process for obtaining a synthetic area source permit and the amount of information contained in it are very similar to those of a title V permit. Three of the commenters detailed the steps involved in obtaining each type of permit, as well as the information contained in each. The commenters also stated that both processes provide opportunity for public comment on the draft permit and that the facilities may be required to certify compliance annually. One of the commenters also provided general information on FESOPs and synthetic area source permits issued in Illinois and Ohio. Another commenter also provided general information on FESOP and synthetic area source permits for 11 states, including whether notice and comment is required and what additional oversight is conducted by the state. One commenter noted that FESOP programs must be approved through State Implementation Programs, which provide an opportunity for both the EPA and public comment. Another commenter stated that under the North Carolina Division of Air Quality's air permitting program, synthetic area sources are already subject to annual inspections similar to what title V requires. The commenter also stated that sources that have add-on controls typically have lower emissions than sources that have taken operational limits to become synthetic area sources.

Response: While the commenters provided broad, general information on the requirements of FESOPs as compared to title V permits, none of them provided specific examples of these permits for the EPA to evaluate and compare to title V permits. Without this specific information from each state (as the requirements for a FESOP vary by state), the EPA cannot conclude that FESOPs provide the same level of information as that of a title V permit. In addition, unlike FESOP programs, petitions to object to title V permits may be brought before the EPA. As the requirements for public participation for a FESOP vary by state, the EPA cannot be assured that all citizens in all states would be afforded the same level of public participation that a title V permit would provide.

In addition, title V requires a facility to include in the title V permit all applicable requirements that apply to CMAS affected units, not just the CMPU requirements that trigger applicability of title V, so that the public will be able to assess a source's compliance with all requirements that apply to CMAS affected units by reviewing the title V permit. The public is provided access to compliance demonstration information submitted to state permitting authorities and there is no indication in the comments that such information is available pursuant to state FESOP programs.

Furthermore, even though certain states, such as North Carolina, may require that a synthetic area source be subject to additional inspections, this requirement varies by state and only a title V permit would assure that these additional inspections are required for all CMAS synthetic area sources required to obtain a title V permit. Finally, we do not agree with the assertion that sources that install control devices necessarily have lower emissions than those that have taken operational limits to maintain area source status, as both types of synthetic area sources are subject to the same requirement to maintain emissions below 10 tpy of any single HAP or 25 tpy of any combination of HAP. It is the potential level of emissions from the synthetic area source absent controls or operational limits that we considered when comparing the two types of synthetic area sources. In the 2009 final rule and the reconsideration proposed rule revisions, we noted that one reason why we were not exempting synthetic area sources that installed controls from title V is because we believe the sources are ''generally larger and more sophisticated'' than natural area sources and the synthetic area sources that took operational limits. See 77 FR 4525; 74 FR 56014. We also stated that we believe the uncontrolled HAP emissions from synthetic area sources that installed controls are generally much higher than the natural area sources and synthetic area sources that took operational limits. *Id.* The commenters did not provide any information that causes us to question our conclusions.

Comment: Four commenters stated that requiring synthetic area sources that installed control devices to obtain a title V permit would create a disincentive for facilities to maintain their synthetic area source status by either voluntarily reducing their emissions or installing add-on controls in lieu of taking production limits, which would have a negative impact on air quality.

Response: The EPA disagrees that requiring title V permits would discourage facilities from maintaining their synthetic area source status, as facilities would in most, if not all, cases be subject to existing NESHAP applicable to chemical manufacturing major sources if they did not maintain synthetic area source status. For example, these sources would likely be subject to the HON or the MON, both of which require more frequent inspections and more stringent control of emissions. The EPA believes that avoiding these additional requirements would still provide incentive for facilities to maintain their synthetic area source status. In addition, all major sources of HAP subject to NESHAP are required to obtain a title V permit so the sources would still be required to comply with title V.

Comment: One commenter stated that it is punitive to require title V permits for sources that have already made a capital investment to achieve area source status and avoid title V permits in the past. The commenter stated that the EPA is ignoring the environmental benefit associated with the installation of federally-enforceable control devices by focusing on the uncontrolled potential of these sources.

Response: Pursuant to section 502(a) of the CAA, all area sources subject to CAA section 112 standards are required to obtain a title V permit unless the EPA makes a finding that title V is impracticable, infeasible or unnecessarily burdensome. Thus, there is no basis to support the statement that title V is punitive in nature and the EPA disagrees that requiring title V permits for synthetic area sources that installed

control devices is punitive. Furthermore, we are not ignoring the environmental benefit of controlling HAP emissions by requiring title V for certain CMAS sources.

In most, if not all, cases, synthetic area sources that installed controls would be subject to existing NESHAP applicable to major sources if they did not take synthetic area source limits and those standards are set at the maximum achievable control technology (MACT) level. Since MACT standards are technology based standards established based on the performance of the best performing source(s), it is likely the commenter would have had to achieve a comparable level of emissions reductions even if they had not taken the synthetic area source limit. While the EPA appreciates the environmental benefit attained by facilities that have installed these control devices to become area sources, we still believe that title V permitting is appropriate to, among other things, ensure: that synthetic area sources that installed controls are maintaining their emissions at the permitted level; that the public is able to review and evaluate the source's permit and compliance; that there is adequate monitoring, recordkeeping and reporting; and that the source's management is required to certify compliance with the CAA requirements applicable to the source.

Comment: Three commenters stated that if the EPA should choose to finalize the title V permit requirement, they supported the decision to limit this requirement to only facilities that have installed controls on an affected CMPU subject to the CMAS rule.

Response: The EPA has finalized revisions to the title V permit requirement; however, the EPA has made some revisions to the title V permit requirement to further clarify the applicability of title V to CMAS sources. The final rule only requires title V permits for facilities that have installed a federally-enforceable control device on at least one affected CMPU and the air pollution control device is required to maintain the source's emissions at area source levels.

Comment: One commenter expressed concern that while the language of the original final rule made it clear that their facility was exempted from the title V requirement, the proposed revisions made it ambiguous as to whether the facility would be required to obtain a title V permit. The commenter believed that the revised provisions for obtaining a title V permit would no longer exclude sources that were never a major source, and could instead be interpreted to mean that any synthetic area source, regardless of whether it was previously major or area, that installed a federally-enforceable control device on an affected CMPU would be subject to the title V permit requirement. The commenter requested that this requirement only apply to sources that became a synthetic area source as a direct result of installing the federally-enforceable control device.

Response: In response to comments on the proposed rule, the EPA has revised the final rule language to clarify the scope of the title V permit requirement. Specifically, the final rule requires a title V permit for any synthetic area source subject to the CMAS rule that would be a major source but for the installation of a federally-enforceable control device on at least one affected CMPU. The final title V requirement language affords no consideration to the purpose of the installed control device, other than it being necessary to maintain the source's emissions at area source levels, or the timing of the installation of the control device.

B. Requirements When Other Rules Overlap With the Final Rule

Comment: One commenter stated that it is not always clear what the most stringent provisions are when looking at overlapping provisions. The commenter requested that the EPA revise the rule to require facilities to make their best determination of stringency and submit to the appropriate agency for review and comment. The commenter also requested that states should be allowed to make streamlined determinations on stringency on an overall program stringency basis rather than individual rule provisions of overlapping rules.

Response: The EPA disagrees with the commenter that it is necessary to revise the final rule to allow for facilities to submit their stringency determinations for review and comment to their permitting authority. As the requirements of this section are entirely optional, we do not believe it to be appropriate to place additional burden on the local permitting authorities to make the determination of what the most stringent provisions are. Instead, we believe that this responsibility should continue to be placed on the facility. For those sources that are unable to determine the more stringent requirements, we continue to believe that it is more appropriate to evaluate requests for clarification on a case-by-case basis.

In addition, we also believe that it would be inappropriate for us to make a determination of equivalency among the numerous state streamlined programs with the requirements of the CMAS rule. As noted in the preamble to the proposed rule revisions, ''[w]e did not include language that defines the more stringent requirements, as found in other rules, due to the great variety in characteristics of CMAS processes and the wide variety of compliance options in both the CMAS rule and overlapping rules. This variety makes it difficult to develop language that would not inadvertently allow a CMAS facility to comply with requirements less stringent than those contained in 40 CFR part 63, subpart VVVVVV, or less stringent than the required control level in an overlapping rule.'' (77 FR 4528). For these reasons, we are not revising these provisions in the final rule.

C. Requirement To Conduct Direct and Proximal Leak Inspections

Comment: Four commenters supported the proposed revisions to remove the requirement to conduct ''direct and proximal'' leak inspections and stated that the proposed sight, sound or smell inspections are appropriate.

Response: The EPA has finalized the proposed revisions to the leak detection requirements.

D. Requirement for Covers or Lids on Process Vessels

Comment: Three commenters requested that the EPA clarify that for metal HAP precipitate, or metal HAP in solution, the requirement to install a cover or lid on process vessels in metal HAP service does not apply. The commenters cited the low potential for emissions from these low vapor pressure metal HAP solutions as rationale for not imposing this requirement on such units. One commenter estimated that without this change, their facility would have to invest over $1,000,000 in covers/lids for their clarifiers, which are used to gravity-separate solids from solution and have very low potential for emissions. One commenter cited 40 CFR part 63, subpart CCCCCCC as an example of an area source rule that does not require this for metal HAP in solution. The commenter also provided examples of regulatory text that could be used in the CMAS rule.

Response: The EPA agrees with the commenters that the requirement to install a cover or lid for process vessels in metal HAP service is unnecessary for metal HAP in solution. As there is very little or no potential for air emissions to occur from these solutions, the rule need not require the process vessel to be covered. As such, we have revised the final rule to state that process vessels

that only contain metal HAP in a liquid solution or other form that will not result in particulate emissions of metal HAP (*e.g.,* metal HAP that is in ingot, paste, slurry or moist pellet form or other form) are not required to comply with the cover/lid requirement.

E. Requirement To Conduct Leak Inspections When Equipment Is in HAP Service

Comment: Three commenters suggested that leak inspections should be permitted to be conducted when equipment is in non-HAP (*i.e.,* VOC) service. Two commenters cited the limited personnel available to conduct leak inspections and the limited time windows for when equipment is in HAP service and inspections may be conducted as rationale.

One commenter noted that there is little difference between detecting leaks for streams in VOC vs. HAP service, as many HAP and non-HAP solvents have similar vapor and odor thresholds and both can be detected adequately by sight, sound or smell. The commenter also stated that since the MON allows for sources to assume that equipment is in HAP service, then the CMAS rule should permit it as well.

Response: The EPA agrees with the commenters that conducting leak inspections when equipment is in VOC service is acceptable for the reasons described above, and has revised the final rule to reflect this option, provided that leaks can be detected while in VOC service. As it may be very difficult for some facilities to conduct their inspections while equipment is in HAP service due to the limited amount of time and/or personnel available, this alternative will provide facilities with flexibility in conducting inspections while maintaining the same level of emissions reductions. This option does not apply to CMPU that contain metal HAP as particulate. For those units, the inspections must be conducted while the unit is in metal HAP service.

F. Applicability of the Family of Materials Concept

Comment: Two commenters supported the proposed revisions to the definition of ''family of materials.''

Response: The EPA has finalized the proposed revisions to this definition.

G. Requirements for Metal HAP Process Vents

Comment: Two commenters stated that the definition of metal HAP process vent should be revised to better reflect GACT for these emission points. The commenters state that in sulfuric acid regeneration units (SARUs), metal HAP are already controlled to >95 percent within the process itself and that it would be unreasonable to require an additional 95 percent control for metal HAP vents. The commenters recommend that a metal HAP process vent be defined as containing at least 50 ppmv metal HAP (similar to the batch and continuous process vents definitions), or that all vents from SARUs be excluded.

Response: The EPA agrees with the commenters that a metal HAP process vent should be defined as containing at least 50 ppmv metal HAP, consistent with the definitions of batch and continuous process vents. In reviewing other rules that regulate the chemical sector (*e.g.,* the MON) and define a process vent as containing at least 50 ppmv, the EPA found that it applied to process vents containing any HAP, not just organic HAP. As such, the EPA has revised the final rule to define a metal HAP process vent as containing at least 50 ppmv metal HAP.

Comment: One commenter requested that the EPA exempt process vents from CMPU using metal HAP in solution from the requirements for metal HAP process vents. The commenter cites the low potential for emissions from these low vapor pressure metal HAP solutions as rationale for exempting them. One commenter cited 40 CFR part 63, subpart CCCCCCC as an example of an area source rule that exempts metal HAP in solution. The commenter also provided examples of regulatory text that could be used in the CMAS rule.

Response: The EPA agrees with the commenter that it is not necessary to subject process vents from CMPU using metal HAP in solution to the requirements for metal HAP process vents. As the CMAS rule requires that CMPU process vents with total metal HAP emissions of less than 400 pounds/year (lb/yr) maintain records demonstrating that total metal HAP emissions are less than 400 lb/yr, and it is unlikely that process vents from CMPU handling only metal HAP in solution would ever exceed this value due to the little or no potential for air emissions to occur, this requirement results in an unnecessary recordkeeping burden for the facility. As such, we have revised the final rule to state that process vents from CMPU that only contain metal HAP in a liquid solution or other form that will not result in particulate emissions of metal HAP (*e.g.,* metal HAP that is in ingot, paste, slurry or moist pellet form or other form) are not required to comply with the metal HAP process vent requirements.

H. Compliance Date

Comment: Four commenters requested that the EPA extend the compliance date for a period of time ranging from 18 months to 3 years. The commenters all stated that the potential expansion of the applicability of the final rule would require additional time for sources to re-evaluate whether they would be subject to the rule. One commenter also cited the uncertainty surrounding the family of materials concept as finalized in the original rule and the fact that the EPA did not address the *de minimis* threshold issue that the Petitioners raised in their petition for reconsideration as reasons for extending the compliance date. The commenters stated that the EPA has the legal authority to extend the compliance date, citing the circumstances under which the EPA did so in the Boiler MACT reconsideration.

Response: The EPA agrees that a short extension of the compliance date is warranted for existing sources, not an extension of 18 months to 3 years. Given the amount of uncertainty regarding the applicability of the family of materials concept in the 2009 final rule, the EPA believes that with the revised definition of ''family of materials'' in these amendments, sources will need the short extension to evaluate applicability and determine the appropriate compliance approach. As such, the EPA believes it is reasonable to provide some additional period of time for facilities to review the revised final rule and determine which CMPU are subject to the requirements.

I. Technical Corrections

Comment: Six commenters objected to the proposed revision to base CMPU applicability on a collective 0.1 percent by weight (for carcinogens) or 1.0 percent by weight (for non-carcinogens) concentration, rather than an individual compound concentration. The commenters stated that this proposed change goes beyond being a ''technical correction'' as described in the proposal preamble, as it would significantly expand the scope of the rule and increase the compliance burden for facilities.

Two commenters stated that going to a collective HAP concentration would be inconsistent with the Toxics Release Inventory and the Occupational Safety and Health Administration Hazard Communication rules upon which the 0.1 percent and 1.0 percent thresholds were based and would be inconsistent with the definition of ''product'' in the CMAS rule.

Three commenters also noted that by having to use the collective concentration, facilities would no longer be able to use MSDS to determine applicability because MSDS are not provided for compounds at concentrations below 0.1 percent.

Response: The EPA agrees with the commenters that it is not appropriate to use a collective HAP concentration in determining applicability. It was not the EPA's intent to expand the applicability of the CMAS rule, but rather to clarify when it applied. As explained above and in section IV.F of this preamble, the commenters brought up numerous issues that the EPA had not considered when proposing this revision that would make determining applicability and complying with the rule extremely difficult. The expansion of the applicability was inadvertent and the final rule has not been revised as proposed.

Comment: Five commenters objected to the proposed revision to determine CMPU applicability based on a collective 50 ppmv concentration. The commenters state that, similar to the proposed revision to the 0.1/1.0 percent thresholds, this revision would significantly expand the scope of the rule, as 50 ppmv is a much lower concentration than the 0.1/1.0 percent concentration thresholds that had already been established. Additionally, the commenters stated that facilities would no longer be able to rely upon MSDS for determining applicability and the revision goes beyond being a ''technical correction'' as described in the proposal preamble.

Response: The EPA agrees with the commenters that it is not appropriate to establish a collective 50 ppmv concentration threshold for determining applicability. It was not the EPA's intent to expand the applicability of the CMAS rule, but rather to make the applicability consistent with the definitions of batch and continuous process vents. As explained above and in section IV.F of this preamble, the commenters brought up numerous issues that the EPA had not considered when proposing this revision, which would have inadvertently expanded the applicability of the rule. The expansion of the applicability was inadvertent and the EPA has not revised the final rule as proposed.

VI. What other actions are we taking?

In addition to requesting reconsideration of the above issues, the petition for reconsideration also requested the EPA take comment on three additional issues: (1) A *de minimis* exemption for all sources potentially subject to the rule; (2) a Petitioner proposed interpretation of the CAA section 112(c)(7) definition of ''research or laboratory facilities'' that would include commercial development activities; and (3) a pollution prevention alternative. The EPA is denying reconsideration of these issues because they failed to meet the standard for reconsideration under CAA section 307(d)(7)(B), and the EPA determined that reconsideration was not otherwise appropriate. Specifically, on these issues, the Petitioners have failed to show the following: That it was impracticable to raise their objections during the comment period; and/or that their concern is of central relevance to the outcome of the rules. We have concluded that no clarifications to the underlying rules are warranted for these issues.

Section 307(d)(7)(B) of the CAA states that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time 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, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)).''

As to the first procedural criterion for reconsideration, a petitioner must show why the issue could not have been presented during the comment period, either because it was impracticable to raise the issue during that time or because the grounds for the issue arose after the period for public comment (but within 60 days of publication of the final action). In the EPA's view, an objection is of central relevance to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised. See, *e.g.,* the EPA's *Denial of the Petition to Reconsider the Endangerment and Cause of Contribute Findings for the Greenhouse Gases under Section 202 of the Clean Air Act,* 75 FR 49561 (August 13, 2010). See also, 75 FR 49556, 49560–49563 (August 13, 2010), and 76 FR 4780, 4786–4788 (January 26, 2011) for additional discussion of the standard for reconsideration under CAA section 307(d)(7)(B).

A. De Minimis Exemption

Petitioners stated that the EPA should revise the CMAS final rule to include an across-the-board *de minimis* exemption for sources. The Petitioners argued that reconsideration would allow commenters to explain how, even with a *de minimis* exemption, the EPA could meet its statutory obligations.

This issue was contained in public comments submitted in response to the CMAS proposed rule published on October 6, 2008 (73 FR 58352). The EPA's responses to the comments are presented in section V.A of the preamble to the final rule (74 FR 56016–56018) and section 3.2 (pp. 3–3–3–4) of the October 2009 *Response to Comments Regarding National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources* document (See Docket Item No. EPA–HQ–OAR–2008–0334–0087).

The comments received on this issue demonstrate that the public had ample opportunity to comment on this issue and indeed did so. The EPA responded to those comments and sees no substantive reason to revisit this issue. Therefore, because the Petitioners did not demonstrate that it was impracticable to comment on this issue during the comment period on the proposed rule and the Petitioners did comment on it during the comment period for the 2008 proposal, the EPA is denying reconsideration of this issue.

B. Research and Development Interpretation

Petitioners stated that the EPA should take comment on an interpretation of ''research and laboratory facility'' in the CMAS final rule that would exempt equipment associated with ''research'' or ''laboratory'' activities as those terms are defined by the Petitioners. The Petitioners were concerned that, without an interpretation of the CAA section 112(c)(7) exemption for research and development facilities, the CMAS rule may pose a substantial compliance challenge for some sources.

This issue was contained in public comments submitted in response to the CMAS proposed rule published on October 6, 2008 (73 FR 58352). The EPA's responses to the comments are presented in section 3.5.3 (pp. 3–11) of the October 2009 *Response to Comments Regarding National Emission Standards for Hazardous Air Pollutants*

for Chemical Manufacturing Area Sources document (See Docket Item No. EPA–HQ–OAR–2008–0334–0087).

The comments received on this issue demonstrate that the public had ample opportunity to comment on this issue and indeed did so. The EPA responded to those comments and sees no substantive reason to revisit this issue. Therefore, because the Petitioners did not demonstrate that it was impracticable to comment on this issue during the comment period on the proposed rule and the Petitioners did comment on it during the comment period for the 2008 proposal, the EPA is denying reconsideration of this issue.

C. Pollution Prevention Alternative

Petitioners stated that the EPA should revise the CMAS final rule to include a pollution prevention alternative. The Petitioners argued that there would be broad interest in this alternative and that data would be made available for the EPA to specify requirements for such an alternative.

This issue was contained in public comments submitted in response to the CMAS proposed rule published on October 6, 2008 (73 FR 58352). The EPA's responses to the comments are presented in section 4.7 (pp. 4–7—4–8) of the October 2009 *Response to Comments Regarding National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources* document (See Docket Item No. EPA–HQ–OAR–2008–0334–0087).

The comments received on this issue demonstrate that the public had ample opportunity to comment on this issue, and indeed did so. The EPA responded to those comments and sees no substantive reason to revisit this issue. Therefore, because the Petitioners did not demonstrate that it was impracticable to comment on this issue during the comment period on the proposed rule and the Petitioners did comment on it during the comment period for the 2008 proposal, the EPA is denying reconsideration of this issue.

VII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR Number 2323.05. The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

For this final rule, the EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $2,958 and is based on the time and effort required of a source to review relevant data, interview plant employees and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than 2 or 3 such occurrences for all sources subject to 40 CFR part 63, subpart VVVVVV over the 3-year period covered by this ICR. We expect to gather information on such events in the future and will revise this estimate as better information becomes available.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 final 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 (less than 500, 750 or 1,000 employees, depending on the specific NAICS Code under subcategory 325); (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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, 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 new requirements on any small entities because it does not impose any additional regulatory requirements beyond those already promulgated.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. This final rule imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

This 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. This rule finalizes amendments to aid with compliance but does not change the level of the standards in the rule.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule will not impose direct compliance costs on state or local governments and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

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

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying 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 final rule is not subject to Executive Order 13045 because it is based solely on technology performance. Further, this action does not relax the control measures on sources regulated by the final rule, and, therefore, will maintain the level of environmental protection.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, this action does not change the level of standards already in place.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not use available and applicable VCS.

This final rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

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

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

The EPA has determined that this final rule, as amended, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the rule amendments maintain the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action does not relax the control measures on sources regulated by the final rule, and, therefore, will not cause emissions increases from these sources.

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. 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 December 21, 2012.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances.

Dated: December 14, 2012.

Lisa P. Jackson,

Administrator.

For the reasons cited 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. Lift the stay of subpart VVVVVV published October 25, 2012 (77 FR 65135).

■ 3. In § 63.11494, lift the stay on paragraph (e) published March 14, 2011 (76 FR 13514).

■ 4. Section 63.11494 is amended by:
■ a. Revising paragraph (a);
■ b. Adding paragraph (c)(1)(vii);
■ c. Revising the last sentence in paragraph (d) introductory text;
■ d. Revising paragraphs (e) and (f) to read as follows:

§ 63.11494 What are the applicability requirements and compliance dates?

(a) Except as specified in paragraph (c) of this section, you are subject to this subpart if you own or operate a chemical manufacturing process unit (CMPU) that meets the conditions specified in paragraphs (a)(1) and (2) of this section.

(1) The CMPU is located at an area source of hazardous air pollutant (HAP) emissions.

(2) HAP listed in Table 1 to this subpart (Table 1 HAP) are present in the CMPU, as specified in paragraph (a)(2)(i), (ii), (iii), or (iv) of this section.

(i) The CMPU uses as feedstock, any material that contains quinoline, manganese, and/or trivalent chromium at an individual concentration greater than 1.0 percent by weight, or any other Table 1 HAP at an individual concentration greater than 0.1 percent by weight. To determine the Table 1 HAP content of feedstocks, you may rely on formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet (MSDS) for the material. If the concentration in an MSDS is presented as a range, use the upper bound of the range.

(ii) Quinoline is generated as byproduct and is present in the CMPU in any liquid stream (process or waste) at a concentration greater than 1.0 percent by weight.

(iii) Hydrazine and/or Table 1 organic HAP other than quinoline are generated as byproduct and are present in the CMPU in any liquid stream (process or waste), continuous process vent, or batch process vent at an individual concentration greater than 0.1 percent by weight.

(iv) Hydrazine or any Table 1 HAP is produced as a product of the CMPU.

* * * * *

(c) * * *

(1) * * *

(vii) Lead oxide production at Lead Acid Battery Manufacturing Facilities, subject to subpart PPPPPP of this part.

* * * * *

(d) * * * A CMPU using only Table 1 metal HAP is required to control only total CAA section 112(b) metal HAP in accordance with § 63.11495 and, if applicable, § 63.11496(f).

* * * * *

(e) Any area source that installed a federally-enforceable control device on an affected CMPU is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71 if the control device on the affected CMPU is necessary to maintain the source's emissions at area source levels. For new and existing sources subject to this rule on December 21, 2012 and subject to title V as a result of this rule, a complete title V permit application must be submitted no later than December 21, 2013. New and existing sources that become subject to this rule after December 21, 2012 must submit a complete title V permit application no later than 12 months after becoming subject to this rule if the source is subject to title V as a result of this rule. Otherwise, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

(f) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than March 21, 2013.

* * * * *

■ 5. Section 63.11495 is amended by:
■ a. Revising paragraphs (a)(1) and (a)(3);
■ b. Adding paragraph (c) heading; and
■ c. Adding paragraph (d) to read as follows:

§ 63.11495 What are the management practices and other requirements?

(a) * * *

(1) Each process vessel must be equipped with a cover or lid that must be closed at all times when it is in organic HAP service or metal HAP service, except for manual operations that require access, such as material addition and removal, inspection, sampling and cleaning. This requirement does not apply to process vessels containing only metal HAP that are in a liquid solution or other form that will not result in particulate emissions of metal HAP (e.g., metal HAP that is in ingot, paste, slurry, or moist pellet form or other form).

* * * * *

(3) You must conduct inspections of process vessels and equipment for each CMPU in organic HAP service or metal HAP service, as specified in paragraphs (a)(3)(i) through (v) of this section, to demonstrate compliance with paragraph (a)(1) of this section and to determine that the process vessels and equipment are sound and free of leaks. Alternatively, except when the subject CMPU contains metal HAP as particulate, inspections may be conducted while the subject process vessels and equipment are in VOC service, provided that leaks can be detected when in VOC service.

(i) Inspections must be conducted at least quarterly.

(ii) For these inspections, detection methods incorporating sight, sound, or smell are acceptable. Indications of a leak identified using such methods constitute a leak unless you demonstrate that the indications of a leak are due to a condition other than loss of HAP. If indications of a leak are determined not to be HAP in one quarterly monitoring period, you must still perform the inspection and demonstration in the next quarterly monitoring period.

(iii) As an alternative to conducting inspections, as specified in paragraph (a)(3)(ii) of this section, you may use Method 21 of 40 CFR part 60, appendix A–7, with a leak definition of 500 ppmv to detect leaks. You may also use Method 21 with a leak definition of 500 ppmv to determine if indications of a leak identified during an inspection conducted in accordance with paragraph (a)(3)(ii) of this section are due to a condition other than loss of HAP. The procedures in this paragraph (a)(3)(iii) may not be used as an alternative to the inspection required by paragraph (a)(3)(ii) of this section for process vessels that contain metal HAP as particulate.

(iv) Inspections must be conducted while the subject CMPU is operating.

(v) No inspection is required in a calendar quarter during which the subject CMPU does not operate for the entire calendar quarter and is not in organic HAP service or metal HAP service. If the CMPU operates at all during a calendar quarter, an inspection is required.

* * * * *

(c) *Startup, shutdown and malfunction.* * * *

(d) *General duty.* At all times, you must operate and maintain any affected CMPU, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the CMPU.

■ 6. Section 63.11496 is amended by:
■ a. Revising the last sentence in paragraph (c);
■ b. Revising paragraphs (d) and (e) introductory texts;
■ c. Adding paragraph (e)(6);
■ d. Adding a sentence to the end of paragraph (f) introductory text;
■ e. Revising paragraphs (f)(3)(i)(C), (f)(3)(ii), and (g)(1);
■ f. Revising the first sentence in paragraph (g)(2); and
■ g. Revising paragraphs (g)(4)(i) and (g)(5).

The additions and revisions read as follows:

§ 63.11496 What are the standards and compliance requirements for process vents?

* * * * *

(c) * * * The TRE index value for continuous process vents and the annual emissions from batch process vents shall be determined for the individual streams before they are combined, and prior to any control (e.g., by subtracting any emission contributions from storage tanks, continuous process vents or batch process vents, as applicable), in order to determine the most stringent applicable requirements.

(d) *Halogenated streams.* You must determine if an emission stream is a halogenated vent stream by calculating the mass emission rate of halogen atoms in accordance with § 63.115(d)(2)(v). Alternatively, you may elect to designate the emission stream as halogenated. If you use a combustion device to comply with the emission limits for organic HAP from a halogenated batch process vent or a halogenated continuous process vent, you must use a halogen reduction device to meet the emission limit in either paragraph (d)(1) or (d)(2) of this section and in accordance with § 63.994 and the requirements referenced therein.

* * * * *

(e) *Alternative standard for organic HAP.* Exceptions to the requirements for the alternative standard requirements specified in Tables 2 and 3 to this subpart and § 63.2505 are specified in paragraphs (e)(1) through (6) of this section.

* * * * *

(6) CEMS requirements and data reduction requirements for CEMS specified in § 63.2450(j) apply.

* * * * *

(f) *Emissions from metal HAP process vents.* * * * The requirements of this paragraph (f) do not apply to metal HAP process vents from CMPU containing only metal HAP that are in a liquid solution or other form that will not result in particulate emissions of metal HAP (e.g., metal HAP that is in ingot, paste, slurry, or moist pellet form or other form).

* * * * *

(3) * * *

(i) * * *

(C) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system (CMS).

* * * * *

(ii) You must conduct a performance test or an engineering assessment for each CMPU subject to a HAP metals emissions limit in Table 4 to this subpart and report the results in your Notification of Compliance Status (NOCS). Each performance test or engineering assessment must be conducted under representative operating conditions, and sampling for each performance test must be conducted at both the inlet and outlet of the control device. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the 5 years prior to the effective date using the same methods specified in paragraph (f)(3)(iii) of this section, and, either no process changes have been made since the test, or, if you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(g) * * *

(1) *Requirements for performance tests.* (i) The requirements specified in § 63.2450(g)(1) through (4) apply instead of, or in addition to, the requirements specified in 40 CFR part 63, subpart SS.

(ii) Upon request, you shall make available to the Administrator, such records as may be necessary to determine the conditions of performance tests.

(2) *Design evaluation.* To determine initial compliance with a percent reduction or outlet concentration emission limit, you may elect to conduct a design evaluation as specified in § 63.1257(a)(1) instead of a performance test as specified in subpart SS of this part 63. * * *

* * * * *

(4) * * *

(i) You may measure pH or caustic strength of the scrubber effluent at least once per day for any halogen scrubber within a CMPU subject to this rule.

* * * * *

(5) *Startup, shutdown, malfunction (SSM).* Sections 63.996(c)(2)(ii) and 63.998(b)(2)(iii), (b)(6)(i)(A), (c)(1)(ii)(E) and (d)(3) do not apply for the purposes of this subpart.

* * * * *

■ 7. Section 63.11497 is amended by adding paragraph (d) to read as follows:

§ 63.11497 What are the standards and compliance requirements for storage tanks?

* * * * *

(d) *Combustion of halogenated streams.* If you use a combustion device to comply with the emission limits for organic HAP from a halogenated vent stream from a storage tank, you must reduce emissions in accordance with § 63.11496(d) and the requirements referenced therein.

■ 8. Section 63.11498 is amended by revising paragraph (a)(2) to read as follows:

§ 63.11498 What are the standards and compliance requirements for wastewater systems?

(a) * * *

(2) You are not required to determine the partially soluble concentration in wastewater that is hard piped to a combustion unit or hazardous waste treatment unit, as specified in Table 6, Item 2.b to this subpart.

* * * * *

■ 9. Section 63.11500 is amended by revising paragraph (a) to read as follows:

§ 63.11500 What compliance options do I have if part of my plant is subject to both this subpart and another Federal standard?

* * * * *

(a) *Compliance with other subparts of this part 63.* (1) If any part of a CMPU that is subject to the provisions of this

subpart is also subject to the provisions of another subpart of 40 CFR part 63, then compliance with any of the requirements in the other subpart of this part 63 that are at least as stringent as the corresponding requirements in this subpart VVVVVV constitutes compliance with this subpart VVVVVV.

(2) After the compliance dates specified in § 63.11494, at an offsite reloading or cleaning facility subject to § 63.1253(f), as referenced from § 63.2470(e) and Table 4 to subpart VVVVVV, compliance with the monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 constitutes compliance with the monitoring, recordkeeping, and reporting provisions of § 63.1253(f)(7)(ii) or (iii). You must identify in your notification of compliance status report required by § 63.11501(b) the subpart of this part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

* * * * *

■ 10. Section 63.11501 is amended by:
■ a. Revising the section heading;
■ b. Revising the last sentence in paragraph (c) introductory text;
■ c. Revising paragraph (c)(1) introductory text;
■ d. Adding paragraphs (c)(1)(vii) and (c)(1)(viii);
■ e. Revising paragraph (c)(4)(i);
■ f. Adding paragraph (c)(8);
■ g. Revising the last sentence in paragraph (d) introductory text; and
■ h. Adding paragraphs (d)(8) and (e) to read as follows:

§ 63.11501 What are the notification, recordkeeping, and reporting requirements, and how may I assert an affirmative defense for violation of emission standards during malfunction?

* * * * *

(c) *Recordkeeping.* * * * If you are subject, you must comply with the recordkeeping and reporting requirements of § 63.10(b)(2)(iii) and (vi) through (xiv), and the applicable requirements specified in paragraphs (c)(1) through (8) of this section.

(1) For each CMPU subject to this subpart, you must keep the records specified in paragraphs (c)(1)(i) through (viii) of this section.

* * * * *

(vii) Records of the date, time, and duration of each malfunction of operation of process equipment, control devices, recovery devices, or continuous monitoring systems used to comply with this subpart that causes a failure to meet a standard. The record must include a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over the standard, and a description of the method used to estimate the emissions.

(viii) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.11495(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

(4) * * *

(i) Keep records of the vessel dimensions, capacity, and liquid stored, as specified in § 63.1065(a).

* * * * *

(8) For continuous process vents subject to Table 3 to this subpart, keep records of the occurrence and duration of each startup and shutdown of operation of process equipment, or of air pollution control and monitoring equipment.

(d) * * * Reports are required only for semiannual periods during which you experienced any of the events described in paragraphs (d)(1) through (8) of this section.

* * * * *

(8) *Malfunctions.* If a malfunction occurred during the reporting period, the report must include the number of instances of malfunctions that caused emissions in excess of a standard. For each malfunction that caused emissions in excess of a standard, the report must include a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over the standard, and a description of the method used to estimate the emissions. The report must also include a description of actions you took during a malfunction of an affected source to minimize emissions in accordance with § 63.11495(d), including actions taken to correct a malfunction.

(e) *Affirmative defense for violation of emission standards during malfunction.* In response to an action to enforce the standards set forth in §§ 63.11495 through 63.11499, you may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the notification requirements in paragraph (e)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design, or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount, and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected CMPU was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis must also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* If you seek to assert an affirmative defense, you must submit a written report to the Administrator, with all necessary supporting documentation, that you have met the requirements set forth in paragraph (e)(1) of this section. This affirmative defense report must be included in the first periodic compliance report,

deviation report, or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance report, deviation report, or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance report, deviation report, or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 11. Section 63.11502 is amended by:

■ a. In paragraph (a) adding in alphabetical order the terms ''Batch operation (§ 63.2550),'' ''Continuous operation (§ 63.2550),'' ''Control device (§ 63.111),'' and ''Isolated intermediate (§ 63.2550),'' and removing the term ''Family of materials (§ 63.2550)''; and

■ b. In paragraph (b) adding in alphabetical order definitions for ''Affirmative defense,'' ''Engineering assessment,'' ''Family of materials,'' ''Hazardous waste treatment,'' ''In VOC service,'' ''Point of determination,'' and ''Uncontrolled emissions,'' revising the second sentence of the definition of ''Batch process vent,'' revising paragraph (1) of the definition of ''Chemical manufacturing process,'' and revising the definitions for ''In metal HAP service,'' ''In organic HAP service,'' ''Metal HAP process vent,'' and ''Product'' to read as follows:

§ 63.11502 What definitions apply to this subpart?

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Batch process vent * * * Batch process vents include vents from batch operations and vents with intermittent flow from continuous operations that are not combined with any stream that originated as a continuous gas stream from the same continuous process. * * *

* * * * *

Chemical manufacturing process * * *

(1) All cleaning operations;

* * * * *

Engineering assessment means, but is not limited to, the following:

(1) Previous test results provided the tests are representative of current operating practices at the process unit.

(2) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(3) Maximum flow rate, TOC emission rate, organic HAP emission rate, metal HAP emission rate, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(4) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(i) Use of material balances based on process stoichiometry to estimate maximum organic HAP or metal HAP concentrations;

(ii) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities;

(iii) Estimation of TOC, organic HAP, or metal HAP concentrations based on saturation conditions; or

(iv) Estimation of maximum expected net heating value based on the vent stream concentration of each organic compound or, alternatively, as if all TOC in the vent stream were the compound with the highest heating value.

(5) All data, assumptions, and procedures used in the engineering assessment shall be documented.

* * * * *

Family of materials means a grouping of materials that have the same basic composition or the same basic end use or functionality; are produced using the same basic feedstocks, the same manufacturing equipment configuration and in the same sequence of steps; and whose production results in emissions of the same Table 1 HAP at approximately the same rate per pound of product produced. Examples of families of materials include multiple grades of same product or different variations of a product (e.g., blue, black and red resins).

* * * * *

Hazardous waste treatment, as used in the wastewater requirements, means treatment in any of the following units:

(1) A hazardous waste incinerator for which you have been issued a final permit under 40 CFR part 270 and comply with the requirements of 40 CFR part 264, subpart O, for which you have certified compliance with the interim status requirements of 40 CFR part 265, subpart O, or for which you have submitted a Notification of Compliance under 40 CFR 63.1207(j) and comply with the requirements of 40 CFR part 63, subpart EEE at all times (including times when non-hazardous waste is being burned);

(2) A process heater or boiler for which you have been issued a final permit under 40 CFR part 270 and comply with the requirements of 40 CFR part 266, subpart H, for which you have certified compliance with the interim status requirements of 40 CFR part 266, subpart H, or for which you have submitted a Notification of Compliance under 40 CFR 63.1207(j) and comply with the requirements of 40 CFR part 63, subpart EEE at all times (including times when non-hazardous waste is being burned); or

(3) An underground injection well for which you have been issued a final permit under 40 CFR part 270 or 40 CFR part 144 and comply with the requirements of 40 CFR part 122.

In metal HAP service means that a process vessel or piece of equipment either contains or contacts a feedstock, byproduct, or product that contains metal HAP. A process vessel is no longer in metal HAP service after the vessel has been emptied to the extent practicable (*i.e.,* a vessel with liquid left on process vessel walls or as bottom clingage, but not in pools, due to floor irregularity, is considered completely empty) and any cleaning has been completed.

In organic HAP service means that a process vessel or piece of equipment either contains or contacts a feedstock, byproduct, or product that contains an organic HAP, excluding any organic HAP used in manual cleaning activities. A process vessel is no longer in organic HAP service after the vessel has been emptied to the extent practicable (*i.e.,* a vessel with liquid left on process vessel walls or as bottom clingage, but not in pools, due to floor irregularity, is considered completely empty) and any cleaning has been completed.

In VOC service means that a process vessel or piece of equipment either contains or contacts a fluid that contains VOC.

* * * * *

Metal HAP process vent means the point of discharge to the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any CMPU at an affected source containing at least 50 ppmv metal HAP. The metal HAP concentration may be determined using any of the following: process knowledge, an engineering assessment, or test data.

* * * * *

Point of determination means ''point of determination'' as defined in § 63.111 in subpart G of this part, except:

(1) The reference to Table 8 or Table 9 compounds means Table 9 (subpart G) or Table 7 (subpart VVVVVV) compounds;

(2) The reference to ''as determined in § 63.144 of this subpart'' does not apply for the purposes of this subpart; and

(3) The point of determination is made at the point where the stream exits the CMPU. If a recovery device is used, the point of determination is after the last recovery device.

Product means a compound or chemical which is manufactured as the intended product of the CMPU. Products include co-products. By-products, impurities, wastes, and trace contaminants are not considered products.

* * * * *

Uncontrolled emissions means organic HAP process vent emissions or metal HAP process vent emissions, as applicable, at the outlet of the last recovery device, if any, and prior to any control device. In the absence of both recovery devices and control devices, uncontrolled emissions are the emissions discharged to the atmosphere.

* * * * *

■ 12. Table 3 to subpart VVVVVV of part 63 is revised to read as follows:

TABLE 3 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR CONTINUOUS PROCESS VENTS

[As required in § 63.11496, you must comply with the requirements for continuous process vents as shown in the following table]

For . . .	You must . . .	Except . . .
1. Each continuous process vent with a TRE ≤1.0.	a. Reduce emissions of total organic HAP by ≥95 percent by weight (≥85 percent by weight for periods of startup or shutdown) or to ≤20 ppmv by routing emissions through a closed vent system to any combination of control devices (except a flare) in accordance with the requirements of § 63.982(c) and the requirements referenced therein; or	i. Compliance may be based on either total organic HAP or TOC; and ii. As specified in § 63.11496(g).
	b. Reduce emissions of total organic by HAP by routing all emissions through a closed-vent system to a flare (except that a flare may not be used to control halogenated vent streams) in accordance with the requirements of § 63.982(b) and the requirements referenced therein, or	i. Not applicable.
	c. Comply with the alternative standard specified in § 63.2505 and the requirements referenced therein	i. As specified in § 63.11496(e).
2. Halogenated vent stream that is controlled through combustion.	a. Comply with the requirements for halogen scrubbers in § 63.11496(d).	
3. Each continuous process vent with a TRE >1.0 but ≤4.0.	a. Comply with the requirements of § 63.982(e) and the requirements specified therein if a recovery device, as defined in § 63.11502, is used to maintain a TRE >1.0 but ≤4.0.	

■ 13. The entry for Item 1 of Table 5 to subpart VVVVVV of part 63 is revised to read as follows:

* * * * *

TABLE 5 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR STORAGE TANKS

For each . . .	You must . . .	Except . . .
1. Storage tank with a design capacity ≥40,000 gallons, storing liquid that contains organic HAP listed in Table 1 to this subpart, and for which the maximum true vapor pressure (MTVP) of total organic HAP at the storage temperature is ≥5.2 kPa and <76.6 kPa..	a. Comply with the requirements of subpart WW of this part;	i. All required seals must be installed by the compliance date in § 63.11494.

TABLE 5 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR STORAGE TANKS—Continued

For each . . .	You must . . .	Except . . .
	b. Reduce total organic HAP emissions by ≥95 percent by weight by operating and maintaining a closed-vent system and control device (other than a flare) in accordance with § 63.982(c); or	i. Compliance may be based on either total organic HAP or TOC; ii. When the term storage vessel is used in subpart SS of this part, the term storage tank, surge control vessel, or bottoms receiver, as defined in § 63.11502 of this subpart, applies; and iii. The requirements do not apply during periods of planned routine maintenance of the control device, as specified in § 63.11497(b).
	c. Reduce total HAP emissions by operating and maintaining a closed-vent system and a flare in accordance with § 63.982(b); or	i. The requirements do not apply during periods of planned routine maintenance of the flare, as specified in § 63.11497(b); and ii. When the term storage vessel is used in subpart SS of this part, it means storage tank, surge control vessel, or bottoms receiver, as defined in § 63.11502 of this subpart.
	d. Vapor balance in accordance with § 63.2470(e); or	i. To comply with § 63.1253(f)(6)(i), the owner or operator of an offsite cleaning or reloading facility must comply with § 63.11494 and § 63.11502 instead of complying with § 63.1253(f)(7)(ii), except as specified in item 1.d.ii and 1.2.iii of this table. ii. The reporting requirements in § 63.11501 do not apply to the owner or operator of the offsite cleaning or reloading facility. iii. As an alternative to complying with the monitoring, recordkeeping, and reporting provisions in §§ 63.11494 through 63.11502, the owner or operator of an offsite cleaning or reloading facility may comply as specified in § 63.11500 with any other subpart of this part 63 which has monitoring, recordkeeping, and reporting provisions as specified in § 63.11500.
	e. Route emissions to a fuel gas system or process in accordance with the requirements in § 63.982(d) and the requirements referenced therein.	i. When the term storage vessel is used in subpart SS of this part, it means storage tank, surge control vessel, or bottoms receiver, as defined in § 63.11502.
* *	* * *	* *

* * * * *

■ 14. Table 6 to subpart VVVVVV of part 63 is revised to read as follows:

TABLE 6 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR WASTEWATER SYSTEMS

[As required in § 63.11498, you must comply with the requirements for wastewater systems as shown in the following table]

For each . . .	You must . . .	And you must . . .
1. Wastewater stream	a. Discharge to onsite or offsite wastewater treatment or hazardous waste treatment	i. Maintain records identifying each wastewater stream and documenting the type of treatment that it receives. Multiple wastewater streams with similar characteristics and from the same type of activity in a CMPU may be grouped together for recordkeeping purposes.

TABLE 6 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR WASTEWATER SYSTEMS—Continued

[As required in § 63.11498, you must comply with the requirements for wastewater systems as shown in the following table]

For each . . .	You must . . .	And you must . . .
2. Wastewater stream containing partially soluble HAP at a concentration ≥10,000 ppmw and separate organic and water phases.	a. Use a decanter, steam stripper, thin film evaporator, or distillation unit to separate the water phase from the organic phase(s); or	i. For the water phase, comply with the requirements in Item 1 of this table, and ii. For the organic phase(s), recycle to a process, use as fuel, or dispose as hazardous waste either onsite or offsite, and iii. Keep records of the wastewater streams subject to this requirement and the disposition of the organic phase(s).
	b. Hard pipe the entire wastewater stream to onsite treatment as a hazardous waste, or hard pipe the entire wastewater stream to a point of transfer to onsite or offsite hazardous waste treatment.	i. Keep records of the wastewater streams subject to this requirement and the disposition of the wastewater streams.

■ 15. Table 8 to subpart VVVVVV of part 63 is revised to read as follows:

TABLE 8 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR HEAT EXCHANGE SYSTEMS

[As required in § 63.11499, you must comply with the requirements for heat exchange systems as shown in the following table]

For . . .	You must . . .	Except . . .
1. Each heat exchange system with a cooling water flow rate ≥8,000 gal/min and not meeting one or more of the conditions in § 63.104(a).	a. Comply with the monitoring requirements in § 63.104(c), the leak repair requirements in § 63.104(d) and (e), and the recordkeeping and reporting requirements in § 63.104(f); or	i. The reference to monthly monitoring for the first 6 months in § 63.104(b)(1) and (c)(1)(iii) does not apply. Monitoring shall be no less frequent than quarterly; ii. The reference in § 63.104(f)(1) to record retention requirements in § 63.103(c)(1) does not apply. Records must be retained as specified in §§ 63.10(b)(1) and 63.11501(c); and iii. The reference in § 63.104(f)(2) to "the next semi-annual periodic report required by § 63.152(c)" means the next semi-annual compliance report required by § 63.11501(f).
	b. Comply with the heat exchange system requirements in § 63.104(b) and the requirements referenced therein.	i. Not applicable.

■ 16. Table 9 to subpart VVVVVV of part 63 is amended by:

■ a. Revising the entry for 63.6(e)(1)(i) and (ii), (e)(3), and (f)(1);

■ b. Removing the entry for 63.7(a)(2), (b), (d), (e)(1)–(e)(3);

■ c. Adding new entries for 63.7(a)(2), (b), (d), (e)(2)–(e)(3) and 63.7(e)(1);

■ d. Removing the entry for 63.8(a)(1), (a)(4), (b), (c)(1)–(c)(3), (f)(1)–(5);

■ e. Adding new entries for 63.8(a)(1), (a)(4), (b), (c)(1)(ii), (c)(2)–(c)(3), (f)(1)–(5), 63.8(c)(1)(i), and 63.8(c)(1)(iii);

■ f. Revising the entry for 63.8(c)(4);

■ g. Removing the entry for 63.8(c)(6)–(c)(8), (d), (e), (f)(6);

■ h. Adding new entries for 63.8(c)(6)–(c)(8), (d)(1)–(d)(2), (e), (f)(6) and 63.8(d)(3);

■ i. Revising the entry for 63.8(g)(5);

■ j. Adding a new entry for 63.9(i);

■ k. Removing the entry for 63.10(b)(2)(i)–(b)(2)(v);

■ l. Adding new entries for 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), and 63.10(b)(2)(iv) and (v);

■ m. Removing the entry for 63.10(c)(7)–(c)(8), (c)(10)–(c)(12), (c)(15);

■ n. Adding new entries for 63.10(c)(7)–(8), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12), and 63.10(c)(15); and

■ o. Revising the entry for 63.10(d)(5).

The additions and revisions read as follows:

TABLE 9 TO SUBPART VVVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVVV

Citation	Subject	Applies to subpart VVVVVV	Explanation
* *	* *	*	* * *
63.6(e)(1)(i) and (ii), (e)(3), and (f)(1).	SSM Requirements	No	See § 63.11495(d) for general duty requirement.
* *	* *	*	* * *
63.7(a)(2), (b), (d), (e)(2)–(e)(3)	Performance Testing Schedule, Notification of Performance Test, Performance Testing Facilities, and Conduct of Performance Tests.	Yes/No	Requirements apply if conducting test for metal HAP control; requirements in §§ 63.997(c)(1), (d), (e), and 63.999(a)(1) apply, as referenced in § 63.11496(g), if conducting test for organic HAP or hydrogen halide and halogen HAP control device.
63.7(e)(1)	Performance Testing	No	See § 63.11496(f)(3)(ii) if conducting a test for metal HAP emissions. See §§ 63.11496(g) and 63.997(e)(1) if conducting a test for continuous process vents or for hydrogen halide and halogen emissions. See §§ 63.11496(g) and 63.2460(c) if conducting a test for batch process vents.
63.8(a)(1), (a)(4), (b), (c)(1)(ii), (c)(2)–(c)(3), (f)(1)–(5).	Monitoring Requirements	Yes	
63.8(c)(1)(i)	General Duty to Minimize Emissions and CMS Operation.	No	
63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS.	No	
* *	* *	*	* * *
63.8(c)(4)		Yes	Only for CEMS. CPMS requirements in 40 CFR part 63, subpart SS are referenced from § 63.11496. Requirements for COMS do not apply because subpart VVVVVV does not require COMS.
* *	* *	*	* * *
63.8(c)(6)–(c)(8), (d)(1)–(d)(2), (e), (f)(6).		Yes	Requirements apply only if you use a continuous emission monitoring system (CEMS) to demonstrate compliance with the alternative standard in § 63.11496(e).
63.8(d)(3)	Written Procedures for CMS	Yes	Requirement applies except for last sentence, which refers to an SSM plan. SSM plans are not required.
* *	* *	*	* * *
63.8(g)(5)		No	Data reduction requirements for CEMS are specified in § 63.2450(j)(4), as referenced from § 63.11496. CPMS requirements are specified in 40 CFR part 63, subpart SS, as referenced from § 63.11496.
* *	* *	*	* * *
63.9(i)		Yes	
* *	* *	*	* * *
63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No	See § 63.11501(c)(8) for recordkeeping of occurrence and duration of each startup and shutdown for continuous process vents that are subpart to Table 3 to this subpart.
63.10(b)(2)(ii)	Recordkeeping of Malfunctions	No	See § 63.11501(c)(1)(vii) and (viii) for recordkeeping of (1) date, time, duration, and volume of excess emissions and (2) actions taken during malfunction.
63.10(b)(2)(iii)	Maintenance Records	Yes	
63.10(b)(2)(iv) and (v)	Actions Taken to Minimize Emissions During SSM.	No	

TABLE 9 TO SUBPART VVVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVVV—Continued

Citation	Subject	Applies to subpart VVVVVV	Explanation
* *	* *	*	* * *
63.10(c)(7)–(8)	Additional Recordkeeping Requirements for CMS—Identifying Exceedances and Excess Emissions.	Yes	
63.10(c)(10)	Recordkeeping Nature and Cause of Malfunctions.	No	See § 63.11501(c)(1)(vii) and (viii) for malfunctions recordkeeping requirements.
63.10(c)(11)	Recording Corrective Actions	No	See § 63.11501(c)(1)(vii) and (viii) for malfunctions recordkeeping requirements.
63.10(c)(12)		Yes	
63.10(c)(15)	Use of SSM Plan	No	
* *	* *	*	* * *
63.10(d)(5)	SSM Reports	No	See § 63.11501(d)(8) for reporting requirements for malfunctions.
* *	* *	*	* * *

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

Department of Labor

48 CFR Chapter 1

29 CFR Part 9

Federal Acquisition Regulations; Nondisplacement of Qualified Workers Under Service Contracts; Effective Date; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0080, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–64; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–64. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective date see separate document, which follows.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–64 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE IN FAC 2005–64

Subject	FAR case	Analyst
Nondisplacement of Qualified Workers Under Service Contracts.	2011–028	Loeb

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the document following the item summary. FAC 2005–64 amends the FAR as specified below:

Nondisplacement of Qualified Workers Under Service Contracts (FAR Case 2011–028)

This final rule adds subpart 22.12, entitled ''Nondisplacement of Qualified Workers Under Service Contracts,'' and a related contract clause, to the FAR. The new subpart implements Executive Order 13495 and Department of Labor implementing regulations at 29 CFR part 9. The final rule applies to service contracts for performance by service employees of the same or similar work at the same location. It requires service contractors and their subcontractors under successor contracts to offer service employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

Dated: December 14, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–64 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–64 is effective January 18, 2013.

Dated: December 12, 2012.

Richard Ginman

Deputy Director, Defense Procurement and Acquisition Policy.

Dated: December 14, 2012.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: December 13, 2012.

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Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 22, and 52

[FAC 2005–64; FAR Case 2011–028; Docket 2011–028; Sequence 1]

RIN 9000–AM21

Federal Acquisition Regulation; Nondisplacement of Qualified Workers Under Service Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement an Executive order for nondisplacement of qualified workers under service contracts, as implemented in Department of Labor regulations.

DATES: *Effective Date:* January 18, 2013.

Applicability Date: This final rule is applicable to solicitations issued on or after the effective date.

Contracting officers are expected to work with their existing service contractors and bilaterally modify their contracts, to the extent feasible, to include the clause at FAR 52.222–17. As an alternative, contracting officers should consider entering into bilateral modifications with existing service contractors to agree to perform paragraph (c) of the clause at FAR 52.222–17, which: (1) Informs the existing predecessor contractor's workforce of their right of first refusal; and (2) provides the list of service employees to the contracting officer no less than 30 days before contract completion. Contracting officers shall document the contract files of their existing service contracts to describe the steps that were taken.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–64, FAR Case 2011–028.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 77 FR 26232 on May 3, 2012, to implement Executive Order (E.O.) 13495, Nondisplacement of Qualified Workers Under Service Contracts, dated January 30, 2009, published at 74 FR 6103 on February 4, 2009, and the Department of Labor (DOL) regulations at 29 CFR part 9. This final rule amends the FAR to add subpart 22.12 and a new clause at FAR 52.222–17, providing the policy of the Federal Government, as expressed in E.O. 13495, to require service contractors and their subcontractors under successor contracts to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified. Twenty seven respondents submitted comments on the proposed rule.

On January 4, 2011, Public Law 111–350 enacted a new codified version of Title 41 United States Code (U.S.C.), entitled ''Public Contracts.'' The CAAC and DARC published a proposed rule on September 18, 2012, at 77 FR 57950 to update all references to Title 41 in the FAR to conform to the positive law codification. As part of these changes, the proposed rule would replace the term ''Service Contract Act'' with the term ''Service Contract Labor Standards statute'' (SCLS statute). If this change is adopted through that rulemaking, similar conforming changes in the use of terms will be made in the text to this final rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the proposed rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

- Revised FAR 22.1200, Scope of subpart, to make it clear that the DOL regulations (29 CFR part 9) implementing E.O. 13495 are applicable.
- Revised the policy, FAR 22.1202, to clarify the applicability of the subpart.
- Revised FAR 22.1203–3, Waiver, to require the approval of waivers by the agency Senior Procurement Executive, without power of redelegation.
- Added three subsections to FAR 22.1203 to address ''Method of job offer,'' ''Exceptions,'' and ''Reduced staffing.''
- Added cross-references throughout FAR subpart 22.12 to the applicable section of the DOL implementing regulations.
- For clarity, a definition of ''service employee'' was added, and the term ''service employee'' is used throughout the rule.

B. Analysis of Public Comments

1. General Comments

Comments: Two respondents expressed support for the proposed rule and the underlying policy concerns it addresses, including minimizing the risk of disruption of services during transition between predecessor and successor contractors and efficiency through the employment of trained employees.

Response: Although no response is required, the FAR Council appreciates all comments.

Comments: A respondent questioned the need for this rule, stating that most contractors try to hire incumbents where it makes sense. This respondent also expressed concern that the proposed rule would interfere with the employer/employee relationship and convert covered contracts to personal services contracts.

Response: In accordance with E.O. 13495 section 6(b), the Federal Acquisition Regulatory Council (FAR Council) is required to issue regulations implementing the E.O. Based upon the statement that most contractors try to hire incumbents, it does not appear that this rule will disrupt current hiring practices. Regarding the concern that this rule will interfere with the employer/employee relationship and convert covered service contracts to personal services contracts, nothing in this rule establishes an employer/employee relationship between the Government and a contractor's employees.

2. Out-of-Scope Comments

Comments: A respondent stated that evaluation criteria must focus on transition plans instead of staffing plans. Another respondent stated the belief that E.O. 13495 was short-sighted and that the Federal Government should not require the successor to hire predecessor contractor employees. The same respondent also stated that there are risks as well as rewards in hiring and training a workforce when competing for contracts. Another respondent questioned why the Government has no faith in open market efficiencies and why it is willing to exchange poor performance on contracts to provide longtime employment for poor job performers. Another respondent stated that the nondisplacement rule conflicts with the Service Contract Act (SCA) statute because the SCA does not authorize the FAR Council, the DOL, or the President to require successor contractors to hire predecessor contractor employees who are covered by the SCA. The same respondent stated that the rule does not provide evidence that its implementation will result in greater efficiencies in Federal procurement. This respondent felt that, because the rule conflicts with the SCA, it must be withdrawn in its entirety. One respondent expressed concern that, by requiring the successor contractor to hire the predecessor contractor's employees, the contracting officer would be dictating how contractors staff their contracts.

Response: The purpose of this rule is to implement E.O. 13495, Nondisplacement of Qualified Workers Under Service Contracts and the DOL implementing regulations. Issues relating to the scope or coverage of either the E.O. or the DOL implementing regulations are outside the scope of this final rule.

Comments: One respondent asked the purpose of the rule. The respondent stated it would be more costly for successor contractors to train an entire workforce. The respondent asked whether the rule was intended to unionize everyone.

Response: The preamble of E.O. 13495 states that a carryover workforce ''provides the Federal Government the benefits of an experienced and trained work force.'' In cases where the agency believes that extensive training would be needed to learn new technology or processes that would not be required of a new workforce, the agency could consider waiving FAR subpart 22.12. (See 29 CFR 9.4(d)(4)(ii)(A)).

Comments: One respondent indicated that this rule would seem to favor time-and-material contracting instead of fixed-price contracting. The respondent indicates that in order to be most beneficial to the Government, vendors would need the ability to be creative and structure the approach in such a way that is flexible for technology changes and allows the vendor the best way to accomplish the objectives.

Response: The respondent's comment is outside the scope of this case. Nothing in this rule addresses or limits the type of contract to be used for service contracts.

Comments: A respondent recommended that the Councils consider possible privacy and liability implications.

Response: This comment is outside the scope of the FAR rule, as the FAR final rule is implementing the requirements of the E.O. and the DOL implementing regulations at 29 CFR part 9, which would have considered this issue (see 76 FR 53720 at 53731–53732).

3. Applicability

Comments: A respondent asked whether this rule will apply only to contracts covered by the SCA and whether professional services will be exempted. Another respondent stated that the proposed rule posed serious issues in contracting for information technology functions because of the need to be responsive to rapid changes in technology and opportunities for cost savings. A third respondent asked whether the rule would apply to competed task orders or to service contracts performed outside the United States.

Response: There appears to be a broad misunderstanding of the types of work that are exempt from the SCA. Professional services (including professional services for information technology) are exempt from applicability of FAR subpart 22.12 for the reasons that follow. Section 2 of E.O. 13495 defines ''employee'' to mean a ''service employee'' as defined in the SCA. The definition of ''service employee'' at 41 U.S.C. 6701(3) provides, in part, that it ''does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations.'' The regulation referenced, 29 CFR 541, entitled ''Defining and Delimiting the Exemptions for Executive Administrative, Professional, Computer, and Outside Sales Employees,'' refers to ''exempt professionals'' as those whose primary duty is the ''performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor'' (29 CFR 541.3(b)(4)).

FAR 22.1003–5, entitled ''Some examples of contracts covered,'' sets forth examples. One example of a contract covered by the SCA, at FAR 22.1003–5(k), is ''maintenance and repair of all types of equipment, for example, electronic, office, and related business and construction equipment.'' The definition of ''service employee'' addresses this concept. Therefore, FAR 22.001, in the proposed rule, moved the definition of ''service employee'' from 22.1001 to 22.001 so that it would apply to this rule.

The SCA applies to service contracts over $2,500, the principal purpose of which is to furnish services in the United States through the use of service employees. FAR subpart 22.10, entitled ''Service Contract Act of 1965, as amended,'' defines the term ''Act or Service Contract Act''. The definition of ''Service contract'' is moved to FAR 22.001. Paragraph (c)(1)(ii) of the clause at FAR 52.222–17 does not give a right of first refusal to ''any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3).''

The term ''United States,'' for purposes of the implementation of E.O. 13495, is defined at FAR 22.1201. The rule does not apply to service contracts that are performed entirely outside the United States.

If the clause is in the basic contract, then the clause applies to task orders issued under the contract to which the SCA applies. The exemptions to the SCA are listed at FAR 22.1003–3.

Comments: One respondent indicated that the FAR rule did not incorporate many of the provisions in the DOL rule. The respondent also indicated that the FAR rule differs from the DOL rule in many ways but fails to provide clear guidance as to the extent to which both sets of rules may be applicable. The respondent indicated that, for each provision in the DOL rule that is neither repeated nor cross-referenced, the FAR final rule should expressly state that the proposed rule does not incorporate the relevant DOL provision so contractors have clear direction on their obligations.

Response: The final rule has been revised to include guidance incorporating the DOL rule and adding cross-references throughout the FAR coverage where appropriate. The FAR and the DOL rule are consistent, and the changes noted above should eliminate any questions.

Comments: A respondent expressed a concern that the rule would hinder competition because it would be difficult for competitors to get commitments from individuals to fill key personnel positions when they can be displaced by the incumbent personnel. This concern was echoed by another respondent, who felt that, if the Government were to require key staff resumes, then, the Government would also have to provide information regarding the key incumbent personnel the Government expects the successor contractor to hire. Other respondents stated that the rule will create disincentives for a firm to compete on a competitive project because the firm will not be able to employ its own staff and/or will have to make the case for not retaining incumbent staff.

Response: If the key person position is covered by the SCA, then a qualified employee of the predecessor contractor must be given the right of first refusal.

With regard to decreased competition, this rule could be one factor for a contractor to consider when deciding whether to participate in the Government market. The rule is unlikely to have a significant effect on competition.

Comments: A respondent stated that the solicitation must provide direct labor information (salaries and benefits) for every labor category; otherwise, the respondent felt, the incumbent (predecessor) contractor would have an unfair competitive advantage. Another respondent expressed a similar concern: Given that ''only the incumbent contractor knows the qualifications and realistic costs of the affected personnel, how can any other offeror submit an adequate bid and the Government perform a realistic analysis of the bid when a portion of the proposal cannot be accurately determined until after contract award?'' This respondent was concerned that the right of first refusal would jeopardize a potential offeror's ingenuity in proposing a technical approach or solution based on limitations of the existing workforce. Further, a third respondent believed that offerors might tailor their personnel requirements to what was currently being done under the incumbent contract instead of proposing a more efficient solution. Another respondent expressed concern that the rule would limit offerors' ability to craft innovative solutions to Government requirements.

Response: Under the SCA, the successor contractor must pay the wage rates and fringe benefits found by the DOL to prevail in the locality, unless the predecessor contractor is operating under a collective bargaining agreement. In the latter case, the successor contractor must pay wages and fringe benefits specified in the collective bargaining agreement (see FAR 22.1002 and 29 CFR 4.53), which would be an attachment to the solicitation.

Each offeror must propose an efficient method of performing the required work as that offeror understands the statement of work. The proposed rule made clear, at paragraph (b) of the clause at FAR 52.222–17, that the predecessor employees are offered a right of first refusal only for positions for which they are qualified; and the successor contractor and its subcontractors may employ fewer employees than did the predecessor contractor. The rule does not limit the technical solutions that may be proposed to meet Government requirements. It only implements the requirement to provide a right of first refusal to service contract employees of predecessor contractors in accordance with the regulations promulgated in this final rule and the DOL regulations set forth at 29 CFR part 9.

Comments: A respondent stated that the ''same location'' limitation on applicability of FAR subpart 22.12 was not clear. The respondent asked whether it meant the same building, base, city, county, command, or something else. The respondent noted that many indefinite delivery/indefinite quantity contracts require services in a wide geographic area and questioned whether, in the Washington, DC, area,

services to be performed at Fort Myer or the Navy Yard would be considered the same location.

Response: Chapter 67, entitled ''Service Contract Labor Standards,'' of Title 41, United States Code, does not define ''same location.'' As a general matter, what constitutes the ''same location'' in this context will depend upon the geographic area in which performance under the predecessor and successor contracts occur. The determination of whether the predecessor and successor contract involve services at the ''same location'' may be resolved by reference to what the statement of work, or any similar contract provision (such as a statement of objectives) specified.

Comments: One respondent asked how ''similar'' will be defined in ''same or similar'' services. Another respondent asked how much variation in locations of performance would be permissible while claiming that a successor contract was for the same or similar job.

Response: 29 CFR 9.2 defines ''same or similar service'' to mean ''a service that is either identical to or has one or more characteristics that are alike in substance to a service performed at the same location on a contract that is being replaced by the Federal Government or a contractor on a Federal service contract.''

Comments: A respondent noted that the proposed rule is silent on part-time or shared positions and asked whether such individuals must receive a bona fide offer of full time employment, given that they may be qualified to perform many other jobs.

Response: The DOL notes that ''the Fair Labor Standards Act * * * does not define part-time or full-time employment; rather, this is generally a matter of agreement between the employer and the employee.'' (See *www.dol.gov/dol/topic/workhours/full-time.htm*). This is addressed at paragraph (a)(2) of 29 CFR 4.165, which states that the SCA ''makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions.'' Therefore, the FAR does not provide an alternate definition of the term. If an individual is employed part-time by a predecessor, then the successor contractor must give that individual a right of first refusal. However, if the successor contractor needs that position to be full-time or part-time, the contractor can make that a requirement for hiring.

Comments: A respondent noted that the DOL regulations expressly acknowledge that an offer by a successor contractor that contains different terms and conditions of employment is considered a bona fide offer and stated that no such provision was included in the proposed FAR rule.

Response: The final rule adds a subsection to FAR 22.1203–4 entitled ''Method of job offer.'' This subsection includes the elements required for a job offer to be considered ''bona fide.''

Comments: A respondent suggested that the final rule would benefit if it provided additional guidance for contracting officers and contractors to better define when the rule is applicable. The respondent proposed the addition of some examples to assist interpretation of its applicability. Another respondent echoed the same comment.

Response: Examples of the applicability of the SCA are included at FAR 22.1003–5, ''Some examples of contracts covered.'' In addition, a specific reference to the DOL final rule (29 CFR part 9) is added at FAR 22.1200, Scope of Subpart, and cross-references have been added where appropriate throughout the final rule.

Comments: A respondent stated that the proposed rule imposed such significant changes in business practices for both predecessor and successor contractors that the rule should be applied only to new contracts that are first solicited after the effective date of the FAR rule and DOL's rule. The respondent stated that this would be appropriate for two reasons: (1) The FAR rule does not provide for agencies' waiving nondisplacement requirements for existing contracts; and (2) contractors with existing contracts should not be required to prepare for the imposition of the requirements in the middle of contract performance at some unknown future date. Yet, a second respondent stated that the final rule must ensure that no service contractor ''be permitted to not give employees notice of their right to continued employment with the successor contractor.''

Response: The preamble to this final rule includes a section entitled ''Applicability,'' which invokes the standard applicability rules at FAR 1.108(d). The rule will not be applied retroactively unless there is a bilateral modification to the contract with consideration. In addition, this section of the preamble provides that contracting officers are expected to work with their existing service contractors and bilaterally modify their contracts, to the extent feasible to ensure that successor contractors under new solicitations will receive the required written notice and ensure contracting officers (and, hence, successor contractors) receive the employee list in sufficient time to ensure continuity of service. Specifically, under this rule, the predecessor contractor must provide a notice 30 days before the end of the contract. However, predecessor contractors performing at Federal facilities will already be operating under the existing notification clause set forth at FAR 52.222–41(n), under the SCA, which only requires a 10-day notice. While some have recommended that the rule be relaxed during the interim period, DOL explained in the preamble to its final rule that waiving the predecessor employees' right of first refusal of employment is not consistent with the E.O., and DOL is not authorized under the E.O. to provide such relief in any event.

Comments: A respondent was concerned that the FAR rule creates a protest risk by the predecessor contractor, as it may not want its employees to work for its competitor.

Response: For existing contracts, the predecessor contractor is required by paragraph (n) of the clause at FAR 52.222–41, Service Contract Act of 1965, to provide to the contracting officer a certified list, not less than 10 days prior to completion of any contract at a Federal facility, of the names of all service employees on the contractor's or its subcontractors' payroll during the last month of contract performance. This list must contain the anniversary dates of employment on the contract. This final rule requires, at paragraph (d)(1) of the clause at FAR 52.222–17, for the contractor to furnish the list, including anniversary dates, not less than 30 days prior to completion of performance under the predecessor contract. Furnishing the list is a contractual requirement for predecessor contractors, and the rules for the successor contractor to make job offers are similarly included in the contract. Therefore, there is little or no risk of a non-frivolous protest.

4. Exemptions and HUBZone Considerations

Comments: Three comments were received concerning the policy statement and clause relating to the interaction of E.O. 13495 and other E.O.s or laws, such as the HUBZone provisions of the Small Business Act. One respondent stated that the rule did not consider the effect of E.O. 13495 on HUBZone small business concerns and

the ability to meet the HUBZone program's residency requirements, while another respondent wanted to emphasize the importance of excluding HUBZone small businesses from this rule. A third respondent thought that the rule should incorporate express guidance on how to comply with the nondisplacement obligations, while at the same time complying with a potentially conflicting law. This respondent believed the rule should incorporate an example into the rule, such as the one set forth in the preamble of the DOL regulation for HUBZone small business concerns.

Response: The proposed rule considered the effect E.O. 13495 may have on HUBZone small business concerns. Specifically, the rule set forth a policy statement and a paragraph in the contract clause, which state that nothing in E.O. 13495 can be construed to permit a contractor or subcontractor to fail to comply with any provision of other E.O. or law. This would include a HUBZone small business concern's compliance with the HUBZone provisions of the Small Business Act and any contractor's or subcontractor's compliance with E.O. 11246 (Equal Employment Opportunity) or the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Therefore, HUBZone small business concerns are not exempt from the E.O.; instead, the policy statement and clause explain that HUBZone small business concerns must try to meet the E.O.'s requirements in tandem with the HUBZone program's requirements. (See 76 FR 53720 at page 53723).

Comments: One respondent stated that it was pleased the rule excluded service contracts and subcontracts awarded through the AbilityOne Program, which is administered by The Committee for Purchase From People Who Are Blind or Severely Disabled.

Response: Noted.

5. Predecessor's List of Qualified Employees

Comments: One respondent requested clarification for situations where the predecessor contract is split into more than one follow-on contract action. In this case, the respondent questioned whether the incumbent (predecessor) contractor would provide the agency only one list of covered employees or would be required to provide a list of covered employees for each of the follow-on contract actions.

Response: As stated in FAR 22.1204(a), the predecessor contractor is required to furnish the contracting officer a list of all service employees under the predecessor contract and its subcontracts. In FAR 22.1204(b), the contracting officer is responsible for providing the list to the successor contractor. In the respondent's scenario, where there is more than one successor contractor, then the contracting officer, not the predecessor contractor, would be responsible for providing the list to the successor contractors. Without regard to the number of successor contracts, there is no obligation for all of the predecessor's employees to get a job offer if the number of job openings on the successor contract(s) is lower than the number of qualified predecessor employees. However, if an employee of the predecessor contractor thinks that he/she has not been offered a job and should have been offered a job, the employee may file a complaint with the Wage and Hour Division of the DOL within 120 days of the first date of contract performance (see 29 CFR 9.21).

Comments: One respondent noted that FAR 52.222–41(n) requires the contractor to submit a list of the names of all service employees and their anniversary dates of employment and that the proposed change at FAR 22.1204 requires no additional information. The respondent asked how the successor contractor would be able to contact these employees to offer employment when there is no information on how to contact the employees, what jobs these individuals held or were qualified for, or the individual's qualifications or work experience.

Response: The lists are not required to include contact information. The DOL rule (29 CFR part 9) did not add a requirement for the predecessor contractor to provide contact information, and, if the predecessor contractor does not voluntarily provide contact information, then the successor contractor will still be required to reach out to those employees (see 29 CFR 9.12(a)(2) and 76 FR 53720 at 53734) (*e.g.,* posting notices of job fairs or holding a session with current employees).

Comments: One respondent recommended sanctions against predecessor contractors that do not submit the certified list of employees within the required timeframe. Specifically, the respondent recommended the final rule include language allowing contracting officers to submit a negative performance review in the Federal Awardee Performance Integrity Information System (FAPIIS) or the Contractor Performance Assessment Reporting System (CPARS).

Response: FAPIIS is intended to track information regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; it is not appropriate for information regarding failure to meet a contract requirement. CPARS is the appropriate venue for contractor performance information. While contracting officers may choose to note the predecessor contractor's failure to provide the required list in a timely manner in CPARS, it is not necessary to remind contracting officers of each circumstance where non-performance may be reported in CPARS. FAR 22.1206(c) provides that the Government may suspend contract payments until the list is provided.

Comments: A respondent suggested that the successor contractor should be required to offer employment to predecessor contractor employees who have worked on the predecessor contract for at least six months.

Response: The DOL examined this same comment prior to publishing its final rule and stated that ''the Department does not agree that * * * predecessor contractors will be encouraged to 'dump' unsuitable employees onto expiring contracts.'' Lengthening the period of employment with the predecessor contractor would not address the concern that the predecessor contractor may retain some of its most qualified workforce (76 FR 53720 at page 53738).

Comments: One respondent stated it is unclear in FAR 52.222–17(d)(2) and (e)(2) who is responsible for providing the predecessor contractor's list of employees to ''employees and their representatives.''

Response: FAR 52.222–17(d)(2) and (e)(2) are revised in the final rule to match FAR 22.1204(b) and read as follows: ''(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.''

Comments: Two respondents requested clarification with respect to the timing of required notices when the successor contractor will begin performance before the predecessor's contract ends, *e.g.,* when there is a phase-in period.

Response: The timing of the lists is mandated by the DOL and implemented at FAR 52.222–41(n) and the final rule at FAR 52.222–17(d)(1).

Comments: One respondent reiterated the requirement to submit an updated list ''not less than 10 days before completion of services on the

contractor'' and stated that this timeframe is inadequate for the successor contractors to inform, interview, and evaluate displaced workers prior to commencement of the contract. Another respondent asked that the rule be amended to require the incumbent (predecessor) contractor to identify its qualified service employees earlier in the procurement process. A third respondent requested that, when there is a protest of the successor contract, then an additional time period should be added to FAR 22.1204(b) to ensure that no potential source selection sensitive data is released prior to clearing all potential protest periods.

Response: Under the final rule, the ten-day notification will apply only in cases where the predecessor contractor has assigned employees to, or removed employees from, the contract after the 30-day notice has been submitted to the contracting officer. The predecessor contractor is not precluded from providing a list prior to the 30-day requirement in the final rule. The contract clause requires that the predecessor contractor must provide the list not less than 30 days prior to the end of contract performance. The DOL rule does not provide for additional time to provide the list for any reason.

Comments: One respondent asked how the contracting officer will know if the predecessor contractor is actually terminating the employment of the listed employees when the contract ends. In some cases, these employees may move to another job with the same contractor.

Response: As stated at 29 CFR 9.12(c), the successor contractor is required to presume that all employees hired to work on the predecessor contract: (1) Will be terminated, (2) are service employees, and (3) performed suitable work under the contract. Once contacted by the successor contractor, employees on the list are free to accept or decline the offer of employment.

6. Predecessor's Written Notice to Employees

Comments: A respondent asked how Government contracting officers can enforce the requirement for the predecessor contractor to provide written notice to its employees of their possible right to an offer of employment with the successor contractor when there is no longer any contractual agreement between the predecessor contractor and the Government.

Response: Contracting officers may document the predecessor contractor's failure to provide the required notice to employees as an issue in a past performance evaluation. Completed past performance evaluations are made available to source selection officials evaluating offers for new contract awards. In addition, the contracting officer may suspend payments to the contractor until it complies with all contractual requirements. Further, in the case of willful or aggravated violations, then the contracting officer may refer the contractor to DOL or to the agency suspension and debarment official.

7. Which Employees Are Qualified

Comments: Several respondents asked how the successor contractor could determine all the positions that the current employee was qualified to perform. The seniority list only provides very limited information.

Response: The FAR and the DOL rule allow the contractor to ask for information about employee qualifications. See 29 CFR 9.12(b)(4), which requires a successor contractor to base its decision regarding an employee's qualifications on credible information provided by a knowledgeable source such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. If the issue is unsuitable performance by a particular employee, the credible information must be in writing (29 CFR 9.12(c)(4)(ii)(A)). In its final rule preamble, the DOL explained that it would not require the list of employees to identify the relevant labor category, job duties, and current contact information, as the employee list is already a requirement of Federal service contractors under the SCA (see 76 FR 53720 at page 53739).

Comments: One respondent asked how the determination was to be made of which employees were qualified. According to the respondent, it was unclear whether this was to be determined by the predecessor contractor or, instead, anyone employed in the position during the last month of the contract was qualified.

Response: The FAR proposed rule preamble incorrectly referred to the list of employees as a list of qualified employees (see 77 FR 26234 in section E). The predecessor contractor does not determine whether the employee is qualified when the predecessor contractor makes the list. The successor contractor determines to which employees it will offer employment, based on the rule's requirements.

Comments: The proposed rule, at FAR 22.1202(a), stated that employees have a right of refusal for positions for which he/she is qualified. A respondent asked how the successor contractor should determine who has priority for that position, *e.g.,* should this be done by seniority, where the most senior employee would have first choice of every position until accepting one, or should the more qualified employee be given the first choice. The respondent wanted to know if it would matter if the successor contractor was unionized.

Response: Executive Order 13495 does not mention seniority as a factor in offering a right of first refusal to employment. Therefore, the successor contractor will determine the order in which employees will be offered employment. Regardless of whether the successor contractor is unionized, the successor contractor determines which employees will be offered employment.

Comments: A respondent stated that offerors would have a hard time preparing a proposal because they would not know the expected salaries for the incumbent (predecessor) contractor's employees.

Response: This rule only concerns service employees covered by the SCA. Employees covered by the SCA would receive at least the minimum wage rates and fringe benefits required by the SCA procedures, based on prevailing rates or based on a collective bargaining agreement. (See FAR 22.1002). The SCA does not cover managerial, supervisory, or professional employees.

8. Poor Performance of Predecessor Employees

Comments: One respondent (6) stated that existing workers may be slow or resistant to adopt changes that the incoming contractor may feel are necessary to meet goals. Another respondent noted that, if a new contractor is brought on because of poor performance of the predecessor contractor, and that performance is due more to the contractor's personnel in place rather than the management, the Government would be perpetuating the problem rather than solving it. Several respondents remarked that the incumbent (predecessor) contractor would keep its best employees and leave the worst ones for the incoming contractor; this would affect the incoming contractor's ability to do the work, disrupting the work, and injuring the contractor's reputation. Another respondent asked for additional flexibility to review qualifications of incumbent personnel when the predecessor contract was terminated for cause or default.

Response: DOL did not agree that predecessor contractors will be encouraged to place unsuitable employees onto expiring contracts, and would retain its most qualified

workforce. DOL noted that employees not being retained would likely have more experience with the contract and contracting agency than new hires recruited by the successor contractor for the purpose of filling the contract requirements. (See 76 FR 53720 at page 53738). The successor contractor must extend offers to those service employees whose employment will be terminated; for those employees whose employment would not be terminated, the successor contractor may extend offers to them. DOL recognized that some predecessor contracts would be terminated for poor performance, but made clear that successor contractors were not to assume that this was the fault of the service employees rather than management; no extra time was given for review under this circumstance. An agency may waive subpart 22.12 application if the agency determines that performance problems on the predecessor contract are not just due to the management but the entire predecessor workforce failing individually, as well as collectively, and that it is not in the interest of economy and efficiency to provide supplemental training to the predecessor's workers. (See 29 CFR 9.4(d)(4)(ii)(C)).

Comments: A respondent was concerned that the successor contractor would be unable to obtain information about the poor performance of a particular worker, and therefore would hire that poor performer. The contractor is required to presume that all employees working under the predecessor contract in the last month of performance performed suitable work on the contract. Neither the FAR Council's rule nor DOL's rule requires a predecessor contractor to provide performance information for predecessor employees. The respondent stated that the potential lack of information about these workers' past performance and the limited time in which to vet them deprives the successor contractor of appropriate tools to determine whether the predecessor employee failed to perform suitably. Another respondent commented that relying on the predecessor contractor or the Government to furnish past performance information on individual employees would be problematic.

Response: The respondent is correct about the presumption and also correct that the predecessor contractor is not required to provide performance information. The emphasis of the E.O. is not on screening out predecessor employees, but on hiring them. Any evidence of poor performance by a particular employee needs to be credible information provided in writing by a knowledgeable source, such as the predecessor contractor and its subcontractors, the local supervisor, the employee, or the contracting agency. (See 29 CFR 9.12(c)(4)).

Comments: Several respondents asked about predecessor employees who perform poorly under the new contract. The respondents asked if the successor contractor would have the right to fire them. The respondents also asked whether the Government would assume the responsibility and/or risk for that poor performance or for performance that is lesser quality than the contractor could have provided with its own staff.

Response: The Government expects the successor contractor to manage its employees, including the predecessor's former employees who have been hired. If the contractor terminates an employee under circumstances suggesting the offer of employment may not be bona fide, the facts and circumstances of the offer and the termination will be closely examined during any compliance action to ensure the offer was bona fide. (See 29 CFR 9.12(b)(6)). The successor contractor bears the responsibility for claiming an exception to the requirement to offer employment to any employee who had worked for the predecessor contractor (see FAR 22.1203–5). The successor contractor is expected to comply with the business ethics requirements of FAR subpart 3.10 and the relevant clauses in the contract.

Comments: Several respondents asked about a successor contractor having different standards. If a successor contractor had a better qualified employee with proven capabilities, could the successor contractor keep and promote the employee after award of the contract, rather than replacing the employee with an incumbent employee. The respondents asked what would happen if the successor contractor proposed a solution using its own employees who were more qualified, or less costly, than the predecessor contractor's employees. The respondents also asked what would happen if the successor contractor has a different level of acceptable conduct and performance.

Response: Paragraph (c)(1)(i) of FAR clause 52.222–17 allows the successor contractor to keep its own employees who would otherwise be facing lay-off or discharge, if the employee had worked for the successor contractor for at least three months before the commencement of the new contract. The purpose of the E.O. and the DOL rule, as well as the FAR rule, is to give a right of first refusal to qualified predecessor contract employees who would otherwise be terminated. The successor contractor's belief that it can supply employees which it believes are better qualified or less costly is not the issue here. For example, the successor contractor could not determine that otherwise-qualified service employees are not qualified to perform the same or similar services on a successor contract because they lack a college degree. (See 76 FR 53720 at page 53736). The issue of an otherwise qualified employee being less qualified is different from the issue of an employee being unqualified or exhibiting unacceptable conduct or performance.

Comments: One respondent expressed concern that the process could result in denying the Government the discretion to select a new service provider when the predecessor's employees were qualified but lacking in performance. The respondent added that the process will allow successor contractors and subcontractors to manipulate the system by submitting a bid using employees that the successor contractor has no intention of hiring and then, after award, replacing them with employees of the predecessor contractor who are poor performers.

Response: Under the E.O., this rule, and 29 CFR part 9, the successor contractor is not required to offer a right of first refusal to any employee(s) whom it reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. Additionally, the hypothetical workforce manipulation mentioned is unlikely to pose a problem, given that both the contracting agency and the successor contractor are aware of the rules on right-of-first refusal and the successor contractor clearly is responsible for the quality of its performance. The fact that the successor contractor has hired employees of the predecessor contractor does not absolve the former from the required level of performance.

9. Successor Efficiencies Require Fewer Employees

Comments: A question was posed regarding whether a reduction in staffing by the successor contractor due to efficiencies required a waiver.

Response: No waiver is required (FAR 22.1203–3) when the successor contractor employs fewer employees than the predecessor contractor due to efficiencies. The proposed rule is modified to include an additional provision addressing this issue: FAR 22.1203–6, entitled ''Reduced staffing.''

Comments: Another respondent noted that the proposed rule did not include guidance in determining which of the predecessor contractor employees to

extend offers of employment when the successor contractor's solution results in reduced staffing. It was suggested that the final FAR rule include a provision similar to the DOL's regulation at 29 CFR 9.12(d)(2) that allows the successor contractor to determine which of the predecessor contractor employees are provided offers of employment.

Response: Because this rule implements both E.O. 13495 and the DOL's regulations at 29 CFR part 9, the guidance at 29 CFR 9.12(d)(2) should be followed. The service anniversary (''seniority'') date is not meant to imply that the successor contractor must offer positions according to seniority.

10. Successor Hiring Process

Comments: Three respondents commented about the requirement for the offer to an employee to remain open for 10 days. This will potentially create a very long period to fill many positions when all the combinations and permutations are considered. If the prospective employee declines employment, it is possible that the successor contractor will be unable to find a suitable replacement on such short notice. Indeed, under the proposed rule, it is conceivable that a successor contractor may not have its workforce in place for months.

Response: The contracting agency will be aware of these issues and should plan for such contingencies because compliance with E.O. 13495 and 29 CFR part 9 is mandatory, not optional.

Comments: One respondent asked either for the list to be provided with the release of the solicitation or for an equitable adjustment for the increased costs.

Response: E.O. 13495 cited FAR 52.222–41(n) and the requirement to provide the certified list of employees no less than 10 days before the end of performance on the predecessor contract. Using its authority as Executive implementing agency for E.O. 13495, DOL extended that time period to no less than 30 days prior to completion of performance on the predecessor contract. The FAR does not further extend that amount of time.

Comments: Three respondents were concerned with the prohibition in the DOL final rule at 29 CFR 9.12(b)(1) against screening employees prior to hire unless dictated by the agency or the terms of the contract. Many contractors have implemented Human Resources and recruiting systems that entail robust screening of all applicants with respect to their educational background and work history, drug use, and other factors that could impact work performance, particularly with respect to job duties that entail access to sensitive or proprietary government or contractor information. Requiring contractors to develop a separate system of policies and modified hiring and screening processes for follow-on service employees is burdensome, costly, and disruptive to many companies' existing practices. Many contractors use the pre-employment drug testing program to demonstrate compliance with the Drug Free Workplace Act of 1988 and implementing FAR regulations. Background checks are one of several tools that responsible employers use to ensure that trustworthy employees are assigned to perform Government contracts, for example where the jobs involve handling sensitive Government and third party personal information. The respondents requested a clear statement that successor contractors will be permitted to perform identical screenings for all employees, regardless of their status as qualifying for hire under the Nondisplacement of Qualified Workers under Service Contract rule.

Response: DOL's preamble suggested that an offeror inform the contracting agency that the offeror requires drug screening of all of its service employees, and recommended that the contracting agency provide for such drug testing in connection with the service contract. See 76 FR 53720 at page 53735. The requirements of the DOL rule concerning employment screening processes such as drug tests, background checks, and security clearance checks (29 CFR 9.12(b)) are addressed at FAR 22.1203–4, Method of job offer.

11. Waiver

Comments: A respondent suggested that the Government should provide supplemental information and/or subset lists to assist contracting officials with the written analysis as described in 29 CFR 9.4(d)(4)(i) in support of a waiver. The respondent expressed concern with the requirement that contracting officers must cross reference the requirements in 29 CFR 9.4 to effectuate the waiver.

Response: The FAR implementation conforms to the requirements in the DOL regulations and the E.O. Cross-referencing 29 CFR 9.4(d) ensures that contracting officials are familiar with all appropriate considerations for waiver. As noted in 29 CFR 9.4(d)(4)(i), a waiver is only appropriate where ''any of the requirements of E.O. 13495 would not serve the purposes of this Order, or would impair the ability of the Federal Government to procure services on an economical and efficient basis.'' As waivers are meant to be limited exceptions, supplemental information is not necessary.

Comments: One respondent noted that the waiver provisions at FAR 22.1203–3 do not provide the option for the agency to waive only some provisions of the requirement. The respondent stated that an agency should be authorized to waive the entire nondisplacement obligation, or one or more individual provisions of the obligation, despite the fact, reported by the respondent in a footnote, that ''E.O. 13495 * * * does not address waivers in its text.'' Doing so, according to the respondent, would afford flexibility to agencies to determine how best to transition services efficiently under particular contracts and classes of contracts.

Response: In fact, section 4 of E.O. 13495 addresses waivers, allowing for an agency waiver ''from the requirements of any or all of the provisions of the order * * *'' The DOL final rule, at 29 CFR 9.4(d)(1), allows that an ''agency may exempt the agency from one or more individual provisions'' as an alternative to exempting the agency from all provisions of 29 CFR part 9. The FAR proposed rule also allowed for the waiver of some of the provisions of subpart 22.12 at FAR 22.1203–3(a).

Comments: One respondent stated that, in keeping with FAR practice, contracting agency heads should be permitted to delegate waiver decision-making to the same extent they delegate other decisions. Another respondent also noted that approval levels for waivers should not rest at a level within the agency that would make obtaining a waiver unfeasible.

Response: The final rule limits the waiver authority to the senior procurement executive, without power of redelegation. FAR 1.108(b) states that each authority is delegable unless specifically stated otherwise. It is common practice in the FAR to limit redelegation when appropriate. The determination to waive some or all of the provisions of FAR subpart 22.12 is most appropriately made by senior officials within agencies.

12. Miscellaneous and Editorial Comments

Comments: A respondent stated that the FAR rule should mirror the DOL rule by incorporating limits on the Government's use of suspension and debarment action for violation under the non-displacement rule.

Response: The final FAR rule references the DOL rule at FAR 22.1200 and adds appropriate cross-references to the DOL rule throughout the FAR

coverage. The Governmentwide debarment and suspension authority is addressed at FAR subpart 9.4. That authority is in addition to the specific authority provided to DOL to debar or suspend an entity due to noncompliance with the implementation of E.O. 13495.

Comments: One respondent indicated that the requirements of the E.O. will result in additional work for the Government contracting community to follow up to make sure that the contractor complies with the requirements.

Response: There may be some additional contract administration responsibilities for the Government contracting officer, but these responsibilities will not be significant. In any case, these requirements are mandated by E.O. 13495 and 29 CFR part 9.

Comments: One respondent recommended a number of edits which should be adopted to correct drafting errors and conform to the FAR Drafting Guide.

Response: The edits have been made in the final rule.

C. Changes Requested by DOL

Comments: DOL provided language to be added as a new subsection of FAR 22.1203, Applicability. The new subsection, to be entitled ''Method of job offer,'' springs from the requirements at 29 CFR 9.12(a), which states, in part, ''the contractor and its subcontractors shall make a bona fide, express offer of employment to a position for which the employee is qualified to each employee and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 days.''

Response: The new subsection FAR 22.1203–4, Method of job offer, is added in the final rule. In addition to restating the means of making a job offer and the minimum of 10 days for the employee's acceptance, the new subsection also explains in more detail what constitutes a ''bona fide'' job offer (based on 29 CFR 9.12(b), Method of job offer) and how to determine a predecessor employee's qualifications.

Comments: DOL provided language to be added as a new subsection of FAR 22.1203, Applicability. The new subsection, to be entitled ''Exceptions'' and numbered FAR 22.1203–5, is based on the requirements at 29 CFR 9.12(c), Exceptions, which provides the following exceptions from the requirement to provide the right of first refusal to employees of the predecessor contractor:

- Nondisplaced employees of the predecessor contractor.
- Successor's current employees who would otherwise face lay-off or discharge and who have worked for the successor contractor at least three months immediately preceding performance of the successor contract.
- Predecessor contractor's non-service employees.
- Predecessor contractor's employees with past unsuitable performance.

Comments: DOL provided language to be added as a new subsection of FAR 22.1203, Applicability. The new FAR subsection, 22.1203–6, entitled ''Reduced staffing,'' repeats some of the requirements in 29 CFR 9.12(d), Reduced staffing.

Response: The new FAR subsection 22.1203–6 addresses circumstances when the successor contractor need not offer employment to all of the displaced employees of the predecessor contractor. In addition, the new FAR subsection repeats the caveat from 29 CFR 9.12(d) that, when employment is not initially offered to all of the displaced employees, the successor contractor and its subcontractors still remain obligated for 90 days after the first date of performance on the contract to provide displaced employees a right of first refusal if additional service personnel are needed.

D. Other Issues

29 CFR Section 9.12(e)(1) of the DOL regulations implementing E.O. 13495 provides that the contractor shall furnish the contracting officer with a certified list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. This requirement is implemented in paragraph (d)(1) of FAR clause 52.222–17, Nondisplacement of Qualified Workers. Pursuant to 41 U.S.C. 1304, a new non-statutory certification may not be included in the FAR unless written justification for such certification is provided to the OFPP Administrator by the FAR Council, and the Administrator approves such request in writing. In accordance with FAR 1.107, this non-statutory certification requirement was approved.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

Executive Order (E.O.) 13495, Nondisplacement of Qualified Workers Under Service Contracts, dated January 30, 2009, and the DOL implementing regulations, published August 29, 2011, in the **Federal Register** at 76 FR 53720, make the policy of the Federal Government to require service contractors and their subcontractors under successor contracts to offer employees of the predecessor contractor a right of first refusal of employment for positions for which they are qualified. The E.O. provides a contract clause for service contract solicitations that will succeed service contracts for performance of the same or similar work at the same location.

Five comments were received on the initial regulatory flexibility analysis. Four of these comments alleged an increased administrative burden on contractors, and they failed to account for the decreased burden of not having to recruit and process new employees. The fifth comment requested the publication of a Small Entity Compliance Guide with the final rule. These comments did not cause a change in the final rule.

No comments were received from the Office of Advocacy of the Small Business Administration on this rule because the office submitted comments on the DOL rule.

The estimated impact that follows is based entirely upon the DOL figures reported in the proposed and final rules it published implementing E.O. 13495 (29 CFR part 9). Although DOL prepared an initial regulatory flexibility analysis, the agency, in the final rule, certified that 29 CFR part 9 does not have a significant economic impact on a substantial number of small entities. There is no additional impact due to the implementation of the DOL regulations in the FAR. The requirements in the FAR are taken from the E.O. and 29 CFR part 9 without addition.

DOL estimated that 28,800 small entities will be subject to the regulations and the majority of these small entities will incur compliance costs of less than $100. The analysis offsets the actions that a successor contractor would already be taking, such as determining an individual's suitability for available positions and documenting employment decisions. Further, DOL assumed a time/cost savings on the part of small entities because the entities will not

have to engage in recruiting and training an entirely new workforce.

The predecessor contractor is required to provide to the successor contractor a certified list of the names of all service employees working under that contract, and its subcontracts, no later than 30 days before completion of performance of the predecessor contract. DOL notes, however, that there is little or no cost associated with this requirement because the certified list contains the same information as the seniority list currently required to be provided under paragraph (n) of the clause at FAR 52.222–41, Service Contract Act of 1965.

The minimal new reporting requirements mandated by the DOL implementation of E.O. 13495 are addressed in the information collection justification submitted by DOL in connection with its final rule (see 76 FR 53720 dated August 29, 2011). No additional reporting requirements are imposed by the FAR final rule, which merely relocates the contract clause from 29 CFR part 9 into FAR part 52. The requirements of E.O. 13495 do not allow for any alternatives.

Comments: Three respondents expressed concerns with the estimate in the proposed rule with respect to Initial Regulatory Flexibility Act (IRFA) analysis, which addresses the impact of the rule on small entities. According to the respondents, the estimated costs of this rule will be much higher than the Government's initial estimate. The respondents stated their belief that the Government did not consider the steps prime contractors must take to ensure smooth contract transitions, hiring staff and pricing proposals, and requested that the Government consider that, in some cases, successor contractors may not be able to automatically absorb predecessor contractor employees in a manner that creates a time/cost savings. One respondent explained that with the new rule, the successor will have to determine every available position and develop a matrix to allow a timely execution of offers. Another of these respondents said that it is unlikely that the successor contractor would be able to perform as efficiently with the predecessor employees as it would with a workforce of its own choosing.

Response: The IRFA explained that it was based entirely upon the DOL's figures as set forth in the proposed and final rules that the DOL published implementing E.O. 13495. Although DOL prepared an IRFA, the agency, in the final rule, certified that 29 CFR part 9 does not have a significant economic impact on a substantial number of small entities. The FAR rule does not impose any requirements other than those set forth in the DOL regulations, which implement the E.O. As a result, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council continue to rely on DOL's certification that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, the Councils note that the actions required by the E.O. are those that a successor contractor would already be taking, such as determining an individual's suitability for available positions and documenting employment decisions. The Councils do not believe that the E.O. adds more to the steps the prime contractors must currently undertake to ensure smooth contract transitions, the hiring of staff, and the pricing of proposals. Rather, the successor contractor will offer the right of first refusal only if it has employment openings and will offer it only to those employees of the predecessor who the predecessor will not retain and are qualified for the position. As a result, DOL's IRFA assumed a time/cost savings on the part of small entities because they will not have to engage in recruiting and training an entirely new workforce.

Comments: A respondent expressed a concern that requiring predecessor contractors to provide employee lists places an administrative burden on contractors.

Response: Paragraph (n) of the clause at FAR 52.222–41 has for many years required a predecessor contractor to provide a list when the services were performed on a Federal facility. While this rule applies to all service contracts for the same or similar work performed at the same location, any additional administrative burden is minimal for businesses, including small entities that have a standard hiring process.

Comments: A respondent felt that the FAR Council should provide small business contractors with a ''Small Entity Compliance Guide.''

Response: The Small Entity Compliance Guide will be prepared by the Regulatory Secretariat in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in the Federal Acquisition Circular, which amends the Federal Acquisition Regulation.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget Control Number 1235–0007 and 1235–0025, entitled Labor Standards for Federal Service Contracts—Regulations 29 CFR part 4, and Nondisplacement of Qualified Workers Under Service Contracts, E.O. 13495, respectively.

List of Subjects in 48 CFR Parts 1, 2, 22, and 52

Government procurement.

Dated: December 14, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 22, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by adding in sequence, FAR segment ''22.12'' and its corresponding OMB Control Numbers ''1235–0007 and 1235–0025'', and FAR Segment ''52.222–17'' and its OMB Control Numbers ''1235–0007 and 1235–0025''.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101, in paragraph (b), in the definition of ''United States'' by redesignating paragraphs (4) through (10) as paragraphs (5) through (11), respectively; and adding a new paragraph (4) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

United States * * *

(4) For use in subpart 22.12, see the definition at 22.1201.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 4. Amend section 22.001 by adding, in alphabetical order, the definitions ''Service contract'' and ''Service employees'' to read as follows:

22.001 Definitions.

* * * * *

Service contract means any Government contract, or subcontract thereunder, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted by the Service Contract Act (41 U.S.C. chapter 67; see 22.1003–3 and 22.1003–4). See 22.1003–5 and 29 CFR 4.130 for a partial list of services covered by the Act.

Service employee means any person engaged in the performance of a service

contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term ''service employee'' includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

* * * * *

22.1001 [Amended]

■ 5. Amend section 22.1001 by removing the definitions ''Service contract'' and ''Service employee''.

■ 6. Revise section 22.1103 to read as follows:

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222–46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated contracts when the contract amount is expected to exceed $650,000 and services are to be provided which will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employee compensation may be assessed adversely as one of the factors considered in making an award.

■ 7. Add Subpart 22.12 to read as follows:

Subpart 22.12—Nondisplacement of Qualified Workers Under Service Contracts

Sec.

22.1200 Scope of subpart.
22.1201 Definitions.
22.1202 Policy.
22.1203 Applicability.
22.1203–1 General.
22.1203–2 Exemptions.
22.1203–3 Waiver.
22.1203–4 Method of job offer.
22.1203–5 Exceptions.
22.1203–6 Reduced staffing.
22.1204 Certified service employee lists.
22.1205 Notification to contractors and service employees.
22.1206 Remedies and sanctions for violations of this subpart.
22.1207 Contract clause.

Subpart 22.12—Nondisplacement of Qualified Workers Under Service Contracts

22.1200 Scope of subpart.

This subpart prescribes policies and procedures for implementing Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, and related Secretary of Labor regulations and instructions (see 29 CFR part 9).

22.1201 Definitions.

As used in this subpart—

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), but does not include any other place subject to United States jurisdiction or any United States base or possession in a foreign country (see 29 CFR 4.112).

22.1202 Policy.

(a) When a service contract succeeds a contract for performance of the same or similar services, as defined at 29 CFR 9.2, at the same location, the successor contractor and its subcontractors are required to offer those service employees that are employed under the predecessor contract, and whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified. Executive Order 13495 generally prohibits employment openings under the successor contract until such right of first refusal has been provided, when consistent with applicable law.

(b) Nothing in Executive Order 13495 shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may, in certain circumstances, conflict with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495 and this subpart.

22.1203 Applicability.

22.1203–1 General.

This subpart applies to service contracts that succeed contracts for the same or similar services (29 CFR 9.2) at the same location.

22.1203–2 Exemptions.

(a) This subpart does not apply to—

(1) Contracts and subcontracts under the simplified acquisition threshold;

(2) Contracts or subcontracts awarded pursuant to 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts or subcontracts with sheltered workshops employing the ''severely handicapped'' as described in 40 U.S.C. 593;

(4) Agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph Sheppard Act, 20 U.S.C. 107; or

(5) Service employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the service employees were not deployed in a manner that was designed to avoid the purposes of this subpart.

(b) The exemptions in paragraphs (a)(2) through (a)(4) of this subsection apply when either the predecessor or successor contract has been awarded for services produced or provided by the ''severely handicapped.''

22.1203–3 Waiver.

(a) The senior procurement executive of the procuring agency may waive some or all of the provisions of this subpart after determining in writing that the application of this subpart would not serve the purposes of Executive Order 13495 or would impair the ability of the Federal Government to procure services on an economical and efficient basis. Such waivers may be made for a contract, subcontract, or purchase order, or with respect to a class of contracts, subcontracts, or purchase orders. See 29 CFR 9.4(d)(4) for regulatory provisions addressing circumstances in which a waiver could or would not be appropriate. The waiver must be reflected in a written analysis as described in 29 CFR 9.4(d)(4)(i) and must be completed by the contract solicitation date, or the waiver is inoperative. The senior procurement executive shall not redelegate this waiver authority.

(b)(1) When an agency exercises its waiver authority with respect to any contract, subcontract, or purchase order, the contracting officer shall direct the contractor to notify affected workers and their collective bargaining representative in writing, no later than

five business days after the solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice as provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222–17 in the solicitation.

(2) Where a contracting agency waives application to a class of contracts, subcontracts, or purchase orders, the contracting officer shall, with respect to each individual solicitation, direct the contractor to notify incumbent workers and their collective bargaining representatives in writing, no later than five business days after each solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222–17 in the solicitation.

(3) In addition, the agency shall notify the Department of Labor of its waiver decision and provide the Department of Labor with a copy of its written analysis no later than five business days after the solicitation issuance date (see 29 CFR 9.4(d)(2)). Failure to comply with this notification requirement shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222–17 in the solicitation. The waiver decision and related written analysis shall be sent to the following address: U.S. Department of Labor, Wage and Hour Division, Branch of Government Contracts Enforcement, 200 Constitution Avenue, Room S–3006, Washington, DC 20210, or email to: *Displaced@dol.gov.*

22.1203–4 Method of job offer.

A job offer made by a successor contractor must be a bona fide express offer of employment on the contract. Each bona fide express offer made to a qualified service employee on the predecessor contract must have a stated time limit of not less than 10 days for an employee response. Prior to the expiration of the 10-day period, the contractor is prohibited from offering employment on the contract to any other person, subject to the exceptions at 22.1203–5. Any question concerning an employee's qualifications shall be decided based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and a contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive Order. An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12(b) for regulatory provisions addressing circumstances in which a bona fide offer of employment can occur.)

22.1203–5 Exceptions.

(a) A successor contractor or its subcontractors are not required to offer employment to any service employee of the predecessor contractor who—

(1) Will be retained by the predecessor contractor.

(2) The successor contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job. (See 29 CFR 9.12(c)(4) for regulatory provisions addressing circumstances in which this exception would or would not be appropriate.)

(b) A successor contractor or its subcontractors may employ under the contract any of its current service employees who (1) have worked for the successor contractor or its subcontractors for at least three months immediately preceding the commencement of the successor contract, and (2) would otherwise face lay-off or discharge.

(c) The successor contractor bears the responsibility of demonstrating the appropriateness of claiming any of the preceding exceptions and the exemption listed at 22.1203–2(a)(5) involving nonfederal work.

22.1203–6 Reduced staffing.

A successor contractor and its subcontractors may employ fewer service employees than the predecessor contractor employed in connection with performance of the work. Thus, the successor contractor need not offer employment on the contract to all service employees on the predecessor contract, but must offer employment only to the number of eligible service employees the successor contractor believes necessary to meet its anticipated staffing pattern. Where a successor contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract. (See 29 CFR 9.12(d) for regulatory provisions addressing circumstances in which reduced staffing can occur.)

22.1204 Certified service employee lists.

(a) Not less than 30 days before completion of the contract, the predecessor contractor is required to furnish to the contracting officer a certified list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. The certified list must also contain anniversary dates of employment of each service employee under the contract and subcontracts for services. The information on this list is the same as that on the seniority list required by paragraph (n) of the clause at 52.222–41, Service Contract Act of 1965. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of 52.222–41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(b) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

22.1205 Notification to contractors and service employees.

(a) The contracting officer shall direct that the predecessor contractor provides written notice to service employees of their possible right to an offer of employment with the successor contractor. The written notice shall be—

(1) Posted in a conspicuous place at the worksite; or

(2) Delivered to the service employees individually. If such delivery is via email, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(b) Contracting officers may advise contractors to provide the notice in Appendix B to 29 CFR chapter 9. Where a significant portion of the predecessor contractor's workforce is not fluent in English, the contractor shall provide the

notice in English and the language(s) with which service employees are more familiar. English and Spanish versions of the notice are available on the Department of Labor Web site at *http://www.dol.gov/whd/govcontracts.*

22.1206 Remedies and sanctions for violations of this subpart.

(a) The Secretary of Labor has the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring the successor contractor to offer employment, in positions for which the employees are qualified, to service employees from the predecessor contract and payment of wages lost. (See 29 CFR 9.24(a)).

(b) After an investigation (see 29 CFR 9.23) and a determination by the Administrator, Wage and Hour Division, Department of Labor, that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld as are necessary to pay the monies due. Upon the final order of the Secretary of Labor that such monies are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement. (See 29 CFR 9.24(c)).

(c) If the contracting officer or the Administrator, Wage and Hour Division, Department of Labor, finds that the predecessor contractor has failed to provide the list required by 22.1204, the contracting officer may, in his or her discretion, or on request by the Administrator, suspend contract payment until such time as the contractor provides the list to the contracting officer.

(d) The Secretary of Labor may also suspend or debar a contractor or subcontractor for a period of up to three years for violations of 29 CFR part 9.

22.1207 Contract clause.

The contracting officer shall insert the clause at 52.222–17, Nondisplacement of Qualified Workers, in solicitations and contracts for (1) service contracts, as defined at 22.001, (2) that succeed contracts for performance of the same or similar work at the same location and (3) that are not exempted by 22.1203–2 or waived in accordance with 22.1203–3.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.212–5 by—

■ (a) Revising the date of the clause;

■ (b) Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(8) and (c)(9), respectively;

■ (c) Adding a new paragraph (c)(7); and

■ (d) Adding paragraph (e)(1)(iii).

The revision and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes of Executive Orders—Commercial Items (JAN 2013)

* * * * *

(c) * * *

__(7) 52.222–17, Nondisplacement of Qualified Workers (JAN 2013) (E.O.13495).

* * * * *

(e)(1) * * *

(iii) 52.222–17, Nondisplacement of Qualified Workers (JAN 2013) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222–17.

* * * * *

■ 9. Add section 52.222–17 to read as follows:

52.222–17 Nondisplacement of Qualified Workers.

As prescribed in 22.1207, insert the following clause:

Nondisplacement of Qualified Workers (JAN 2013)

(a) *Service employee,* as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term ''service employee'' includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(b) The Contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the service employees were hired, a right of first refusal of employment under this contract in positions for which the service employees are qualified.

(1) The Contractor and its subcontractors shall determine the number of service employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor Contractor employed in connection with performance of the work.

(2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this contract, and the Contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation.

(i) The successor Contractor and its subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Contractor and its subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and the Contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bonafide offer of employment).

(c)(1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Contractor and any subcontractors (i) may employ under this contract any service employee who has worked for the contractor or subcontractor for at least three months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3), and (iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor whom the Contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12(c)(4) for additional information). The successor Contractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(2) In addition, any Contractor or subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (*e.g.,* it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Contractor or subcontractor must consider

whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(3) Nothing in this clause shall be construed to permit a Contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d)(1) The Contractor shall, not less than 30 days before completion of the Contractor's performance of services on the contract, furnish the Contracting Officer with a certified list of the names of all service employees working under this contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Contractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this contract, furnish the Contracting Officer with an updated certified list of the names of all service employees employed within the last month of contract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor Contractors or their subcontractors.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(3) The Contracting Officer will direct the predecessor Contractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor contractor. Where a significant portion of the predecessor Contractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—

(i) Posted in a conspicuous place at the worksite; or

(ii) Delivered to the service employees individually. If such delivery is via email, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(e)(1) If required in accordance with 52.222–41(n), the predecessor Contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor Contractors or their subcontractors. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor Contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of 52.222–41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(f) The Contractor and subcontractor shall maintain the following records (regardless of format, *e.g.,* paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exemption claimed under this part.

(3) A copy of the service employee list provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Contractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

(g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause (52.233–1) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the service employees under the contract or its predecessor contract. The Contracting Officer will refer any service employee who wishes to file a complaint, or ask questions concerning this contract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Contact email: *displaced@dol.gov.*

(h) The Contractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(j) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. However, if the Contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Contractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.

(k) The Contracting Officer will withhold, or cause to be withheld, from the prime Contractor under this or any other Government contract with the same prime Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the Contractor has failed to provide a list of the names of service employees working under the contract, the Contracting Officer may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(l) *Subcontracts.* In every subcontract over the simplified acquisition threshold entered into in order to perform services under this contract, the Contractor shall include a provision that ensures—

(1) That each subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service

employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor Contractor and its subcontractors;

(2) That the subcontractor will provide the Contractor with the information about the service employees of the subcontractor needed by the Contractor to comply with paragraphs (d) and (e) of this clause; and

(3) The recordkeeping requirements of paragraph (f) of this clause.

(End of clause)

[FR Doc. 2012–30592 Filed 12–20–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0081, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–64; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–64, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–64, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

DATES: For effective date see separate document, which follows.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–64 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE IN FAC 2005–64

Subject	FAR Case	Analyst
* Nondisplacement of Qualified Workers Under Service Contracts.	2011–028	Loeb

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following the item summary. FAC 2005–64 amends the FAR as specified below:

Nondisplacement of Qualified Workers Under Service Contracts (FAR Case 2011–028)

This final rule adds subpart 22.12, entitled ''Nondisplacement of Qualified Workers Under Service Contracts,'' and a related contract clause, to the FAR. The new subpart implements Executive Order 13495 and Department of Labor implementing regulations at 29 CFR part 9. The final rule applies to service contracts for performance by service employees of the same or similar work at the same location. It requires service contractors and their subcontractors under successor contracts to offer service employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

Dated: December 14, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–30593 Filed 12–20–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 9

RIN 1215–AB69; 1235–AA02

Nondisplacement of Qualified Workers Under Service Contracts; Effective Date

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule; notice of effective date and OMB approval of information collection requirements.

SUMMARY: The Department of Labor announces the effective date of its Final Rule published on August 29, 2011, to implement Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts (Executive Order 13495 or Order). Executive Order 13495 states that the Order shall apply to solicitations issued on or after the effective date of regulations issued by the Federal Acquisition Regulatory Council (FARC) to amend the Federal Acquisition Regulation (FAR) to provide for the inclusion of the contract clause set forth in Executive Order 13495 in Federal solicitations and contracts for services subject to the Order (FARC Final Rule). The Department of Labor Final Rule provided that it would not be effective until the FARC issued the FARC Final Rule, and that as a result, the Department of Labor would publish a notice in the **Federal Register** announcing the effective date once the effective date was determined. The FARC has established January 18, 2013 as the effective date for its final rule. In accordance with the Department of Labor Final Rule, this document advises the public of the effective date of the Department's Final Rule. In addition, in accordance with the Paperwork Reduction Act (PRA), the Department of Labor announces that the Office of Management and Budget has approved the information collection requirements contained in the Department of Labor Final Rule.

DATES: The effective date for the Final Rule published on August 29, 2011 (76 FR 53720), is January 18, 2013. In addition, on December 7, 2011, the Office of Management and Budget (OMB) approved under the Paperwork Reduction Act the Department of Labor's information collection request for requirements in 29 CFR 9.21; 9.12(a), (b), (e)(1), (e)(2), and (f) as published in the **Federal Register** on August 29, 2011. *See* 76 FR 53744. The current expiration date for OMB authorization for this information collection is December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Timothy Helm, Division of Enforcement Policies and Procedures, Branch Chief, Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, at (202) 693–0064 (this is not a toll-free number).

This notice is available through the printed **Federal Register** and electronically via the *http://www.gpoaccess.gov/fr/index.html* Web site.

Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to

obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: Executive Order 13495 establishes a general policy of the Federal Government concerning service contracts and solicitations for service contracts for performance of the same or similar services at the same location. This policy mandates the inclusion of a contract clause requiring the successor contractor and its subcontractors to offer those employees employed under the predecessor contract, whose employment will be otherwise terminated as a result of the award of the successor contract, a right of first refusal of employment under the successor contract in positions for which they are qualified. Because the Executive Order applies to contract solicitations issued on or after the effective date for FARC Final Rule, the Department of Labor's final rule published August 29, 2011 (76 FR 53720) could not become effective until the effective date of the FARC Final Rule. The FARC Final Rule has an effective date of January 18, 2013. The effective date of the Department's Final Rule also is January 18, 2013.

The Department's final rule includes information collection requirements subject to the Paperwork Reduction Act. Specifically, the final rule requires information collections for employment offers (§ 9.12(a), (b), (e)(1), (e)(2), and (f)), and related to the filing of complaints (§ 9.21)). As discussed in the preamble to the final rule, the Department submitted the information collections contained therein to the Office of Management and Budget (OMB) for approval. (76 FR 53744) On December 7, 2011, OMB approved the Department's information collection request under Control Number 1235–0025, thus giving effect to the information collection requirements contained in the final rule published in the **Federal Register** on August 29, 2011. The current expiration date for OMB authorization for this information collection is December 13, 2014.

The Department has determined that good cause exists to make this Final Rule effective on January 18, 2013, concurrent with the effective date of the FARC Final Rule. This Final Rule is a technical amendment to the Department's final rule published in the **Federal Register** on August 29, 2011 (76 FR 53720), in which the Department advised the public that the rule would not be effective until the FARC issued the FARC Final Rule, and that as a result, the Department would publish a notice in the **Federal Register** announcing the effective date once the effective date was determined. Contractors and subcontractors subject to the Department's Final Rule have had sufficient opportunity to determine how they would comply with the Department's Final Rule. Furthermore, it is in the public interest to make the effective date of the Department's Final Rule concurrent with the FARC Final Rule's effective date to avoid confusion that could result for contractors and subcontractors if the two rules were to have differing effective dates. For the reasons stated, it is the Department's position that is not necessary to delay the effective date of this Final Rule until 30 days after publication in the **Federal Register**.

Dated: December 13, 2012.

Mary Beth Maxwell,

Acting Deputy Administrator, Wage and Hour Division.

[FR Doc. 2012–30595 Filed 12–20–12; 8:45 am]

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FEDERAL REGISTER

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Part V

Department of Justice

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304 et al.

Disposal of Controlled Substances; Proposed Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, 1305, 1307, 1317, and 1321

[Docket No. DEA–316]

RIN 1117–AB18

Disposal of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes requirements to govern the secure disposal of controlled substances by both DEA registrants and ultimate users. These regulations would implement the Secure and Responsible Drug Disposal Act of 2010 (Pub. L. 111–273) by expanding the options available to collect controlled substances from ultimate users for purposes of disposal to include: Take-back events, mail-back programs, and collection receptacle locations. These proposed regulations contain specific language to continue to allow law enforcement agencies to voluntarily conduct take-back events, administer mail-back programs, and maintain collection receptacles. These regulations propose to allow authorized manufacturers, distributors, reverse distributors, and retail pharmacies to voluntarily administer mail-back programs and maintain collection receptacles. In addition, this proposed rule expands the authority of authorized retail pharmacies to voluntarily maintain collection receptacles at long term care facilities. This proposed rule also reorganizes and consolidates existing regulations on disposal, including the role of reverse distributors.

DATES: Electronic comments must be submitted and written comments must be postmarked on or before February 19, 2013. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–316'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA Office of Diversion Control (OD/DX), 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–4654.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you would like to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you would like to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

Outline

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Executive Summary

Purpose of the Regulatory Action

On October 12, 2010, the Secure and Responsible Drug Disposal Act of 2010 (Disposal Act) was enacted (Pub. L. 111–273, 124 Stat. 2858). Before the Disposal Act, ultimate users who wanted to dispose of unused, unwanted, or expired controlled substance pharmaceuticals had limited disposal options. The Controlled Substances Act (CSA) only permitted ultimate users to destroy those substances themselves, for example by flushing or discarding, or to dispose of such substances by surrendering them to law enforcement or by seeking assistance from the U.S. Drug Enforcement Administration (DEA). These restrictions resulted in the accumulation of controlled substances in household medicine cabinets that were available for abuse, misuse, and accidental ingestion. The Disposal Act amended the CSA to authorize ultimate users to deliver their controlled substances to another person for the purpose of disposal in accordance with regulations promulgated by the Attorney General. 21 U.S.C. 822(g) and 828(b)(3). The Attorney General delegated responsibility for promulgating the Disposal Act implementing regulations to DEA. These proposed regulations expand the entities to which ultimate users may transfer unused, unwanted, or expired controlled substances for the purpose of disposal, as well as the methods by which such controlled substances may be collected. Specified entities may voluntarily administer any

of the authorized collection methods in accordance with these proposed regulations.

Summary of the Major Provisions of the Regulatory Action

DEA is proposing new regulations for the disposal of controlled substances by ultimate users in accordance with the Disposal Act. In drafting the implementing regulations, DEA considered the public health and safety, ease and cost of program implementation, and participation by various communities. To this end, DEA found that in order to properly address the disposal of controlled substances by ultimate users, it was necessary to conduct a comprehensive review of DEA policies and regulations related to each element of the disposal process, including the transfer, delivery, collection, destruction, return, and recall of controlled substances, by both registrants and non-registrants (e.g., ultimate users). The reverse distributor registration category, which is pertinent to the process of registrant disposal, was included in this comprehensive review. These regulations will be incorporated into a new part 1317 on disposal.

The goal of this proposed new part on disposal, consistent with Congress's goal in passing the Disposal Act, is to set controlled substance diversion prevention parameters that will encourage public and private entities to develop a variety of methods for collecting and destroying controlled substances in a secure, convenient, and responsible manner. Also consistent with Congress's goal in passing the Disposal Act to decrease the amount of controlled substances introduced into the environment, particularly into the water, these regulations provide individuals various additional options to dispose of their unwanted or unused controlled substances beyond discarding or flushing the substances. As a result of these regulations, the supply of unused controlled substances in the home should decrease, thereby reducing the risk of unintentional diversion or harm.

Ultimate User Disposal

This rule proposes three voluntary options for ultimate user disposal: (1) Take-back events, (2) mail-back programs, and (3) collection receptacles. In addition to ultimate users, individuals lawfully entitled to dispose of ultimate user decedent's property are authorized to dispose of the ultimate user's substances by utilizing any of the three options for disposal. All of the proposed collection methods are voluntary and no person is required to establish or operate a disposal program.

DEA proposes specific language that will continue to authorize federal, state, tribal, and local law enforcement agencies, either independently or in partnership with private entities or community groups, to voluntarily hold take-back events and administer mail-back programs. DEA also proposes to authorize certain registrants (manufacturers, distributors, reverse distributors, and retail pharmacies) to be ''collectors,'' with authorization to conduct mail-back programs. All mail-back programs must provide specific mail-back packages to the public, either at no cost or for a fee, and collectors that conduct mail-back programs must have and utilize an on-site method of destruction.

Finally, DEA proposes that law enforcement agencies voluntarily maintain collection receptacles at that agency's physical location and to authorize collectors to maintain collection receptacles at their registered location. Retail pharmacies that are authorized to be collectors may maintain collection receptacles at long term care facilities (LTCFs). LTCFs are permitted to dispose of controlled substances on behalf of an ultimate user that resides or has resided at that LTCF only through a collection receptacle that is maintained by a retail pharmacy at that LTCF.

DEA proposes to allow all controlled substances collected through take-back events, mail-back programs, and collection receptacles to be comingled with non-controlled substances. Controlled substances collected by collectors may not be individually counted or inventoried. In addition, DEA proposes various collection security and recordkeeping requirements.

DEA appreciates that there is a cost to voluntarily providing these methods of collection and destruction. DEA notes that some state and local pharmaceutical disposal programs receive funding and other support from numerous sources, including conservation groups, local governments, state grants, and public and private donations. These expanded methods of disposal benefit the public by decreasing the supply of controlled substances available for misuse, abuse, and accidental ingestion, and protect the environment from potentially harmful contaminants. However, other advantages may accrue directly to those entities that opt to maintain a disposal program. For example, those authorized registrants that choose to maintain collection receptacles may be enhanced by the increased consumer presence at their registered locations and the goodwill that develops from providing a valuable community service. In addition, the proposed regulation specifies that mail-back program collectors may partner with third parties to make mailers available to the public. Those authorized registrants that choose to administer mail-back programs may gain from the opportunity to distribute to consumers promotional, educational, or other informational materials with the mailers.

Registrant Disposal

DEA proposes to delete the existing rule related to registrant disposal, 21 CFR 1307.21, and incorporate similar requirements on proper disposal procedure, security, and recordkeeping in a new part 1317 on disposal. DEA proposes these changes in order to provide consistent disposal procedures for each registrant category, regardless of geographic location. In addition, DEA proposes to modify existing DEA Form 41 to record the destruction of controlled substances that remain in the closed system of distribution and to account for registrant destruction of controlled substances collected from ultimate users and other non-registrants outside the closed system pursuant to the Disposal Act.

Reverse Distributors

DEA proposes revised regulations for reverse distributors that are clear, consistent, and consolidated into one part. Reverse distributors are often the last registrant to possess controlled substances prior to destruction because they are at the end of the closed system and the same recordkeeping safeguards that exist when controlled substances are distributed between registrants are not present. Because reverse distributors routinely acquire controlled substances for destruction from other registrants and may also be authorized as collectors, reverse distributors accumulate greater amounts of controlled substances that are destined for destruction in comparison to other registrants. DEA believes that the proposed regulations will help reverse distributors comply with the Controlled Substances Act in a manner that effectively decreases the risk of the diversion of controlled substances during the disposal process. DEA proposes to revise the definition of reverse distributor in addition to proposing new procedures that reverse distributors must follow to acquire controlled substances from registrants and other security and recordkeeping requirements.

Return and Recall

DEA proposes to delete the existing rule on return and recall, 21 CFR 1307.12, and incorporate into a new part 1317 clarified and separate return and recall requirements for registrants and non-registrants.

Methods of Destruction

DEA proposes a standard of destruction—non-retrievable—for persons that intend to destroy controlled substances. In particular, DEA is not requiring a particular method of destruction, so long as the desired result is achieved. This standard is intended to allow public and private entities to develop a variety of destruction methods that are secure, convenient, and responsible, consistent with preventing the diversion of such substances. Destruction of controlled substances must also meet all other applicable Federal, state, Tribal, and local laws and regulations.

Background

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended, and referred to as the Controlled Substances Act (CSA).[1] DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety. To this end, controlled substances are classified into one of five schedules based upon: The potential for abuse, currently accepted medical use, and the degree of dependence if abused. 21 U.S.C. 812. Listed chemicals are separately classified based on their use and importance to the manufacture of controlled substances (List I or List II chemicals). 21 U.S.C. 802(33)–(35).

The CSA establishes a closed system of distribution that requires DEA to monitor and control the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals until they reach their final lawful destination. The secure destruction of unused, recalled, tainted, expired, or otherwise unwanted controlled substances is essential to preventing the diversion of controlled substances into the illicit market.

In order to maintain this closed system of distribution, persons that manufacture, distribute, dispense, import, export, or conduct research or chemical analysis with controlled substances and listed chemicals are required to register with DEA at each principal place of business or professional practice. Persons registered with DEA are permitted to possess controlled substances and listed chemicals as authorized by their registration and must comply with the applicable requirements associated with their registration. 21 U.S.C. 822.

Not all persons that possess controlled substances are required to register with DEA. For example, a patient who receives a controlled substance pursuant to a lawful prescription, also known as an ultimate user, is not required to register with DEA in order to receive and possess that controlled substance. 21 U.S.C. 822(c)(3); see also 21 U.S.C. 957(b)(1)(C).[2] The CSA defines an ''ultimate user'' as ''a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.'' 21 U.S.C. 802(27).

While Congress envisioned a closed system of distribution that would control a substance from its manufacture or import through the traditional chain of distribution moving from registrant to registrant until it reached its final lawful use (e.g., dispensed to the ultimate user, etc.), it did not account for circumstances in which controlled substances were lawfully dispensed to and possessed by an ultimate user but not fully used. Although ultimate users are exempt from CSA registration requirements for the possession of controlled substances, if they distribute (i.e., deliver or transfer) such controlled substances without the appropriate registration, they are in violation of the CSA.[3] Such unlawful distribution includes the transfer of controlled substances for the purpose of disposal.[4]

On October 12, 2010, the Secure and Responsible Drug Disposal Act of 2010 (Disposal Act) was enacted (Pub. L. 111–273, 124 Stat. 2858). The Disposal Act amended the CSA to allow an ultimate user to ''deliver'' a controlled substance ''to another person for the purpose of disposal'' if the person receiving the controlled substance is authorized to receive that substance and the disposal takes place in accordance with regulations issued by the Attorney General to prevent the diversion of controlled substances. 21 U.S.C. 822(g)(1). The Attorney General delegated responsibility for promulgating the Disposal Act implementing regulations to DEA.

In addition to authorizing ultimate users to deliver their controlled substances to another person for the purpose of disposal, the Disposal Act also authorized any person lawfully entitled to dispose of an ultimate user decedent's property to deliver the ultimate user's controlled substance to another person for the purpose of disposal if the ultimate user dies while in lawful possession of the controlled substance. The Disposal Act also gave DEA the ability, by regulation, to authorize long term care facilities (LTCFs) to dispose of controlled substances on behalf of ultimate users who reside or have resided at the LTCF.

[1] The Attorney General's delegation of authority to DEA may be found at 28 CFR 0.100.

[2] 21 U.S.C. 822(c)(3) and 957(b)(1)(C) except ''ultimate users'' who possess substances for purposes referenced in 21 U.S.C. 802(25); however, ''ultimate user'' is defined in 21 U.S.C. 802(27).

[3] It is unlawful to knowingly or intentionally manufacture, distribute, dispense, or possess with the intent to manufacture, distribute, or dispense, a controlled substance without the appropriate registration. 21 U.S.C. 841(a).

[4] The terms ''disposal,'' ''dispose,'' or ''disposition'' appear several times in the CSA and its implementing regulations, but these terms are not defined. For example, in the CSA, see 21 U.S.C. 822(g); 824(f) and (g); 826(c), (e), and (f); 827(a)(3) and (d)(1); 842(a)(7); 853(n); 880(a)(2); 881(e)(1); and 958(d)(6); and in the CFR, see 21 CFR 1307.21(b). The term ''net disposal,'' however, is defined at 21 CFR 1300.01(b). As used, the terms refer to a variety of activities that ultimately result in eliminating the availability of controlled substances for use. For example, within the meaning of the CSA, a controlled substance can be ''disposed of'' by destruction, return, recall, sale, or through the manufacturing process. The Disposal Act allows an ultimate user to deliver a lawfully obtained controlled substance to another person ''for the purpose of disposal.'' DEA believes that the ultimate user disposal authorized by the Disposal Act includes the transfer or delivery of controlled substances for purposes of destruction, return, and recall. Such ultimate user activities are consistent with the intent to remove unused, unwanted, tainted, and expired substances from households and out of the reach of children and teenagers thereby reducing the risk of diversion and protecting the public health and safety. As used in this Notice of Proposed Rulemaking, DEA uses the terms ''disposal'' and ''dispose'' to refer generally to the wide range of activities that result in controlled substances being unavailable for further use. When necessary to specify a particular activity within the disposal process, the particular activity is identified, e.g., transfer, deliver, collect/collection, return, recall, destroy/destruction.

Congress directed DEA, in promulgating the Disposal Act implementing regulations, to consider the public health and safety, ease and cost of program implementation, and participation by various communities. The implementing regulations may not *require* any person to establish or operate a delivery or disposal program.

History of Disposal of Controlled Substances

In 1970, Congress created the CSA after consolidating more than 50 laws related to the control of narcotics and dangerous drugs. The statute was ''designed to improve the administration and regulation of the manufacturing, distribution, and dispensing [and import/export] of controlled substances by providing for a 'closed' system of drug distribution for legitimate handlers of such drugs'' with criminal penalties for transactions outside the legitimate chain.[5] With the enactment of the CSA, the Attorney General delegated the responsibility for promulgating the CSA's implementing regulations to DEA's predecessor, the Bureau of Narcotics and Dangerous Drugs (BNDD).[6]

BNDD recognized that to maintain the closed system of distribution, secure avenues for the destruction of controlled substances were essential. The implementing regulations specifically addressed the issue of the disposal of controlled substances (36 FR 7776, April 24, 1971). In particular, the implementing regulations outlined a process under which any person lawfully in possession of a controlled substance could distribute such substance to the person from whom he/she obtained it or return it to the manufacturer or the manufacturer's registered agent, and created procedures for any person in possession of a controlled substance, with instruction from DEA, to either deliver or transfer the substance to another for destruction, or to destroy that substance themselves. 21 CFR 1307.12 and 1307.21. These procedures have changed little since 1971.

DEA Registrant Disposal—Reverse Distributors

Through the mid-1990s, DEA accepted controlled substances from registrants for destruction or authorized registrants to destroy controlled substances pursuant to 21 CFR 1307.21. Manufacturers also accepted returns of controlled substances from their customers as an additional service. Eventually, a group of brokers emerged with the sole purpose to collect controlled substances from registrants for destruction pursuant to the procedures outlined in DEA's regulations.[7] Initially, this group registered with DEA as distributors and called the services that they provided ''reverse distribution.'' At about the same time, another group emerged called ''inventory control processors/auditors'' whose primary purpose was to identify expired substances in a registrant's inventory and prepare them for disposal by the registrant pursuant to 21 CFR 1307.21, or return to the person from whom it was obtained or to the manufacturer. This group was not required to register with DEA in order to conduct their activities because they did not take possession of the substances. Any inventory control processors/auditors that wanted to take possession of controlled substances were required to register with DEA as distributors. To reduce the risk of diversion from these activities, and ensure accountability during the disposal process, DEA and the registered distributors entered into memorandums of understanding (MOUs) that outlined acceptable disposal procedures until permanent regulations were finalized.

Initially, DEA proposed to codify these MOUs by issuing a Notice of Proposed Rulemaking to define and register a new category of manufacturer registration called ''disposers'' that would authorize those registrants to receive controlled substances for the primary purpose of destruction (60 FR 43732, August 23, 1995). This rule was never finalized. In 2003, DEA readdressed the issue of registrant disposal in an Interim Final Rule (IFR) to define and register ''reverse distributors'' (68 FR 41222, July 11, 2003). In 2005, DEA published a final rule, thereby finalizing a new category of distributor registration called ''reverse distributors'' (70 FR 22591, May 2, 2005). The final rule authorized reverse distributors to acquire controlled substances from DEA registrants for the purpose of return to the manufacturer or manufacturer's agent or for processing those substances for disposal in accordance with 21 CFR 1307.21. The final rule also codified security, recordkeeping, reporting, and order form requirements applicable to reverse distributors.

Non-Registrant Disposal

As discussed above, prior to passage of the Disposal Act, the CSA did not address the disposal of controlled substances by ultimate users. Congress envisioned a closed system of distribution that would control a substance from its manufacture or import through the traditional chain of distribution moving from registrant to registrant until it reached its final lawful use (e.g., dispensed to the ultimate user, etc.). The CSA did not, however, account for circumstances in which controlled substances were lawfully dispensed to and possessed by an ultimate user, but not fully used. To this end, the CSA did not authorize the ultimate user to transfer unwanted and unused controlled substances to another person for the purpose of disposal.

Moreover, the CSA did not address the disposal of controlled substances by long term care facilities (LTCFs). DEA defines a LTCF as ''a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.'' 21 CFR 1300.01(b). Generally, controlled substances are prescribed by a LTCF resident's physician and dispensed by the resident's pharmacist; such controlled substances are owned by the resident. This is in contrast with patients in a hospital where controlled substances are dispensed dose by dose and remain under the possession and control of the registered dispenser, the hospital. Accordingly, a LTCF may secure its residents' controlled substances for custodial purposes only. The controlled substances remain in the lawful possession of the resident, the ultimate user. As with any other ultimate user, prior to the enactment of the Disposal Act, a LTCF resident in lawful possession of dispensed controlled substances could not distribute those substances to another person, even for the purpose of disposal.

In anticipation of the growing need of ultimate users and LTCFs to dispose of unused and unwanted controlled substances, DEA published an Advance Notice of Proposed Rulemaking to solicit information on the disposal of controlled substances by ultimate users and LTCFs (74 FR 3480, January 21, 2009). Subsequently, as discussed above, on October 12, 2010, the Secure and Responsible Drug Disposal Act of 2010 was enacted.

Existing DEA Regulations

Existing DEA regulations on the disposal of controlled substances are codified at 21 CFR 1307.12 and 1307.21. The process for returns is outlined in 21

[5] H.R. Rep. No. 91–1444 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4566, 4571–4572.

[6] In 1973, the BNDD was abolished and all BNDD functions were transferred to DEA. Reorganization Plan No. 2 of 1973, 38 FR 18380 (July 2, 1973).

[7] The procedures are found today in 21 CFR 1307.21.

CFR 1307.12 and permits any person in lawful possession of a controlled substance to distribute that substance, without being registered to distribute, to the person from whom the substance was obtained or to the manufacturer or manufacturer's registered agent.

The procedure governing the transfer of controlled substances for disposal is outlined in 21 CFR 1307.21. In the existing regulations, any person in possession of any controlled substance that desires or is required to dispose of such substance may request authority and instructions for disposal from the DEA Special Agent in Charge (SAC) in the region in which they are located. The SAC must authorize and instruct applicants to dispose in one of four ways, by: (1) Transfer to a DEA registrant authorized to possess the substance; (2) delivery to an agent of DEA or to the nearest DEA office; (3) destruction in the presence of an agent of DEA or other authorized person; or (4) such other means that the SAC determines to assure that the substance does not become available to unauthorized persons. 21 CFR 1307.21(b).

Registrants requesting authority and instructions from the SAC to dispose of controlled substances must submit to the SAC three copies of DEA Form 41 listing the controlled substances that the registrant would like to dispose. 21 CFR 1307.21(a). Registrants required to regularly dispose of controlled substances may ask the SAC for authorization to dispose of those substances without prior approval from DEA in each instance if the registrant agrees to keep records of disposal. Further, the SAC may place additional conditions upon the ongoing approval to dispose. 21 CFR 1307.21(c).

Reverse Distributors

DEA currently defines a reverse distributor as ''a registrant who receives controlled substances acquired from another DEA registrant for the purpose of—(1) Returning unwanted, unusable, or outdated controlled substances to the manufacturer or the manufacturer's agent; or (2) Where necessary, processing such substances or arranging for processing such substances for disposal.'' 21 CFR 1300.01(b). Reverse distributors are required to meet general security requirements, the security requirements applicable to non-practitioners, and specific inventory, recordkeeping, and reporting requirements. DEA registrants are authorized to distribute their lawfully possessed controlled substances to a registered reverse distributor to the extent authorized by their registration and in conformity with the CSA and its implementing regulations. 21 U.S.C. 822(b) and 958(g); See, e.g., 21 CFR 1301.13(e) and 1307.11. Manufacturers, distributors, importers, and practitioners are currently authorized to distribute their lawfully possessed controlled substances to a reverse distributor without prior authorization from the SAC in the region they are located. 21 CFR 1301.13(e)(i), (ii), (viii) and 1307.11(a)(2).

Law Enforcement Agencies and Ultimate User Take-Back Events

Until DEA finalizes the implementing regulations for the Disposal Act and expanded options for disposal are available, ultimate users may not deliver their lawfully obtained controlled substances to any other person for the purpose of disposal other than by surrender to law enforcement or under the direction of the DEA Special Agent in Charge in the area in which the person is located. In the interim, DEA has established National Take-Back Days.[8] DEA organized these nationwide one day events as a collaborative effort with state and local law enforcement agencies. The National Take-Back Days provide the public with a convenient and secure way to surrender pharmaceutical controlled substances to law enforcement for destruction.[9]

Prescription Drug Abuse Epidemic

Before the Disposal Act, the CSA did not address the disposal of controlled substances by ultimate users. To dispose of their controlled substances, ultimate users were permitted to destroy the substances themselves (e.g., mix the substances with coffee grounds, place in a plastic bag, and throw into the garbage or flush) or surrender the substances to law enforcement or DEA. There is concern, however, that throwing controlled substances into the garbage or flushing them can contribute to harming the environment. Because the public has limited options for disposal, outdated and unwanted controlled substances often accumulate in medicine cabinets, easily within reach of children and teenagers. In passing the Disposal Act, Congress recognized that the secure disposal of controlled substances is important because of the significant prescription drug abuse problem in the United States. The Centers for Disease Control and Prevention declared prescription drug overdoses an epidemic.[10] Studies show the adverse consequences associated with the substantially high levels of abuse and misuse (non-medical use) of prescription drugs.

The availability of outdated or unwanted prescription drugs is problematic because there is a concern that young people may perceive prescription and/or over-the-counter drugs as ''safer'' than illegal drugs because of their intended, legitimate medical use.[11] This misperception may be shared by parents. Over 20 percent of parents believe that it is acceptable to give a teen a prescription drug that was not prescribed to them.[12] The 2010 National Survey on Drug Use and Health (NSDUH)[13] indicates that over 70 percent of Americans twelve and older who used pain relievers non-medically in the previous year obtained the drugs from a friend or relative.[14] Another study found that more than 50 percent of teens obtained prescription drugs from their own family's medicine cabinet.[15]

The prevalence of controlled substance prescription drug abuse among teenagers is right behind their abuse of marijuana (to include organic marijuana and synthetic cannabinoids). The 2011 ''Monitoring the Future'' survey of teenagers found that 8.1 percent of high school seniors reported non-medical use of Vicodin (a brand name for Schedule III hydrocodone combination products) in the past year, and 4.9 percent reported non-medical use of OxyContin (a brand name for Schedule II oxycodone sustained release products) in the past year.[16] This is

[8] The National Take-Back Days were held on September 25, 2010, April 30, 2011, October 29, 2011, April 28, 2012, and September 29, 2012.

[9] DEA registrants are not authorized to dispose of controlled substances at these events; DEA registrants must comply with the current DEA regulations regarding disposal of controlled substance stock/inventory.

[10] Centers for Disease Control and Prevention, ''Morbidity and Mortality Weekly Report,'' Vol. 61, No. 1, at 10 (January 13, 2012).

[11] Partnership for a Drug-Free America and MetLife Foundation, ''2009 Parents and Teens Attitude Tracking Study Report,'' March 2, 2010.

[12] Partnership for a Drug-Free America and MetLife Foundation, ''2010 Partnership Attitude Tracking Study,'' April 6, 2011.

[13] The National Survey on Drug Use and Health (NSDUH) is an annual survey of the civilian, non-institutionalized, population of the United States aged twelve or older. The survey is conducted by the Department of Health and Human Services Office of Applied Studies, Substance Abuse and Mental Health Services Administration (SAMHSA).

[14] Substance Abuse and Mental Health Services Administration, ''Results from the 2010 National Survey on Drug Use and Health: Volume I, Summary of National Findings,'' Office of Applied Studies, 2011 (NSDUH Series H–41, HHS Publication No. SMA 11–4658), *http://www.oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf.*

[15] Partnership for a Drug-Free America and MetLife Foundation, ''2010 Partnership Attitude Tracking Study,'' April 6, 2011.

[16] Lloyd D. Johnson, Ph.D., et al, ''Monitoring the Future National Results on Adolescent Drug Use: Overview of Key Findings, 2011,'' Institute for

consistent with reports by high school students of increased non-medical use of painkillers in the past five years.[17] According to a 2009 survey by the Partnership at Drugfree.org, more than 50 percent of teenagers (grades 9–12) believe that prescription drugs are easier to obtain than illegal drugs.

Prescription drug abuse is the fastest growing drug problem in the United States. Findings from the 2010 NSDUH estimate that 7.0 million persons aged twelve or older used prescription-type psychotherapeutic drugs—pain relievers, anti-anxiety medications, stimulants, and sedatives—non-medically in the previous month.[18] This represents 2.7 percent of the U.S. population.[19] In 2010, 2 million persons aged twelve or older used pain relievers non-medically for the first time.[20] On average, every day 2,046 12 to 17-year-olds abuse a prescription pain reliever for the first time.[21]

Non-medical prescription drug use, particularly among young adults, is having a devastating effect on the United States. According to the Centers for Disease Control and Prevention, poisoning deaths, which include drug overdoses such as those from prescription drugs, are the leading cause of injury death in the United States; nearly nine out of ten poisoning deaths are caused by drugs and more than 40% of those involve opioid analgesics.[22] According to SAMHSA's latest Drug Abuse Warning Network (DAWN) data, of the 4.6 million emergency department visits in 2009 associated with drug use, about 1.2 million visits involved the non-medical use of pharmaceuticals.[23] Emergency department visits involving non-medical use of pharmaceuticals (misuse or abuse) almost doubled between 2004 and 2009 from 627,291 in 2004 to 1,244,679 visits in 2009 (a 98.4 percent increase).[24] About half of the 2009 emergency department visits related to misuse or abuse of pharmaceuticals involved painkillers and more than one-third involved drugs to treat insomnia and anxiety.[25]

Scope of Proposed Rule

In response to this growing problem, DEA is proposing new, expanded regulations for the disposal of controlled substances by ultimate users in accordance with the Disposal Act. These regulations will provide ultimate users with more options for disposal of their controlled substances so that the controlled substances will not accumulate and be available for misuse, abuse, and accidental ingestion by children and the elderly. In drafting the implementing regulations, DEA considered the public health and safety, ease and cost of program implementation, and participation by various communities. To this end, DEA found that in order to properly address the disposal of controlled substances by ultimate users, it was necessary to conduct a comprehensive review of DEA policies and regulations related to each element of the disposal process, including the transfer, delivery, collection, destruction, return, and recall of controlled substances, by both registrants and non-registrants (e.g., ultimate users).[26] The reverse distributor registration category, which is pertinent to the process of registrant disposal, was included in this comprehensive review.

As discussed above, DEA currently regulates the disposal of controlled substances by registrants and other persons in accordance with 21 CFR 1307.21 and regulates the returns process through 21 CFR 1307.12. The existing disposal regulation gives DEA Special Agents in Charge (SACs) the discretion to authorize disposal in a manner that reduces the risk of diversion from this activity on a case-by-case basis. These regulations have changed little since the CSA was enacted. While this approach is effective, with the enactment of the Disposal Act and the increasing need for the responsible disposal of controlled substances by registrants and non-registrants alike, DEA believes that in order to securely and effectively dispose of unwanted or unused controlled substances, consistent nationwide standards on disposal are necessary. As a result, DEA proposes to delete 21 CFR 1307.12 on ''Distribution to supplier or manufacturer'' and 21 CFR 1307.21 on ''Disposal of controlled substances'' and promulgate a new part 1317 that will expand available disposal options, establish nationwide standards for the disposal of controlled substances, and comprehensively outline the process and procedure for the disposal of controlled substances by registrants, ultimate users, and other non-registrants such as long term care facilities.[27]

The goal of this proposed new part on disposal, consistent with Congress's goal in passing the Disposal Act, is to set controlled substance diversion prevention parameters that will allow public and private entities to develop a variety of methods for collecting and destroying controlled substances in a secure, convenient, and responsible manner. DEA believes that the new part on disposal will provide registrants and non-registrants alike clear and consistent requirements for the disposal of controlled substances. It is intended to maximize cost efficiency, voluntary participation, and public accessibility while simultaneously promoting the secure and responsible disposal of controlled substances in order to prevent diversion.

In accordance with the changes described above, DEA proposes to delete any reference to 21 CFR 1307.12 and 1307.21 and replace it with a reference to the new 21 CFR part 1317, where appropriate.[28] DEA also proposes to revise 21 CFR 1301.13(e)(1)(i) to delete reference to a disposer category of registration in the coincident activity column for manufacturers. A disposer category of registration was proposed by DEA in 1995, but was never finalized

Social Research, The University of Michigan, 22012.

[17] Lloyd D. Johnston, Ph.D., et al, ''Monitoring the Future National Results on Adolescent Drug Use: Overview of Key Findings, 2009,'' National Institute of Drug Abuse, 2010 (NIH Publication No. 10–7583).

[18] Substance Abuse and Mental Health Services Administration, ''Results from the 2010 National Survey on Drug Use and Health: Volume I, Summary of National Findings,'' Office of Applied Studies, 2011 (NSDUH Series H–41, HHS Publication No. SMA 11–4658), *http://www.oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf.*

[19] These estimates were similar to those from the 2009 survey but 13 percent higher than those from the 2008 survey.

[20] *Id.*

[21] Substance Abuse and Mental Health Services Administration, 2010 National Survey on Drug Use and Health.

[22] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, ''Drug Poisoning Deaths in the United States, 1980–2008,'' December 2011.

[23] Behavioral Health Statistics and Quality, ''Highlights of the 2009 Drug Abuse Warning Network (DAWN) Findings on Drug-Related Emergency Department Visits,'' *The DAWN Report,* December 28, 2010.

[24] *Id.* at 4.

[25] *Id.* at 3.

[26] DEA does not address the proper disposal of listed chemicals by DEA registrants in this rulemaking.

[27] Any previous waivers, MOUs, and MOAs issued in accordance with 21 CFR 1307.21 shall be superseded by this rulemaking on the ''Disposal of Controlled Substances'' if and when it is finalized.

[28] DEA proposes in 21 CFR 1301.76 to delete reference to 1307.12 and replace it with reference to 21 CFR part 1317; in 21 CFR 1304.11(e) and the introductory paragraph of 1304.22 to delete reference to 21 CFR 1307.12; in 21 CFR 1301.25(i), 1301.52(c), and 1307.13 to delete reference to 21 CFR 1307.21 and replace it with reference to 21 CFR part 1317; in 21 CFR 1304.25(a)(9) and 1304.25(b)(9) to delete reference to 21 CFR 1307.22 and replace it with reference to 21 CFR part 1317; and in 21 CFR 1304.04(a) to add reference to 21 CFR part 1317. DEA also proposes in 21 CFR 1307.22 to delete reference to 21 CFR 1307.21, and replace it with reference to 21 CFR part 1317. DEA proposes to revise the title of 21 CFR 1307.22 to ''Delivery of surrendered and forfeited controlled substances'' for clarity.

(60 FR 43732, August 23, 1995). Reference to a disposer category was inadvertently included in a previous rulemaking (68 FR 58587, October 10, 2003).

January 19–20, 2011 Public Meeting

On January 19 and 20, 2011, DEA held a well-attended public meeting to receive information from interested parties and the public and gather ideas for drafting regulations for the newly enacted Disposal Act. (The Notice of Meeting was published in the **Federal Register** on December 22, 2010, 75 FR 80536.) This meeting provided an opportunity for all interested persons —the general public, including ultimate users, parents, pharmacies, waste management companies, long term care and pharmaceutical related industries, as well as federal, state, and local agencies, including law enforcement personnel, and others—to express their views regarding safe and effective methods of disposal of controlled substances consistent with the CSA. Representatives of various industries and organizations as well as federal, state, and local agencies made presentations at the meeting and many submitted written comments prior to the meeting.

In drafting the Disposal Act implementing regulations, DEA gathered information about disposal from the more than 70 written comments and 44 oral presentations that were submitted and transcribed from the two day public meeting. Information and experience resulting from pilot projects around the United States involving mail-back programs, take-back events, and collection receptacles for pharmaceuticals were shared and helped inform this proposed rule. Representatives of law enforcement agencies provided information on their experience, existing procedures, and perspective, particularly with respect to take-back events as a method of collection. Representatives from DEA registrant and other affected groups, such as pharmacies, reverse distributors, and the waste management industry, provided insights on technology and existing destruction procedures. Presentations by the Environmental Protection Agency, the Food and Drug Administration, the U.S. Postal Service, the U.S. Army, and state and local agencies provided information on relevant federal, state, and local laws and procedures pertaining to the disposal and transportation of controlled substances, particularly pharmaceuticals. DEA appreciated and considered all information provided at or submitted in response to the Notice of Meeting in drafting this NPRM.

Proposed Disposal Act Implementing Regulations

Disposal of Controlled Substances by Ultimate Users—Authorized Persons

In accordance with the Disposal Act, DEA proposes new regulations for the disposal of controlled substances by ultimate users and other non-registrants—in particular: (1) Persons lawfully entitled to dispose of ultimate user decedent's property and (2) LTCFs on behalf of ultimate users that reside or have resided at that LTCF. In drafting these proposed implementing regulations, DEA considered the public health and safety, ease and cost of program implementation, and participation by various communities. To this end, DEA proposes three options for ultimate users to dispose of controlled substances: (1) Take-back events; (2) mail-back programs; and (3) collection receptacle locations. These proposed options are voluntary and no person is required to establish or operate a disposal program, although any person who chooses to do so and is authorized by DEA to do so must adhere to the final regulations.

DEA proposes to authorize ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property to deliver lawfully possessed controlled substances in Schedules II, III, IV, and V to law enforcement agencies through take-back events, mail-back programs, and collection receptacles, and to authorized collectors through mail-back programs and collection receptacles. DEA is also proposing to authorize LTCFs, on behalf of an ultimate user that resides or has resided at that LTCF, to deliver a resident's lawfully possessed controlled substances in Schedule II, III, IV, or V to certain on-site collection receptacles operated by a registered retail pharmacy that is an authorized collector. The collection of Schedule I controlled substances is not permitted because, generally, ultimate users cannot lawfully possess Schedule I substances unless they are participating in an investigational use of drugs pursuant to 21 U.S.C. 355(i) and 360b(j). For ultimate users in lawful possession of Schedule I substances for investigational use, DEA proposes that they follow the disposal procedures in 21 CFR 1317.85(b). Furthermore, the proposed collection methods are intended for the collection and destruction of lawfully possessed controlled substances, not as an avenue for the disposal of substances that were illegally obtained.

DEA proposes in sections 1317.65—1317.80 that controlled substances collected from ultimate users and other authorized non-registrant persons may be comingled with non-controlled substances—both controlled and non-controlled substances may be collected together so long as the requirements outlined for controlled substances are followed. Comingling reduces the risk of diversion and is practical, efficient, and economical. Members of the public cannot easily identify the difference between controlled and non-controlled substances. As collection pilot programs demonstrate, the requirement that controlled and non-controlled substances be collected separately is expensive, time-consuming, and hampers the collection process. In addition, comingling controlled substances is another way to minimize the risk of diversion of collected controlled substances. For example, many pharmacies and institutional practitioners disperse controlled substances throughout the stock of non-controlled substances in order to deter the theft or diversion of the controlled substances. See 21 CFR 1301.75(b).

DEA proposes in section 1317.30 that federal, state, tribal, and local law enforcement agencies continue with authority to collect ultimate user controlled substances, and that certain registrants authorized by DEA to be a ''collector'' be authorized to collect controlled substances from ultimate users, persons lawfully entitled to dispose of ultimate user decedent's property, and, in some circumstances, long term care facilities. DEA is authorizing certain registrant categories to be ''collectors'' so that DEA can ensure sufficient physical security controls are in place, thereby minimizing the risk of diversion. Registrants are subject to controls related to their DEA registration. These pre-existing controls will protect against the diversion of controlled substances in the process of ultimate user collection.

Possession for Disposal

Once a controlled substance is lawfully dispensed to an ultimate user, the ultimate user is in possession of that substance. Only the ultimate user or other authorized persons (i.e., persons lawfully entitled to dispose of an ultimate user decedent's property and, in some cases, the LTCF where the ultimate user resides or has resided) may dispose of such controlled substances in accordance with DEA's proposed ultimate user disposal regulations. In contrast, a controlled

substance dispensed for immediate administration pursuant to an order for medication in an institutional setting remains in the possession of that registered institution, even if the substance is not fully exhausted (e.g., some of the substance remains in a vial, tube, or syringe after administration but cannot or may not be further utilized). Such remaining substance must be properly recorded, stored, and destroyed in accordance with DEA regulations, and all applicable federal, state, tribal, and local laws and regulations. These same principles would apply to hospice settings, which may be registered by DEA as an institutional practitioner or may be unregistered like many LTCFs.

Law Enforcement Agencies

DEA proposes specific language in section 1317.35 to continue to authorize law enforcement agencies, on a voluntary basis, to collect controlled substances from ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property through: (1) Take-back events, (2) mail-back programs, and (3) collection receptacles located at the law enforcement agency's physical address.

DEA recommends that law enforcement agencies electing to participate in ultimate user disposal maintain any records of receipt or collection in a manner that is consistent with that agency's recordkeeping requirements for illicit controlled substance evidence handling and store any controlled substances collected in a manner that reasonably prevents the diversion of controlled substances and is consistent with that agency's standard procedures for storing illicit controlled substances. Destruction of controlled substances must be in accordance with applicable federal, state, tribal, and local laws and regulations. DEA recommends that law enforcement agencies also keep a record of any transfer of controlled substances to reverse distributors for destruction; such records may assist DEA in ensuring that reverse distributors are keeping proper records of those controlled substances they acquire from law enforcement agencies that conduct ultimate user disposal activities. DEA recognizes that law enforcement agencies have existing procedures regarding the handling, storage, or transfer for destruction of controlled substances. These proposed rules do not require changes to those procedures. DEA anticipates that those existing procedures will provide the necessary security to prevent the diversion of controlled substances.

DEA proposes that law enforcement agencies that choose to conduct mail-back programs within their jurisdiction must make available to ultimate users packages described in proposed section 1317.70. Such packages may, however, be made available pursuant to a partnership or other agreement between the law enforcement agency and another person for the purpose of funding, dissemination, production, or other non-collection activity meant to facilitate the law enforcement agency's mail-back program. Such standards will help to alleviate the primary security concerns related to mail-back programs. As explained below, many such concerns exist regardless of the destination of the mail-back packages; thus, security standards related to the mail-back packages must be maintained even if the program is conducted by a law enforcement agency. DEA emphasizes, however, that the authority of law enforcement agencies to conduct ultimate user disposal programs is not a mechanism by which registrants may circumvent these proposed regulations or any other applicable laws or regulations. Any person, group, or entity that partners with a law enforcement agency to implement an ultimate user disposal program must comply with all applicable laws and regulations. In specific terms, any authorized collector that partners with a law enforcement agency to jointly conduct a collection program must adhere to these proposed regulations and any other applicable laws and regulations.

DEA appreciates that implementing some of the proposed disposal methods may present challenges to some state, tribal, and local law enforcement agencies. When implementing any new community service, all government agencies must balance available resources against established priorities. DEA hopes that these regulations will provide flexibility and opportunities for communities, interest groups, registrants, and law enforcement agencies to partner together to provide cost effective, safe, and convenient methods of ultimate user disposal. DEA looks forward to receiving suggestions from state, tribal, and local law enforcement agencies concerning its proposed regulations for the disposal of controlled substances by law enforcement agencies.

Collectors

DEA proposes in section 1300.01(b) to define a ''collector'' as a registered manufacturer, distributor, reverse distributor, or retail pharmacy that is authorized to receive a controlled substance for the purpose of destruction from an ultimate user, person lawfully entitled to dispose of an ultimate user decedent's property, or a long term care facility on behalf of an ultimate user that resides or has resided at that facility. In section 1317.40(a), DEA proposes that registered manufacturers, distributors, reverse distributors, and retail pharmacies may obtain authorization from DEA to be a collector. No manufacturer, distributor, reverse distributor, or retail pharmacy is required to be a collector.

In proposing which DEA registrants could become authorized collectors, DEA considered public health and safety, diversion control, and convenience and accessibility. In particular, DEA is proposing to authorize registered retail pharmacies to become collectors because such registrants are open to the public and have theft and loss prevention measures within the pharmacy processing area as well as outside the confines of the prescription processing and pick-up area, which easily lends itself to secure collection receptacle placement. Retail pharmacy personnel also routinely handle controlled substances intended for the ultimate user in a public setting while keeping such substances secure, and they have experience comingling controlled and non-controlled substances in the receipt and storage process. As public retail establishments, retail pharmacies generally have experience with the general public as customers and routinely implement theft and loss prevention measures.

For the foregoing reasons, retail pharmacies co-located with hospitals may be authorized to maintain collection receptacles in accordance with these regulations. Registered hospitals themselves, however, may not be authorized as collectors. This should have limited adverse impact on the ability of hospital patients to participate in ultimate user disposal because DEA believes many hospitals are co-located with registered retail pharmacies as a convenient service for outpatients. DEA proposes to restrict hospitals from being authorized collectors because they do not generally operate under the same business model or with similar theft and loss prevention procedures as retail pharmacies. For example, the general public is expected to enter retail pharmacies for short durations in order to conduct retail business. The physical layout of retail pharmacies is designed for open, clearly observable common areas and practically no areas to conceal an unlawful purpose. It would be unusual and suspicious for a person to spend an extended amount of time in a retail pharmacy without a known,

specific purpose, triggering routine theft and loss prevention measures. In contrast, hospitals are generally open 24-hours per day and allow for unsupervised public access; they are much larger than retail pharmacies and many interactions occur behind closed doors without routine theft and loss prevention measures; and foot traffic is not routinely monitored for unlawful purposes. These differences reduce the effectiveness of the proposed regulation's diversion control mechanisms and substantially increase the risk of diversion at hospitals if hospitals were authorized as collectors.

The above discussed risks in allowing hospitals as collectors are not necessary in light of the many other options available to ultimate users to dispose of unwanted or unused controlled substances.

In addition to the increased risk of diversion at hospitals, there is a risk of inadequate recordkeeping if hospitals are permitted as collectors. Unlike retail pharmacies, registered hospitals do not dispense controlled substances to ultimate users pursuant to legitimate prescriptions. Rather, registered hospitals administer controlled substances to inpatients dose by dose, and the controlled substances remain within the possession and control of the registered dispenser, the hospital. As such, registered hospitals may not dispose of controlled substances in collection receptacles, but must follow the revised regulations for registrant destruction, and keep records of such destruction.

DEA is also proposing to allow retail pharmacies to operate collection receptacles in LTCFs under certain circumstances, as discussed below, because—unlike hospitals—LTCFs ''face a distinct set of obstacles to the safe disposal of [ultimate user] controlled substances due to the increased volume of controlled substances they handle.'' Pub. L. 111–273, 2, 124 Stat. 2858. DEA is further proposing to authorize registered manufacturers, distributors, and reverse distributors to become collectors because, although such registrants have registered locations that generally are not open to the public, they do have heightened security requirements and are accustomed to receiving, securing, and distributing large amounts of controlled substances on a daily basis. DEA believes that expanding collector authorization to these registrants will provide the necessary convenience and accessibility to the public while ensuring the public health and safety and minimizing potential diversion.

To obtain authorization to be a collector, a manufacturer, distributor, reverse distributor, or retail pharmacy must apply for a modification to their registration in accordance with 21 CFR 1301.51, which DEA is proposing to revise in order to reflect these changes. Upon DEA approval of this modification in registration, each authorized registrant's DEA Certificate of Registration will specify that registrant's status as a ''collector'' and the location(s) approved for collection. Once approved to be a collector, the option for renewal will be available to authorized registrants when they renew their registration.

DEA proposes in section 1317.40(a) that if the registrant that is authorized to collect ceases activities as a collector, such registrant must modify their registration in accordance with 21 CFR 1301.51 to indicate that they no longer collect. In accordance with 21 CFR 1301.52, the registration of any person and any modifications, including authorization to be a collector, terminates if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration. Any registrant that ceases legal existence or discontinues business or professional practice must notify the Administrator promptly of such fact. 21 CFR 1301.52(a). Additionally, a registrant's authorization to collect is dependent upon the registration status of the manufacturer, distributor, reverse distributor, or retail pharmacy. Accordingly, the expiration, revocation, suspension, or surrender of a DEA registration will also result in the loss of the registrant's authorization to be a collector.

DEA proposes in section 1317.40(c) that authorized collectors may conduct the following activities: (1) Receive mail-back packages from ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property if the collector has and utilizes an on-site method of destruction; (2) install, manage, and maintain collection receptacles at locations for which the registrant is authorized to collect; and (3) promptly dispose of sealed inner liners and their contents as provided for in § 1317.05(c)(2). DEA proposes in section 1317.40(b) that collection may occur only at the registered locations of manufacturers, distributors, reverse distributors, and retail pharmacies that are authorized to collect at those locations and at long term care facilities (LTCFs) at which registered retail pharmacies are authorized to maintain a collection receptacle (see discussion on LTCFs below).

DEA proposes to authorize as collectors those persons already registered as manufacturers, distributors, reverse distributors, and retail pharmacies because, as registrants, these persons are accountable, have experience handling large volumes of controlled substances on a routine basis, and they are subject to controls related to their DEA registration. These pre-existing controls also protect against the diversion of controlled substances in the process of ultimate user collection. Further, DEA believes that ultimate user collection should occur at DEA registered locations because these premises are subject to DEA inspection, security, and other controls.[29] Such requirements ensure that proper security and other controls are in place to minimize the risk of diversion from the collection of controlled substances. Finally, with the passage of the Disposal Act, Congress did not provide DEA the authority to register persons specifically for the purpose of collecting and disposing of controlled substances from ultimate users. DEA is therefore restricted to operating within its previously existing statutory authority with regard to registration.

In section 1317.45, DEA proposes that authorized collectors employ as an agent or employee with access to or influence over controlled substances acquired pursuant to their status as a collector, only those persons that have never been convicted of any felony offense related to controlled substances and have never, at any time, had an application for registration with DEA denied, had a DEA registration revoked or suspended, or surrendered a DEA registration for cause. DEA is proposing security requirements for collectors in order to strengthen the accountability of the ultimate user collection process, which occurs outside the closed system of distribution, by ensuring that only those employees that have met certain employee screening requirements have access to or influence over controlled substances collected from ultimate users. This requirement is similar to the employee screening requirements for registered practitioners in 21 CFR 1301.76, where there is also a high risk of diversion.

The information that collectors must maintain in their records is proposed in

[29] In accordance with the Disposal Act, which permitted DEA to, by regulation, authorize LTCFs to dispose of controlled substances on behalf of ultimate users that reside or have resided at the LTCF (see 21 U.S.C. 822(g)(3)), DEA is also proposing to authorize the collection of controlled substances at those LTCFs for which a registered retail pharmacy is authorized to maintain a collection receptacle (see discussion of LTCFs below).

section 1317.50. In accordance with the CSA, every DEA registrant must make a biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. 21 U.S.C. 827(a).[30] These records must be maintained separately from all other records of the registrant or, alternatively, in the case of non-narcotic controlled substances, be in such a form that required information is readily retrievable from the ordinary business records of the registrant. 21 U.S.C. 827(b)(2). The records must be kept and be available for at least two years for inspection and copying by officers or employees of the Attorney General. 21 U.S.C. 827(b)(3). DEA may promulgate regulations that specify the information that registrants are required to maintain in their records. 21 U.S.C. 827(b).

To this end, DEA is proposing information that collectors must record based on the particular ultimate user collection method utilized (i.e., mail-back program or collection receptacle). The inner liners and mail-back packages that DEA proposes to be utilized in the collection of ultimate user controlled substances are intended for the disposal of controlled substances. As a result, DEA is requiring that collectors make an inventory of all inner liners and mail-back packages and maintain records on the use and destruction of such liners and packages in order to properly account for the disposal of controlled substances in accordance with the CSA. Once sealed, inner liners and mail-back packages shall not be opened, x-rayed, or otherwise penetrated and the substances contained in the inner liners and mail-back packages may not be individually handled, counted, inventoried, or otherwise discerned.

DEA is also proposing in section 1317.50 that collectors be exempt from the ARCOS requirements in 21 CFR 1304.33 and the order form requirements in 21 CFR part 1305 only when they collect controlled substances from ultimate users or other authorized non-registrant persons. Such substances are outside the closed system of distribution, and these tracking and accountability mechanisms are designed for substances within the closed system of distribution.

Registered Reverse Distributors and Distributors

DEA appreciates that law enforcement agencies and authorized collectors may not have the resources to destroy controlled substances received from ultimate users. Such persons may use the services of a registered reverse distributor for this purpose. DEA proposes in section 1317.55(a) to authorize registered reverse distributors to acquire for purposes of destruction controlled substances that have been collected by: (1) Law enforcement agencies; and (2) authorized collectors through collection receptacles. DEA also proposes in section 1317.55(b) to authorize registered distributors, in addition to registered reverse distributors, to acquire for purposes of destruction controlled substances collected by authorized collectors through collection receptacles.[31] DEA is proposing in section 1317.55(c) that registered reverse distributors and registered distributors that choose to acquire such collected controlled substances from authorized collectors do so in the manner prescribed for acquiring registrants' controlled substance inventory for purposes of disposal. This consistent procedure will help provide certainty in the disposal process, and help prevent errors during the acquisition process. Such acquisitions may be made pursuant to pick-up by the reverse distributor or distributor at the registrant's registered or authorized collection location, by delivery by common or contract carrier to the reverse distributor's or distributor's registered location, or by direct delivery from a non-practitioner to the reverse distributor's or distributor's registered location.

DEA proposes that authorized collectors that conduct mail-back programs must have and use an on-site method of destruction, and, as a result, these collectors will not be authorized to deliver or transfer those substances to a registered reverse distributor or distributor. The requirement to destroy on-site would not apply to law enforcement agencies that conduct mail-back programs; law enforcement agencies may continue to transfer any collected substance to an authorized reverse distributor.

Registered reverse distributors and distributors do not have to be authorized collectors to acquire collected controlled substances from law enforcement agencies or authorized collectors. In such circumstances, the substances being acquired have already been collected by law enforcement agencies and authorized collectors and should already be securely sealed in an inner liner or mail-back package in accordance with sections 1317.65–1317.80.

DEA also proposes in section 1317.55(c) that those registered reverse distributors and distributors that acquire controlled substances from law enforcement agencies and authorized collectors must destroy such controlled substances or securely transfer and store the controlled substances utilizing applicable procedures described in section 1317.15(c) until timely destruction can occur. In addition, reverse distributors and distributors must destroy the controlled substances as soon as practicable but no later than fourteen calendar days of pick-up or delivery, pursuant to proposed section 1317.15(d). Consistent procedures for the acquisition and disposal of registrant inventory and ultimate user collected controlled substances will streamline practices and help prevent confusion and error in the transfer, storage, and destruction processes. Any storage of such substances at the registered location of the reverse distributor or distributor must be in a manner consistent with the security requirements for Schedule II controlled substances. This is to minimize the risk of diversion because inner liners and mail-back packages shall not be opened once they are sealed and their contents will not be known, and, as a result, such liners and packages should be stored as though each contains a Schedule II controlled substance.

DEA also proposes in sections 1317.55(d) and 1317.100 to require that these reverse distributors and distributors keep records regarding the receipt, storage, transfer, and destruction of those controlled substances acquired from law enforcement agencies and authorized collectors.[32] Such records will help to ensure that the collected substances are accounted for and properly destroyed.

Finally, DEA proposes in section 1317.55(e) and (f) to exempt reverse distributors and distributors that acquire collected controlled substances from law enforcement agencies or authorized collectors from the ARCOS

[30] The recordkeeping requirements differ depending on whether the records pertain to the registrant's inventory or stock, or the registrant's activities as an authorized collector. The requirements contained in the current regulations are those imposed on registrants with regard to their stock on hand (i.e., their inventory of controlled substances). Controlled substances collected from ultimate users are not part of a registrant's inventory and would not be counted as such.

[31] Reverse distributors or distributors may acquire controlled substances that have been collected by collection receptacle at either an authorized collector's registered location or, pursuant to sections 1317.75(g) and 1317.80(d), at a long term care facility for which a registered retail pharmacy is authorized to collect. See subsequent discussion for more detail on reverse distributors.

[32] For clarity, DEA proposes in 21 CFR 1304.11(e)(2) and 1304.22(b) to cross reference these reverse distributor and distributor recordkeeping requirements covered by 21 CFR 1317.55.

requirements in 21 CFR 1304.33 and the order form requirements in 21 CFR part 1305, only when they acquire controlled substances that have been collected from ultimate users by law enforcement agencies or authorized collectors. Such substances are outside the closed system of distribution, and these tracking and accountability mechanisms are designed for substances within the closed system of distribution.

Disposal of Controlled Substances by Ultimate Users—Authorized Methods

Take-Back Events

The first method of collection that DEA proposes, in section 1317.65, is take-back events. Ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property would be authorized to utilize a take-back event in accordance with 1317.65 to dispose of their controlled substances in Schedules II, III, IV, and V. As mentioned above, DEA is proposing specific language that will continue to authorize law enforcement agencies to conduct take-back events. DEA believes that take-back events should be conducted only by law enforcement agencies because such events are highly publicized, are often held at easily accessible locations within a community, and do not have the same security controls as permanent collection locations. As such, take-back events are more vulnerable to diversion. Although only law enforcement agencies would continue to be authorized to conduct take-back events, DEA proposes in section 1317.65(a) that private entities or community groups may continue to partner with law enforcement to hold community take-back events, thereby allowing for greater community involvement, education, and outreach, while minimizing the risk of diversion.

Many of the provisions that DEA proposes in section 1317.65, with respect to take-back events, are recommendations (''should'' instead of ''shall'') because DEA has no intent to change existing law enforcement procedures regarding the handling, storage, transfer, or destruction of controlled substances. DEA is, however, proposing some requirements that law enforcement agencies must follow in order to hold a take-back event. For example, in section 1317.65(b), DEA proposes that any law enforcement agency that conducts a take-back event shall appoint a law enforcement officer, who must be employed full time by the agency, to oversee the collection. Further, law enforcement officers employed [33] and authorized by the law enforcement agency conducting the take-back event must maintain control and custody of the collected substances from the time the substances are collected from the ultimate user or person authorized to dispose of the ultimate user decedent's property until secure transfer or destruction has occurred. DEA believes that designated law enforcement officers should be required to maintain control and custody of the controlled substances at all times in order to protect against theft and diversion.

Take-back events provide ultimate users the opportunity to dispose of Schedule II, III, IV, and V controlled substances, which they legally possess, at a designated place and time. DEA proposes in section 1317.65(c) that each take-back event should have at least one receptacle for the collection of permitted substances. Although this is only a recommendation for law enforcement agencies that conduct take-back events, DEA believes that optimal security and protection of public health and safety can be achieved if controlled and non-controlled substances are collected in a collection receptacle that is securely locked and substantially constructed with an outer shell and removable inner liner.

DEA also proposes in section 1317.65(e) that only an ultimate user or person lawfully entitled to dispose of an ultimate user decedent's property may transfer controlled substances to the law enforcement agency during the take-back event. No other person, such as a take-back event volunteer, may handle or touch the controlled substances at any time. DEA is proposing this requirement to limit the number of hands through which the substances pass because the risk of diversion increases each time a controlled substance is transferred to a new person.

Mail-Back Programs

The second method of collection that DEA proposes, in section 1317.70, is mail-back programs. Ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property are authorized to utilize a mail-back program in accordance with 1317.70 to dispose of their controlled substances in Schedules II, III, IV, and V. DEA proposes in section 1317.70(a) specific language to continue to authorize law enforcement agencies to voluntarily conduct mail-back programs; and mail-back programs may be conducted by registered manufacturers, distributors, reverse distributors, or retail pharmacies that: (1) Are authorized as collectors; and (2) have and utilize an on-site method of destruction at their registered location. The security requirements proposed with respect to the other proposed collection methods (take-back events and collection receptacles) are adequate to ensure that controlled substances are collected and maintained in a manner that prevents diversion until transfer and destruction can occur. Designing regulations that ensure the security of controlled substances in the context of mail-back programs is challenging because, unlike take-back events and collection receptacle locations, there is a third party who handles the controlled substances as they are transferred from the ultimate user to the authorized collector in mail-back programs—the mail system. This unique circumstance provides opportunities for diversion that do not exist with the other collection methods, thus requiring more stringent controls than the other methods. As a result, DEA proposes to allow mail-back programs to be voluntarily conducted by DEA registrants that are authorized collectors that have and utilize an on-site method of destruction and by law enforcement agencies in order to minimize the transfer of controlled substances between various locations. This is intended to minimize the risk of diversion.

DEA also proposes in section 1317.70(c) that any authorized collector or law enforcement agency that conducts a mail-back program must produce and provide specified packages, either at no cost or for a fee, to ultimate users for the collection of controlled substances through the mail, and may do so in partnership with third parties for convenience, funding, or any other lawful purpose. One example of such a partnership would be when an authorized collector with an on-site method of destruction (e.g., a DEA-registered reverse distributor) produces appropriate mail-back packages, and allows a third party business partner that is frequently accessed by the public (e.g., a retail pharmacy) to provide these packages to patronizing customers. In this circumstance, the registered reverse

[33] DEA proposes in section 1317.02 to define ''law enforcement officer'' for the purpose of 21 CFR part 1317. In order to prevent the appearance that a third party has access to or influence over controlled substances, for example by directly or indirectly funding law enforcement disposal activities, DEA is requiring the law enforcement officer to be directly employed full time by a law enforcement agency, be under the direction and control of the federal, state, tribal, or local government, be acting in the course of their official duty, and be duly sworn and given the authority by the federal, state, tribal, or local government to: (1) Carry firearms; (2) execute and serve warrants; (3) make arrests without warrant; and (4) make seizures of property.

distributor would be responsible for operating the mail-back program, including recordkeeping and security, and it must receive the mail-back packages directly at its registered location for on-site destruction. DEA proposes that packages used for collection by mail-back must meet certain specifications. The proposed package requirements include only those specifications necessary to ensure that controlled substances sent through the mail, outside of the closed system of distribution, can be tracked with a high degree of confidence in their security. These requirements are intended to protect public health and safety and prevent the diversion of controlled substances.

In particular, the packages are proposed to be postage paid (e.g., business reply), preaddressed to the authorized mail-back location, nondescript, tamper-evident and tear-resistant, among other things. This is to ensure that the mailers are not delayed or diverted through address changes, theft, or because the package has inadequate postage. Such mailers must be addressed to the authorized collector's registered location with the on-site method of destruction or to the law enforcement agency's physical address and cannot be addressed to any other location, such as a post office box.

DEA is also proposing to require that each package must have a unique identification number so that each package can be tracked. In an effort to increase the ease of program implementation and to enhance the security of the mail-back option, DEA is also proposing that each package include instructions for the user that indicate the process for mailing back the package, the permitted substances that can be sent, and notice that only packages provided by the authorized collector will be accepted for destruction.

DEA considered requiring registrants to establish a system that would allow ultimate users to notify the collector when the ultimate user mailed back a package containing controlled substances, similar to pilot projects described in the public hearing. However, the burden of requiring a notification system outweighed the benefits of such a system, particularly when other security-enhancing measures are proposed. DEA believes that the collector inventory and recordkeeping requirements—that a collector conducting a mail-back program must keep inventory of mailers created and record the unique identification number of each mail-back package received—coupled with the stringent package specifications—for example the package must be postage paid and preaddressed—are sufficient controls to help protect against diversion while minimizing the burden on ultimate users. However, while DEA is not proposing to require collectors to create and maintain a notification system, such a system is not prohibited by the proposed regulations. To ensure privacy, the proposed language of section 1317.70(d) specifies that the public cannot be required to provide any personally identifiable information when mailing back controlled substances to an authorized collector.

DEA proposes in section 1317.70(e) that the authorized collector shall accept for the purpose of on-site destruction only those packages that they made available, directly or in partnership with a third party, for the collection of controlled substances. This requirement is designed so that authorized collectors, who control the production of uniform mail-back packages that are both nondescript and not readily identified as containing controlled substances, can easily identify authorized packages and thereby increase the likelihood that they accept only those packages that they are authorized to accept.

If the authorized collector inadvertently and unknowingly accepts controlled substances from an ultimate user in a package that they did not make available for the collection of controlled substances, the authorized collector shall notify the DEA office in their area of the receipt of the package within three business days of receipt and store the package, in a manner consistent with the routine mail-back package storage requirements discussed below, until the collector receives further instructions from DEA.

The ''three business day'' requirement allows the registrant enough time to process the packages received while still ensuring that DEA is notified of the incident in a timely manner thus allowing further investigation if necessary. The requirements for postage paid and preaddressed packages are designed to reduce the likelihood that authorized collectors will receive unauthorized controlled substances via mail-back programs because the sender would have to address such package and pay for postage. Ultimate users will likely not engage in such inconveniences when postage paid and preaddressed mailers are available.

DEA proposes in section 1317.70(f) that law enforcement officers employed by the law enforcement agency and ''authorized employees'' of a collector be the only individuals permitted to handle packages collected through a mail-back program. Under the proposed definition in 1317.02(a), an ''authorized employee'' is a person directly employed by the registrant full time (i.e., not employed as a contractor or agent of a third party) and must not have been convicted of any felony offense related to controlled substances and not have had at any time an application for registration with DEA denied, had a DEA registration revoked or suspended, or surrendered a DEA registration for cause. These enhanced security requirements are proposed consistent with existing security screening procedures for employees of certain registrants and will strengthen the integrity of the mail-back process by ensuring that only trusted employees have access to or influence over controlled substances.

DEA proposes in section 1317.70(f) that upon receipt of a package through a mail-back program, an authorized collector shall not open the package, x-ray, analyze, or otherwise penetrate the package. DEA proposes in section 1317.05(c)(1) that the authorized collector must promptly destroy the package on-site or securely store the package until prompt on-site destruction or timely notification to DEA of receipt of an unauthorized package in accordance with 1317.70(e) can occur. DEA is proposing the flexible ''prompt'' destruction and secure storage standard for collectors rather than a specific time frame to ensure that controlled substances do not accumulate while pending destruction or secure storage and are destroyed in a prompt manner, thus reducing the opportunities for diversion, while still accounting for the individual circumstances of registrants that destroy controlled substances. If the authorized collector is a reverse distributor, however, such destruction must occur as soon as practicable but no later than fourteen calendar days of receipt in accordance with proposed section 1317.15(d), which is discussed below.

Mail-back programs provide a convenient means of disposal for ultimate users who may not otherwise have access to a safe method of disposal. Mail-back programs are valuable because they may be made available to a large number of ultimate users regardless of geographic location. Because this method of ultimate user disposal presents high risks of diversion, DEA has carefully weighed many options and proposes the outlined requirements. The proposed requirements may limit the number of persons authorized to conduct a mail-back program; however, a single

authorized mail-back program is capable of receiving packages from any location within the U.S.[34] The mail-back method of disposal for ultimate users is a valuable and convenient option, however, the high risk of diversion inherent to this method requires stringent controls, including post-collection tracking and accountability mechanisms, as well as on-site destruction by authorized collectors.

Collection Receptacles

The third voluntary method of collection that DEA proposes, in section 1317.75, is collection receptacles. DEA proposes specific language in section 1317.75(a) to continue authorization for any federal, state, tribal, or local law enforcement agency to maintain a collection receptacle at the law enforcement agency's physical location as well as to authorize any DEA registered manufacturer, distributor, reverse distributor, or retail pharmacy authorized as a collector to maintain a collection receptacle at their DEA registered location. Collection receptacles may be located at a collector's registered location (and certain authorized LTCFs, as discussed below) or at a law enforcement agency's physical location—they may not be placed at non-registered locations such as libraries or community centers. DEA is proposing collection receptacles be placed at registered locations to ensure that controlled substances are collected at those locations that have existing security controls in place, with the exception of LTCFs, thereby reducing the risk of diversion while still providing for a convenient option for ultimate user disposal.

Like take-back events and mail-back programs, DEA proposes in sections 1317.75(b) and (c) and 1317.80(a) that the only persons that may transfer controlled substances to the authorized collector's collection receptacle are the ultimate user, persons lawfully entitled to dispose of an ultimate user decedent's property, and, as discussed below, a LTCF on behalf of an ultimate user that resides or has resided at that LTCF when a collection receptacle is located at that LTCF. This requirement is proposed in order to limit the number of hands through which the substance passes because the risk of diversion increases each time a controlled substance is transferred to a new person.

The proposed collection receptacle requirements in section 1317.75(d) and (e) are intended to protect against diversion. In particular, DEA is proposing the minimum collection receptacle requirements necessary to protect against diversion while allowing flexibility. The collection receptacles used by authorized collectors must have a permanent outer container with a removable inner liner. The outer container must have an opening big enough to allow contents to be added to the inner liner, but small enough to prevent removal of the inner liner contents. The opening must be capable of being locked at times when an authorized employee is not present, unless the collection receptacle is located in a secured area of a long term care facility which is regularly monitored by LTCF personnel.

DEA defines an inner liner in section 1317.02 and proposes requirements for inner liners in section 1317.60. In particular, like the mail-back packages, the inner liner must be waterproof, tamper-evident, and tear-resistant. The inner liner must be removable and sealable immediately upon removal without emptying or touching the contents and the contents of the inner liner shall not be viewable from the outside when sealed. The size of the inner liner must be clearly marked on the outside of the liner, for example, be clearly marked ''5 gallon'' or ''10 gallon.'' Finally, the inner liner must bear a permanent, unique identification number that enables the liner to be tracked. DEA is proposing these inner liner requirements to ensure that controlled substances are collected and destroyed in an accountable, secure, and convenient way in order to both prevent the diversion of controlled substances and to protect public health and safety.

In an effort to increase the ease of program implementation, to increase the security of collection by collection receptacle and to remind the public that illicit substances shall not be collected, DEA is also proposing that the outer container prominently display a sign indicating that only non-controlled drugs and Schedule II, III, IV, or V controlled substances are acceptable for collection. DEA seeks comment on the value and utility of requiring that a specific, uniform symbol be placed on each collection receptacle.

DEA is also proposing other security measures, including the requirement that collection receptacles be securely fastened to a permanent structure such as a wall, floor, or immovable countertop so that they cannot be removed. At a registered location, the collection receptacle must be located within the immediate proximity of a designated area where controlled substances are stored and where an authorized employee is present. At a long term care facility, the collection receptacle must be located in a secured area monitored by personnel of that long term care facility. In addition, access to the inner liner is restricted to authorized employees. Containers secured in compliance with the proposed requirements are intended to deter and prevent theft and pilferage.

DEA proposes in section 1317.75(g) that the removal of the inner liner of the collection receptacle shall be performed by or under the supervision of at least two authorized employees of the authorized collector. To this end, a registered reverse distributor or distributor is permitted to remove and take the inner liner of the collection receptacle for destruction so long as the removal is performed under the supervision of at least two authorized employees of the authorized collector. In accordance with section 1317.05(c)(2), upon removal of the inner liner of the collection receptacle, the authorized collector shall promptly: (1) Destroy the inner liner and its contents; or (2) store the inner liner and its contents at the collector's registered location in a manner consistent with the security requirements for Schedule II controlled substances until prompt destruction can occur.

Authorized collectors who are registered practitioners[35] shall dispose of the sealed inner liners and their contents in one of the following ways: (1) Promptly destroy the sealed inner liners and their contents, using an on-site method of destruction in accordance with Subpart C of part 1317 of this chapter; (2) promptly deliver the sealed inner liners and their contents by common or contract carrier to the registered location of a reverse distributor or distributor for destruction, or by reverse distributor pick-up at the collector's registered or authorized location; or (3) request assistance from the Special Agent in Charge of the Administration in the area in which the practitioner is located by submitting one copy of DEA Form 41 identifying what is to be disposed.

Authorized collectors who are not registered practitioners[36] shall dispose of the sealed inner liners and their

[34] Mail-back programs are restricted to the receipt of mailers initiated within the U.S. in order to be consistent with the import requirements of the CSA as provided in Subchapter II of Chapter 13 of Title 21 of the U.S. Code (21 U.S.C. 951 et. seq.).

[35] The basis for distinguishing between practitioners and non-practitioners when specifying disposal procedures is explained in detail below under the discussion of controlled substance inventory disposal, beginning on page 61.

[36] The basis for distinguishing between practitioners and non-practitioners when specifying disposal procedures is explained in detail below under the discussion of controlled substance inventory disposal, beginning on page 61.

contents in one of the following ways: (1) Promptly destroy the sealed inner liners and their contents, using an on-site method of destruction in accordance with Subpart C of part 1317 of this chapter; (2) promptly deliver the sealed inner liners and their contents by common or contract carrier to the registered location of a reverse distributor or distributor, or by reverse distributor pick-up at the collector's registered or authorized location; or (3) promptly transport the sealed inner liners and their contents by the collector's own means to the registered location of a reverse distributor or distributor, or to the location of destruction. DEA is proposing the flexible ''prompt'' destruction, transfer, and storage standard for collectors rather than a specific time frame to ensure that controlled substances do not accumulate while pending destruction, transfer, or storage, while still accounting for the individual circumstances of registrants that operate and maintain collection receptacles. If the authorized collector is a reverse distributor, however, such destruction must occur as soon as practicable but no later than fourteen calendar days of receipt in accordance with proposed section 1317.15(d), which is discussed below.

Long Term Care Facilities

The Disposal Act authorized the Attorney General to develop regulations to permit long term care facilities to dispose of controlled substances on behalf of ultimate users who reside or have resided at such facilities in a manner that provides effective controls against diversion and is consistent with public health and safety. As such, DEA proposes in section 1317.80 to allow collection receptacles to be placed at long term care facilities for the disposal of controlled substances in accordance with outlined requirements.

DEA is proposing that only a registered retail pharmacy that receives authorization to collect at a specific long term care facility may manage and maintain collection receptacles at that long term care facility and remove or supervise the removal of the inner liner of the collection receptacles at that long term care facility. Such registered retail pharmacies that desire to operate a collection receptacle at a long term care facility must apply to modify their registration in accordance with 21 CFR 1301.51 and include in their application for modification in registration the physical location of each long term care facility at which the registered pharmacy intends to operate a collection receptacle. If the retail pharmacy that is authorized to collect ceases activities as a collector, such registrant must modify their registration in accordance with 21 CFR 1301.51 to indicate that they no longer collect or have ceased collection at a particular physical location.[37] The requirements in 21 CFR 1301.52(a) related to the termination of registration also apply.

A registered retail pharmacy authorized to maintain a collection receptacle at a long term care facility shall comply with the proposed requirements in 21 CFR 1317.75 that govern collection receptacles. At a long term care facility, the collection receptacle must be located in a secured area monitored by personnel of that long term care facility. In addition, access to the inner liner is restricted to authorized employees of the registered retail pharmacy. Because an authorized employee must be employed full time by the registrant, employees of the long term care facility will not have access to the inner liner of the collection receptacle, unless they are also a full time employee of the registered retail pharmacy that maintains that collection receptacle. In addition, DEA is proposing that two authorized employees of the retail pharmacy must remove or supervise the removal of the inner liner from the collection receptacle. In an effort to increase security and control of controlled substances collected, no employee of the long term care facility will have access to or influence over the contents of the collection receptacle, except to deposit controlled substances into it.

DEA is proposing that long term care facilities be permitted to dispose of controlled substances in Schedules II through V on behalf of an ultimate user who resides or has resided at such long term care facility. As with all other collection methods, controlled and non-controlled substances may be comingled in the collection receptacle. DEA proposes that the long term care facility be required to transfer controlled substances into collection receptacles (on behalf of ultimate users who reside or have resided at the long term care facility) immediately, but no longer than three business days after it is determined that the ultimate user no longer needs or wants, or should discontinue use of the controlled substance. DEA proposes this requirement on the transfer of controlled substances at a long term care facility in an effort to prevent the accumulation of ultimate user controlled substances at long term care facilities. DEA believes that this requirement balances security concerns with the ease of long term care facility participation by allowing these facilities to determine whether it is appropriate for them to dispose on behalf of an ultimate user.

Pursuant to 21 U.S.C. 822(g)(3), DEA is proposing that a long term care facility must dispose of those controlled substances only by depositing the substances into an authorized collection receptacle at the long term care facility. The long term care facility is not permitted to deliver or transfer the controlled substances off-site. If the long term care facility does not have access to an on-site collection receptacle, they are not otherwise permitted to dispose of a controlled substance on behalf of an ultimate user. Rather, the ultimate user or persons lawfully entitled to dispose of ultimate user decedent's property should dispose of those controlled substances. See 21 U.S.C. 822(g)(1) and 822(g)(4).

Because ultimate user medications are concentrated in and often administered by long term care facilities, DEA considered proposing to authorize long term care facilities to dispose of controlled substances on behalf of an ultimate user through mail-back programs and through take-back events. However, the majority of such facilities are not registered by DEA to handle controlled substances, and, therefore, do not have in place physical security controls and other requirements that minimize the risk of diversion such as the obligation to maintain effective controls against diversion, report thefts and losses, and screen certain employees for controlled substance-related felony convictions. DEA believes that only authorized DEA registrants and law enforcement agencies should be authorized to collect controlled substances from ultimate users because they have in place the proper security and other controls to help guard against diversion. Because long term care facilities are typically not registered with DEA and face the unique challenge of disposing of controlled substances on behalf of an ultimate user, DEA is proposing an option for LTCFs that balances convenience with security.

The on-site collection receptacles will reduce the risk that controlled substances may be removed from the facilities by employees (e.g., to transport substances to a take-back event for disposal) who will not be subject to the same screening procedures as employees of authorized collectors, such as the requirement that authorized

[37] For the purposes of 21 U.S.C. 880(a), collection receptacles at long term care facilities maintained by a registered retail pharmacy authorized as a collector is a ''controlled premise'' of that registered retail pharmacy.

employees who have access to or influence over controlled substances have no felony convictions related to controlled substances. Additionally, DEA believes that the mail-back option is not suitable because of the likelihood that long term care facilities may need to dispose of large quantities of controlled substances or dispose of controlled substances on a frequent basis. One security aspect of the mail-back method of disposal is the requirement that mailers be non-descript, so as not to be readily identifiable as containing controlled substances. If a large number of such mailers are consistently sent from an unregistered facility whose residents are likely to possess controlled substances, such as a long term care facility, that security measure loses much of its efficacy, thereby increasing the risk of diversion, and may even have the unintended effect of making a long term care facility's mailing system a target for diversion.[38] DEA is, therefore, proposing to only permit long term care facilities to use an on-site collection receptacle that is under the control of an authorized retail pharmacy registrant to dispose of controlled substances on behalf of an ultimate user. DEA believes that a secure on-site collection receptacle is the best method to protect against diversion and is consistent with public health and safety.

Although LTCFs may only dispose of their residents' controlled substances through collection receptacles at the LTCF, LTCF residents themselves may utilize any other disposal method available to ultimate users, including mail-back programs and take-back events. Care should be taken to ensure that LTCF residents' use of mail-back programs and take-back events does not result in the accumulation of controlled substances in a single location susceptible to internal or external diversion threats, as discussed above.

Additional Security Controls for the Collection of Controlled Substances Through Mail-Back Programs and Collection Receptacles

As discussed above, sealed mail-back packages and inner liners acquired by collectors and registered reverse distributors and distributors must be stored in a manner consistent with the physical security requirements for Schedule II controlled substances. Registered reverse distributors, distributors, and manufacturers authorized as collectors and that store mail-back packages and inner liners acquired from an ultimate user must follow the physical security controls for storing Schedule II controlled substances in accordance with 21 CFR 1301.72, which DEA proposes to revise. An authorized collector that is a retail pharmacy must follow the physical security controls for storing Schedule II controlled substances in accordance with 21 CFR 1301.75; however, such sealed mail-back packages and inner liners may not be dispersed through the practitioner's stock of non-controlled substances as described in 21 CFR 1301.75(b), which DEA proposes to revise. DEA understands that storing sealed mail-back packages and inner liners as though they are Schedule II controlled substances is a stringent requirement; however the majority of authorized collectors, as registrants, are likely to already have these storage capabilities in place. DEA is proposing these physical security requirements because Schedule II is the highest schedule of controlled substances that is lawfully permitted to be included in the mail-back packages and inner liners. Because mail-back packages and inner liners may not be opened and their contents will not be known, such packages and liners should be stored as though each package and liner contains a Schedule II controlled substance.

In the event of theft, pilferage, or loss, registrants must notify DEA, in accordance with 21 CFR 1301.76(b) and 1301.74(c). DEA considers any theft or loss from a collection receptacle or mail-back program to be a ''significant loss'' within the meaning of the regulation because such losses would be attributable to the unique activities involving the disposal of controlled substances. 21 CFR 1301.74(c)(3). Also, because the controlled substances collected cannot be individually handled or sorted, it must be assumed that the loss includes Schedule II controlled substances. 21 CFR 1301.74(c)(2) and 1301.76(b). Finally, collection receptacles and mail-back packages are likely candidates for diversion because these collection methods are highly publicized and accessible to the public, and, as a result, any theft or loss from these collection methods is considered significant. 21 CFR 1301.74(c)(5) and 1301.76(b)(5).

Tracking Controlled Substances Collected From Ultimate Users and Other Authorized Non-Registrants From Collection to Destruction

In accordance with the closed system and the statutory framework of the CSA, DEA must ensure that all controlled substances collected from ultimate users are properly and promptly secured, stored, and destroyed. DEA considered allowing authorized persons to count or otherwise inventory controlled substances collected from ultimate users. Any effort to count, identify, or otherwise inventory the contents of sealed packages or inner liners, however, would require individualized identification of the contents, increase the number of hands through which controlled substances pass, and require that the packages and inner liners remain opened and exposed for extended periods of time. These factors greatly increase the risk of diversion and, when combined with the increased costs associated with such efforts, outweigh the potential benefit.

As a result of these security and diversion prevention considerations, DEA is proposing a system of collection that requires the ultimate user or other authorized non-registrant person in lawful possession of a controlled substance to personally handle such substance at all times until it is safely and securely placed in an authorized mail-back package or in an appropriate collection receptacle at an authorized location or at a take-back event. Additionally, an authorized collector would be required to collect items only in a collection receptacle with an inner liner or in a mail-back package, both of which must be uniquely identifiable, sealable, waterproof, tamper-evident, and tear-resistant. No person may open or otherwise access any secured mail-back package or inner liner.

DEA is proposing that each inner liner and mail-back package provided by an authorized collector must have a unique identification number that enables the liner and package to be tracked. The authorized collector must record the unique identification number located on the inner liner or mail-back package so that it can be properly tracked from collection to destruction. Law enforcement agencies are encouraged, but not required, to implement similar recordkeeping and tracking procedures. DEA believes that the proposed recordkeeping and tracking system is the most effective and efficient way to ensure that those controlled substances collected from ultimate users and other authorized non-registrants are secure until destruction, and are actually

[38] Although reverse distributors and other collectors conducting mail-back programs will likewise receive a large number of mailers, DEA does not anticipate that the same risk exists. Collectors authorized to conduct mail-back programs will be DEA registrants that already routinely receive controlled substances and have in place security controls. A long term care facility, however, is likely not a DEA registrant, does not already routinely send out controlled substances, and will not have in place the same types of security controls.

destroyed. DEA has proposed a rule that allows authorized collectors the flexibility to create a tracking system that is proportionate to the scope and method of their desired disposal program while also meeting the applicable security and control requirements proposed by DEA.

Disposal of Controlled Substances by Registrants

The procedures for the disposal of controlled substances by registrants are often determined on a case-by-case basis by the DEA Special Agent in Charge (SAC) in the area where the registrant is located. In many circumstances, the SAC has the discretion to determine how to authorize and instruct registrants to dispose of controlled substances, including how the substances may be destroyed. 21 CFR 1307.21(a) and (b).

DEA proposes to expand the inventory [39] disposal options available to registrants, delete the existing rule related to registrant disposal (21 CFR 1307.21), and incorporate similar requirements on proper disposal procedure, security, and recordkeeping into a new part 1317 on disposal. DEA is proposing these changes to ensure consistency in disposal procedures among registrant categories, regardless of geographic location. Such regulations will reduce the burden on registrants by eliminating the existing requirement for every registrant to contact the SAC in their area when they wish to destroy controlled substances. Also, the procedures and security and recordkeeping requirements that DEA proposes are intended to codify existing practice and to set singular and consistent procedures for DEA registrants in accordance with their authorized business activities while protecting the public health and safety and minimizing the risk of diversion.

Registration requirements and authorized activities vary depending on the type of controlled substance business activity in which a person is engaged. Accordingly, if a registrant desires to deliver controlled substances for any lawful purpose, the registrant must be authorized by his registration to conduct the delivery—the registrant must be authorized to engage in such conduct either as a business activity or coincident activity. This general rule also applies if a registrant desires to deliver controlled substances to an authorized person by transporting the substances itself and maintaining custody and control of the substances during transportation.

Pursuant to the Controlled Substances Act, registration to distribute conveys broad authority to deliver controlled substances for a lawful purpose. ''Distribute'' means to ''deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term 'distributor' means a person who so delivers a controlled substance or listed chemical.'' 21 U.S.C. 802(11). Accordingly, registrants authorized to distribute controlled substances (e.g., non-practitioners such as manufacturers, distributors, and reverse distributors) may themselves deliver such substances to authorized persons for the purpose of disposal in accordance with applicable security and recordkeeping procedures. In contrast, the Controlled Substances Act narrows the authorization of practitioners [40] (e.g., physicians, pharmacies, and hospitals) to ''dispense,'' which means ''to deliver a controlled substance *to an ultimate user* or research subject by, or *pursuant to the lawful order of, a practitioner, including the prescribing and administering of a substance* * * *'' 21 U.S.C. 802(10) (emphasis added). Authorization to dispense does not include authorization to distribute and vice versa. See 21 U.S.C. 802(11) (specifically excluding ''dispense'' from the definition of ''distribute''). As such, registration to dispense specifically conveys narrow authority to deliver a controlled substance *to an ultimate user pursuant to the lawful order of a practitioner.* Registrants who are only authorized to dispense controlled substances (e.g., practitioners) are therefore not authorized to deliver these substances themselves to any entity other than an ultimate user, even for the purpose of disposal. Instead, practitioners may only deliver these substances to authorized persons by common or contract carrier or by pick-up at the practitioner's registered location.

As discussed, non-practitioners (e.g., manufacturers, distributors, and reverse distributors) are not similarly limited in their authority to lawfully deliver controlled substances. DEA therefore proposes in section 1317.05(b) to allow non-practitioners to deliver (i.e., transfer) controlled substances themselves for the purpose of disposal provided that such substances are transported directly to the destruction location and accompanied by two authorized employees. This proposed requirement is consistent with existing practices by registered manufacturers, distributors, and reverse distributors when transporting and disposing of controlled substances. These non-practitioners generally follow these procedures (in addition to various other procedures) as a counter-measure against theft and diversion. DEA proposes these procedures, along with the procedures set forth at section 1317.95, as the minimum required to help ensure the physical security of highly pilferable controlled substances and as a deterrent to theft and diversion.

Consistent with the requirements of the Controlled Substances Act, DEA proposes in section 1317.05(b) to authorize non-practitioners to dispose of their controlled substance inventory in one of four ways: (1) Promptly destroy the substance using an on-site method of destruction in accordance with applicable federal, state, tribal, and local laws and regulations (as required by section 1317.90); (2) promptly deliver the substance to a registered reverse distributor at its registered location by common or contract carrier, or by reverse distributor pick-up; (3) for the purpose of return or recall, promptly deliver the substance by common or contract carrier or pick-up at the registrant's registered location to the person from whom it was obtained, the registered manufacturer of the substance, or another registrant authorized by the manufacturer to accept returns or recalls; or (4) promptly transport the substance by its own means to the registered location of a reverse distributor, the location of destruction, or the registered location of any person authorized to receive the substance for the purpose of return or recall.

As discussed, a practitioner's registration does not convey authority to distribute, deliver, or otherwise transfer controlled substances to any entity other than an ultimate user. Accordingly, DEA proposes in section 1317.05(a) to authorize practitioner registrants to dispose of their controlled substance inventory in one of four ways: (1) Promptly destroy the substance using an

[39] ''Inventory'' means ''all factory and branch stocks in finished form of a basic class of controlled substance manufactured or otherwise acquired by a registrant, whether in bulk, commercial containers, or contained in pharmaceutical preparations in the possession of the registrant (including stocks held by the registrant under separate registration as a manufacturer, importer, exporter, or distributor).'' 21 CFR 1300.01(b).

[40] Defined by the CSA as ''a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' 21 U.S.C. 802(21). Under the CSA, ''[t]he Attorney General shall register practitioners * * * to dispense, or conduct research with, controlled substances * * * .'' 21 U.S.C. 823(f).

on-site method of destruction in accordance with applicable federal, state, tribal, and local laws and regulations (as required by section 1317.90); (2) promptly deliver the substance to a reverse distributor at its registered location by common or contract carrier, or by reverse distributor pick-up;[41]; (3) for the purpose of return or recall, promptly deliver the substance to the registered person from whom the substance was obtained, the registered manufacturer of the substance, or another registrant authorized to accept returns or recalls by common or contract carrier or by pick-up at the registrant's registered location; or (4) request assistance from the Special Agent in Charge of the Administration in the area in which the practitioner is located. DEA proposes to allow practitioner registrants to retain the existing ability to request assistance from the SAC in the area in which the practitioner is located to dispose of their controlled substances, similar to the existing provisions of section 1307.21, in order to expand the options available for practitioners to destroy controlled substances or cause controlled substances to be destroyed. DEA proposes that the SAC in the practitioner's area may authorize the practitioner to: Transfer the controlled substances to a person registered under the Act and authorized to transport and destroy the substance; deliver the substances to an agent of the DEA or the nearest DEA office; or destroy the substances in the presence of an agent of the DEA or other authorized person. In circumstances in which a practitioner regularly destroys controlled substances, the practitioner may do so on a regular basis upon instructions from the relevant SAC.

Registrants that destroy controlled substances must do so promptly, unless otherwise specified. DEA is proposing the flexible ''prompt'' destruction standard rather than a specific time frame for destruction to ensure that controlled substances do not accumulate while pending destruction and are destroyed in a timely manner, while still accounting for the individual circumstances of registrants that destroy controlled substances.

For all registrants that destroy controlled substances or cause controlled substances to be destroyed (e.g., by transferring the substance to an authorized reverse distributor or transporting the substance to an off-site, unregistered location for destruction), DEA proposes in section 1317.95 that such registrants be required to follow certain security procedures related to employees, transportation, loading and unloading, handling, and destruction. DEA is proposing enhanced security requirements in order to strengthen the integrity of the disposal process, which has been expanded to include more disposal options and eliminates the requirement of prior notice of destruction to DEA, by filing DEA Form 41 prior to destruction, in every instance except when practitioners seek disposal assistance pursuant to proposed section 1317.05(a)(4). When a DEA registrant that destroys or causes the destruction of controlled substances is the last registered person to possess such substances, the registrant must follow increased security measures at the point of destruction to ensure accountability and effectively minimize the risk of diversion.

For registrants that destroy controlled substances on-site, that maintain possession of controlled substances until they are rendered non-retrievable (e.g., when transporting substances to an unregistered location for destruction), or that transfer custody to an authorized person for disposal, DEA is proposing employee security requirements in section 1317.95 to ensure that only employees that have satisfied certain employee screening requirements are authorized to oversee the handling of controlled substances during the destruction process. Under the proposed definition in 1317.02(a), an ''authorized employee'' is a person directly employed by the registrant full time (i.e., not employed as a contractor or agent of a third party) who must not have been convicted of any felony offense related to controlled substances and not have had at any time an application for registration with DEA denied, had a DEA registration revoked or suspended, or surrendered a DEA registration for cause.

The proposed security measures include the requirement that two authorized employees load and unload (or observe the loading and unloading of) controlled substances during transfer of the substances to another registrant; and, if the substances are destroyed on a registrant's registered premises, two authorized employees shall personally witness the destruction and shall handle (or observe the handling of) the substance until it is rendered non-retrievable. This two-person integrity requirement is necessary because the destroying registrant is the last person authorized to handle the substance before destruction and this requirement will reduce the opportunity for diversion and help to ensure that the controlled substances are actually destroyed and not diverted to illicit use.

Additionally, DEA proposes in section 1317.100 that a registrant that destroys controlled substances or causes the destruction of controlled substances is required to maintain a record of the destruction in a form to be issued by DEA. This form will be DEA Form 41. At present, DEA Form 41 is used as a record of destruction by registrants. DEA is proposing to modify DEA Form 41 to act as the record of destruction, including the signature of the two authorized employees witnessing the destruction. In an effort to minimize the burden on registrants, and in accordance with the proposed comprehensive new part on disposal, registrants that destroy or cause the destruction of controlled substances and utilize DEA Form 41 will no longer be required to submit three copies of DEA Form 41 to the SAC in their area, except one copy shall be submitted by practitioners seeking assistance pursuant to section 1317.05(a). Rather, in accordance with the CSA, such registrants will be required to keep and make available that record, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. 21 U.S.C. 827. Furthermore, all methods of destruction must be conducted in accordance with all applicable federal, state, local, and tribal laws and regulations.

Reverse Distributors

Reverse distributors are a unique group of registrants whose primary function is to possess controlled substances for the purpose of destruction or return. In this regard, reverse distributors provide a valuable service to other registrants in the disposal process. In the distribution of controlled substances between registrants, each registrant serves as a check on the other and verifies whether the controlled substance has reached its lawful destination. This is accomplished through existing reporting, recordkeeping, and order form requirements. 21 U.S.C. 827–828; 21 CFR part 1304 and 21 CFR part 1305. However, a reverse distributor that acquires controlled substances from another registrant for destruction is the last person to possess such substance before destruction so there is no recipient to verify that the substance has been destroyed. Furthermore, reverse distributors accumulate greater amounts of controlled substances that are

[41] Current DEA regulations at 21 CFR 1307.11(a)(2) discuss practitioner distribution of controlled substances to a reverse distributor. DEA proposes to clarify that provision at the proposed section 1317.05. As such, DEA proposes to delete 21 CFR 1307.11(a)(2) to eliminate redundancy.

destined for destruction in comparison to other registrants. This is because reverse distributors routinely acquire controlled substances for destruction from other registrants and may also be authorized as collectors. As a result, DEA is proposing security and recordkeeping requirements that apply specifically to a reverse distributor's unique function.

The existing regulations pertaining to reverse distributors are located in different parts of the CFR. DEA is proposing revised regulations for reverse distributors that are clear, consistent, and consolidated into one part.[42] DEA believes that these proposed regulations will help reverse distributors comply with the Controlled Substances Act in a manner that effectively decreases the risk of diversion of controlled substances during the disposal process.

DEA proposes to revise the definition of reverse distributor in section 1300.01(b). In the existing regulations, a reverse distributor is permitted to acquire controlled substances from other registrants for the purpose of return to the manufacturer or manufacturer's agent, or ''to process for or arrange the processing for'' disposal. DEA proposes to revise the definition of ''reverse distributor'' by first defining ''reverse distribute'' to mean ''to acquire controlled substances from another DEA registrant or a law enforcement agency for the purpose of: (1) Return to the manufacturer or another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf, or (2) destruction.'' A ''reverse distributor'' is a person who reverse distributes a controlled substance.

In the existing definition of reverse distributor, a reverse distributor is permitted to acquire controlled substances from other registrants for the purpose of return to the manufacturer or manufacturer's agent. DEA proposes revising the definition to authorize a reverse distributor to acquire controlled substances from another DEA registrant for the purpose of return to the manufacturer or another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf. This revision is proposed so that the reverse distribute definition is consistent with the proposed revisions to return and recall in sections 1317.05 and 1317.85 (discussed below). DEA believes that this new definition clearly and accurately reflects the proper role of a reverse distributor.

DEA proposes in section 1317.15(b) to authorize registered reverse distributors to acquire controlled substances from other registrants in one of two ways: (1) Pick-up the controlled substance from a registrant at the registrant's registered location (''pick-up''), or (2) receive the controlled substance from a registrant at the reverse distributor's registered location, delivered directly by a non-practitioner or by common or contract carrier (''delivery''). Once en route from a registrant's registered location to a reverse distributor's registered location, shipments or packages of controlled substances may not be re-routed to another person or location, even if that person or location is registered with DEA. DEA believes that re-routing shipments or packages destined for one registrant to another registrant substantially increases the likelihood of diversion.

DEA proposes in section 1317.15(c) that upon acquisition of a controlled substance from a registrant, a reverse distributor must either: (1) Immediately store the controlled substance at, or transfer the controlled substance to, the reverse distributor's registered location for secure storage until timely destruction or timely return to the registered manufacturer of the substance can occur, (2) immediately deliver the controlled substance to the manufacturer or manufacturer's agent, (3) timely destroy the controlled substance, or (4) immediately deliver the controlled substance to the place of destruction for timely destruction. The requirement for ''immediate'' transfer or delivery is intended to ensure that shipments or packages are continuously moving towards their ultimate, secure destination. Such continuous movement reduces the risk of diversion by limiting the opportunity for theft or loss. Consistent with 21 CFR 1301.12(b)(4) and the existing definition of ''freight forwarding facility'' in 21 CFR 1300.01(b), a reverse distributor may not operate freight forwarding facilities for purposes of transporting controlled substances. DEA proposes to clarify this by specifically excluding reverse distributors from the definition of ''freight forwarding facility'' in section 1300.01(b).

DEA is also proposing in section 1317.15(d) to require reverse distributors to destroy or cause the destruction of any controlled substances received for the purpose of destruction as soon as practicable but no later than within fourteen calendar days of pick-up or delivery. A reverse distributor that acquires a controlled substance for destruction is the last person to possess such substance before destruction and, therefore, must follow increased security measures. The ''as soon as practicable but no later than fourteen calendar day'' requirement is unique to reverse distributors—other registrants that destroy must do so promptly and do not have to follow a specific time limit—because the primary business activity of reverse distributors, unlike other registrants, is to acquire controlled substances for the purpose of destruction or return. As a result, reverse distributors generally accumulate greater amounts of controlled substances that are destined for destruction in comparison to other registrants. They are typically the last registrant to handle the controlled substance with no other registrant reporting and recording receipt of the substance as a check against diversion. The ''as soon as practicable but no later than fourteen calendar day'' requirement will ensure that reverse distributors destroy or cause the destruction of controlled substances in a timely manner while also enabling them sufficient time to prepare the necessary records required for destruction. In addition, the ''as soon as practicable but no later than fourteen calendar day'' requirement will reduce the risk of diversion by limiting the opportunity for theft or loss. This is necessary because, just as there is a greater risk of diversion when controlled substances are being transported for the purposes of destruction, there is a greater risk of diversion the longer a substance destined for destruction remains in storage awaiting destruction.

DEA is proposing to specify a maximum time limit for reverse distributors to destroy or cause the destruction of any controlled substance received for the purpose of destruction—as soon as practicable but no later than fourteen calendar days of receipt (pick-up or delivery). While DEA believes that the majority of reverse distributors already destroy or cause the destruction of controlled substances received for the purpose of destruction 'as soon as practicable' but no later than fourteen calendar days of receipt, DEA recognizes that some may not. For the reverse distributors that do not currently meet this standard, this requirement may cause these reverse distributors to incur additional costs through more frequent transportation of controlled substances to the point of destruction and destruction of partial loads. For purposes of this proposal, DEA assumes that some reverse distributors may have

[42] While reverse distributor-specific regulations are consolidated into proposed new 21 CFR part 1317, registered reverse distributors will still be required to follow all other applicable regulations that fall outside 21 CFR part 1317.

to adjust current business operations in order to comply with this new requirement, such as by restricting the receipt of deliveries to their registered location to specific days and/or amounts, or by changing pick-up routes to accommodate the requirement that any controlled substance received for the purpose of destruction be destroyed as soon as practicable but no later than fourteen calendar days of receipt.

DEA believes that the proposed ''as soon as practicable but no later than fourteen calendar day'' requirement is reasonable and will reduce the risks of diversion. However, DEA also acknowledges that there are assorted federal, state, and local transportation and environmental laws and regulations that reverse distributors must comply with in addition to those under the CSA and these proposed regulations. DEA also acknowledges that these proposed regulations may result in reverse distributors choosing to be responsible for much more controlled substances than they are currently responsible. Accordingly, DEA invites comments on the practicability of implementing the ''as soon as practicable but no later than fourteen calendar day'' requirement while also maintaining effective controls against diversion. Considering there are currently a limited number of registered reverse distributors with significant variations in current business practices across the United States, DEA seeks information regarding how the ''as soon as practicable but no later than fourteen calendar day'' destruction requirement would impact business practices, if at all, with specific focus on the potential long-term and short-term costs of implementing this requirement, and whether such costs would be offset by other measures. DEA also invites comment regarding the effects that shorter and longer time limits for destruction—specifically, as soon as practicable but no later than seven calendar days or thirty calendar days for destruction—would have on current business practices, including the physical security controls and operating procedures that would be implemented or modified in order to guard against theft and diversion, and the potential costs that may be incurred as a result of alternative time limits.

DEA is also proposing in section 1317.20 enhanced employee security requirements for reverse distributors. DEA proposes that reverse distributors be prohibited from employing, as an agent or employee who has access to or influence over controlled substances, any person that has ever been convicted of any felony offense related to controlled substances or has ever had an application for registration with DEA denied, had a DEA registration revoked or suspended, or surrendered a DEA registration for cause. DEA is proposing these enhanced security requirements for reverse distributors in order to strengthen the integrity of the disposal process by ensuring that only certain employees are authorized to have access to or influence over controlled substances. This requirement is similar to existing employee security requirements for registered practitioners in 21 CFR 1301.76(a), where there is a high risk of diversion and limited physical security requirements.

DEA is also proposing in 1317.25 to streamline and clarify recordkeeping requirements for registered reverse distributors that acquire controlled substances from other registrants so that they are consistent and accurately reflect reverse distributor authorized activities in compliance with the Controlled Substances Act. These requirements are separate from the recordkeeping requirements for reverse distributors that acquire controlled substances from law enforcement agencies and authorized collectors, as discussed above, in proposed section 1317.55.

First, the existing regulations require registered reverse distributors to record in an inventory, information regarding specific quantities of controlled substances that is different from the information required in continuing records. 21 CFR 1304.11(e)(3) and 1304.22(e). To reconcile this discrepancy, DEA proposes in sections 1317.25(b) and (c) that in both inventory and continuing records, a reverse distributor must record the quantity of a controlled substance in both finished and bulk form, and the quantity contained in a commercial container, carton, crate, drum, or other receptacle that has been opened.

Second, in accordance with the CSA, every DEA registrant must maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. 21 U.S.C. 827(a). These records must be maintained separately from all other records of the registrant or, alternatively, in the case of non-narcotic controlled substances, be in such a form that required information is readily retrievable from the ordinary business records of the registrant. 21 U.S.C. 827(b)(2). The records must be kept and be available for at least two years for inspection and copying by officers or employees of the Attorney General. 21 U.S.C. 827(b)(3). Under its statutory authority, DEA may promulgate regulations that specify the information that registrants are required to maintain in their records. 21 U.S.C. 827(b).

To this end, DEA proposes in section 1317.25(c) to require registered reverse distributors to: (1) Keep records regarding each controlled substance received from another registrant for the purpose of return to a manufacturer or, if designated, to another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf, and (2) keep records regarding each controlled substance destroyed, including information pertaining to the receipt and destruction of the controlled substance. These records, similar to the current requirements in 21 CFR 1304.22(e) that DEA proposes to delete, are necessary for inspection to maintain the integrity of the closed system and to assist in the detection and prevention of diversion.

DEA proposes in section 1317.25(c)(4) that for all controlled substance records, reverse distributors will be required to maintain the record of receipt with the corresponding record of return or destruction. By maintaining all relevant records together, DEA will be able to account for each substance received by a reverse distributor from its acquisition to its disposition, whether by destruction or return to the manufacturer. DEA also emphasizes that each registrant must prepare and maintain separate and independent records in order to ensure accountability of each registrant, and the integrity of the closed system of distribution.

Return and Recall

DEA is proposing to delete the existing rule on return and recall, 21 CFR 1307.12, and to clarify and separate the role of registrants and non-registrants in the return and recall of controlled substances. This is because of the different circumstances surrounding registrant and ultimate user return and recall.

Return and Recall by Registrants

DEA proposes procedures for the return and recall of controlled substances by DEA registrants in sections 1317.05(a)(3), 1317.05(b)(3), and 1317.05(b)(4), and recordkeeping and order form requirements in a new section 1317.10, which are similar to the existing rule on return and recall in 21 CFR 1307.12. The proposed new sections, however, clarify which registrants are authorized to distribute and receive returns and recalls and clarifies the recordkeeping and order form requirements. DEA proposes in sections 1317.05(a)(3), 1317.05(b)(3), and 1317.05(b)(4) that registrants in

lawful possession of a controlled substance may return that substance for the purpose of return or recall to: (1) The registered person from whom it was obtained; (2) the registered manufacturer of the substance; or (3) another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf. The procedures governing return of the substance are determined by the returning registrant's authorization as a practitioner or non-practitioner, as discussed above. This is consistent with the intent of the Controlled Substances Act to prevent opportunities for diversion because the substances are being transferred within the closed system of distribution for the purpose of disposal (i.e., return or recall) without having left the closed system of distribution, and accountability is ensured by pertinent recordkeeping requirements.

DEA proposes in section 1317.10(a) information that must be maintained in the records of registrants returning controlled substances and registrants receiving returns. In addition, pursuant to proposed section 1317.10(b), DEA Form 222 must be used by each registrant that distributes a controlled substance in Schedule I or II for the purpose of return and recall in accordance with 21 CFR part 1305. The freight forwarding provision of the existing rule is also retained in section 1317.10(c).

Ultimate User Product Recall

DEA proposes in section 1317.85 procedures for the recall or return of controlled substances by ultimate users. Currently, DEA authorizes ultimate user distribution for the purpose of recall under existing 21 CFR 1307.12, but the language in this section is overly broad. The proposed section 1317.85(a) reduces ambiguity that exists under current regulations by specifying to whom an ultimate user is permitted to deliver their recalled controlled substance and by outlining consistent and clear requirements for registrants authorized to receive those recalled substances from ultimate users.

In particular, DEA proposes in section 1317.85(a) to authorize an ultimate user in lawful possession of a controlled substance in Schedules II, III, IV, or V to deliver the recalled controlled substance to the manufacturer of the substance or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf. In the event of a product recall, the manufacturer of the recalled controlled substance or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf is authorized to receive recalled controlled substances from an ultimate user and does not need to be an authorized collector to do so. This is because the necessary security and experience in handling controlled substances is already in place. Recalled controlled substances received by authorized registrants from ultimate users are re-entering the closed system of distribution and must be handled (stored, destroyed, etc.), unless otherwise specified, in accordance with procedures that the registrant is otherwise required to follow.

DEA proposes in 1317.85(a)(1) that registrants authorized to receive recalled controlled substances from ultimate users maintain a record of recalled controlled substances received from ultimate users. Those registrants, however, are exempted under section 1317.85(a)(2) from the requirements in 21 CFR part 1305 pertaining to DEA Form 222 for substances received from non-registrants. In accordance with the Disposal Act, the delivery of a Schedule II controlled substance for the purpose of disposal by an ultimate user, long-term care facility, or other person acting in accordance with the Disposal Act is exempt from order form requirements (i.e., an ultimate user or long-term care facility may transfer a Schedule II controlled substance to another person for the purpose of disposal without a written order of the person to whom such substance is transferred). 21 U.S.C. 828(b)(3). In other words, when an ultimate user delivers a recalled controlled substance to an authorized registrant for the purpose of disposal, in this case recall, such transactions are exempt from the requirements found in 21 CFR part 1305.

DEA is also proposing in section 1317.85(a)(3) that the authorized registrant report all recalled controlled substance acquisition transactions pursuant to 21 CFR 1304.33. Such registrants may report either each individual receipt or a single transaction that includes all recalled controlled substances of the same name and finished form (e.g., all 10-milligram tablets or all 5-milligram concentration per fluid ounce or milliliter) received from ultimate users.

Finally, DEA proposes in 1317.85(b) that an ultimate user that is participating in an investigational use of drugs pursuant to 21 U.S.C. 355(i) and 360b(j) and wishes to deliver any unused controlled substance received as part of that research to the registered dispenser from which it was obtained, may do so in accordance with regulations promulgated by the Secretary of Health and Human Services pursuant to 21 U.S.C. 355(i) and 360b(j).

Methods of Destruction

DEA is proposing a standard of destruction—non-retrievable—for persons that destroy or cause the destruction of controlled substances. Some examples of current technology that may achieve the non-retrievable standard are incineration and chemical digestion. Flushing and mixing controlled substances with coffee grounds or kitty litter are examples of existing methods of destruction that do not meet the non-retrievable standard. These examples are not exhaustive and DEA is not requiring, endorsing, authorizing, or recommending any particular method of destruction so long as the desired result is achieved and the method is compliant with all applicable federal, state, tribal, and local laws and regulations. This standard is intended to allow public and private entities to develop a variety of destruction methods that are secure, convenient, and responsible, consistent with preventing the diversion of such substances. DEA is proposing a standard of destruction that provides communities the flexibility to tailor disposal options to meet their resources and needs and allows for advances in technology.

Non-Retrievable

Each controlled substance has its own inherent chemical and/or physical properties. Accordingly, the objective of ''destruction'' is to render the substance no longer susceptible to diversion for an illicit or non-medical use. DEA intends to provide maximum flexibility to allow for technological innovation and development in controlled substance destruction processes. As such, DEA solicits comments on the proposed requirement that all destruction processes be applied in such a manner that the controlled substances are rendered ''non-retrievable.''

Any destruction method applied to a controlled substance must render it ''non-retrievable.'' The proposed definition of ''non-retrievable'' means to permanently alter any controlled substance's physical and/or chemical state through irreversible means in order to render that controlled substance unavailable and unusable for all practical purposes. This definition is not intended to require destruction beyond the state at which a controlled substance becomes unavailable, unusable and, subsequently, no longer available for diversion.

In the case of ultimate user disposal where most people are unable to differentiate between controlled and non-controlled substances and because cataloging or taking inventory of substances may be detrimental to efforts to prevent diversion, all of the proposed collection methods allow comingling of pharmaceuticals. As a result, this proposed rule would require a method of destruction sufficient to render all included controlled substances non-retrievable. Likewise, where the actual substances collected are unknown, but may reasonably include controlled substances, the proposed rule would require selection of a method of destruction sufficient to render non-retrievable any controlled substance likely to be present. Information received at the January 2011 public meeting held by DEA indicated that incineration in accordance with federal, state, and local law may be the currently most-used method of destruction to achieve this result. Even so, DEA is proposing a standard that allows flexibility so long as the desired result is achieved, thus allowing for technological innovation and development. Regardless of the destruction method, the destruction must be conducted in accordance with all federal, state, tribal, and local laws and regulations.

Environmental Considerations

In passing the Disposal Act to provide those individuals seeking to dispose of unwanted or unused controlled substances in their household with more disposal options beyond discarding or flushing the substances, Congress expected that there would be fewer such substances introduced into the environment, particularly into the water.[43] DEA also recognizes that the establishment of alternative, lawful means for disposing of unused or expired pharmaceutical controlled substances may alleviate some existing environmental concerns. For example, recent studies have reported on the presence of pharmaceutical chemicals in varying concentrations in water supplies. DEA is hopeful that the increased availability of methods for citizens to safely and securely dispose of unwanted prescription drugs will have a positive impact on reducing the introduction of chemical contaminants into the water supply. However, collection and destruction of unwanted and unused pharmaceuticals cannot and will not address water contamination that occurs from other means such as bodily elimination or excretion of such substances.

The requirements of this proposed rule only govern compliance with the Controlled Substances Act. Any selected method of destruction of controlled substances meeting the requirements of this proposed rule must also comply with all applicable federal, state, and local laws and regulations applicable at the time of the destruction. Because of the broad range of such environmental and other laws and regulations, this proposed rule does not purport to address what laws may or may not be applicable in a particular circumstance now or at some future date.

As DEA and public and private entities introduce proposed options for disposal of controlled substances to the general public and in specific communities, it is anticipated that the environmental benefits of proper collection and destruction will be emphasized in the public education and publicity surrounding the disposal of unwanted or unused controlled substances. Public health and safety is protected and improved both in preventing diversion of controlled substances during a national epidemic of pharmaceutical drug abuse and in providing options for collection that result in secure and environmentally sound destruction consistent with federal, state, tribal, and local laws and regulations.

Miscellaneous Changes

In accordance with the changes described above, DEA proposes to delete any reference to 21 CFR 1307.12 and 1307.21 and replace it with a reference to the new 21 CFR part 1317, where appropriate.[44] DEA also proposes to revise 21 CFR 1301.13(e)(1)(i) to delete reference to a disposer category of registration in the coincident activity column for manufacturers. A disposer category of registration was proposed by DEA in 1995, but was never finalized (60 FR 43732, August 23, 1995). Reference to a disposer category was inadvertently included in a previous rulemaking (68 FR 58587, October 10, 2003).

Regulatory Analyses

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), federal agencies must evaluate the impact of rules on small entities and consider less burdensome alternatives. As discussed in the preceding sections of the regulatory preamble, DEA has considered numerous alternatives for each proposed requirement and method of collection and evaluated the impact of this proposed rule on small entities. DEA has concluded that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. An economic analysis of the Proposed Rule can be found in the rulemaking docket at *http://www.regulations.gov.*

In developing this proposed rule, DEA considered several options for both registrant and non-registrant disposal and reverse distributor destruction requirements. DEA analyzed alternative methodology approaches keeping in mind its statutory obligations under the CSA. DEA considered three options for non-registrant disposal: (1) Single Collection, which would authorize non-registrants to utilize only one method of collection to dispose of their lawfully possessed controlled substances; (2) Open Collection, which would authorize any person to collect controlled substances from ultimate users for disposal, regardless of their status as a DEA registrant; and (3) Multiple Collection, which would authorize non-registrants to utilize more than one method of collection to transfer controlled substances for purposes of disposal to law enforcement agencies and certain DEA registrants. In addition, DEA considered two options for registrant disposal: (1) Retain Existing Regulations, which would make no changes to the existing registrant disposal regulations (21 CFR 1307.12 and 1307.21); and (2) Establish Consistent National Standards, which would delete existing regulations on the disposal of controlled substances (21 CFR 1307.12 and 1307.21) and promulgate a new part that would comprehensively outline the process and procedure for the disposal of controlled substances by registrants and non-registrants.

Finally, DEA considered four options for reverse distributors: (1) On-site Requirement, which would require reverse distributors to have and utilize

[43] See Findings, Sec. 2, Secure and Responsible Drug Disposal Act of 2010.

[44] DEA proposes in 21 CFR 1301.76 to delete reference to 1307.12 and replace it with reference to 21 CFR part 1317; in 21 CFR 1304.11(e) and the introductory paragraph of 1304.22 to delete reference to 21 CFR 1307.12; in 21 CFR 1301.25(i), 1301.52(c), and 1307.13 to delete reference to 21 CFR 1307.21 and replace it with reference to 21 CFR part 1317; in 21 CFR 1304.25(a)(9) and 1304.25(b)(9) to delete reference to 21 CFR 1307.22 and replace it with reference to 21 CFR part 1317; and in 21 CFR 1304.04(a) to add reference to 21 CFR part 1317. DEA also proposes in 21 CFR 1307.22 to delete reference to 21 CFR 1307.21, but not replace it with reference to 21 CFR part 1317. This revision to 21 CFR 1307.22 will allow existing practices for seizure and forfeiture to continue. DEA proposes to revise the title of 21 CFR 1307.22 to ''Delivery of forfeited controlled substances'' for clarity.

an on-site method of destruction; (2) Prompt Requirement, which would require reverse distributors, like all other registrants, to promptly destroy controlled substances; (3) No Requirement, which would retain the current destruction standard and would not put a timeline on when reverse distributors must destroy controlled substances acquired for destruction; and (4) As Soon As Practicable But No Later Than Fourteen Calendar Day Requirement, which would require reverse distributors to destroy controlled substances received for the purpose of destruction as soon as practicable but no later than fourteen calendar days of receipt. DEA performed a qualitative analysis of each of these alternatives and selected the ''Multiple Collection'' option for non-registrant disposal, the ''Establish Consistent National Standard'' option for registrant disposal, and the ''As Soon As Practicable But No Later Than Fourteen Calendar Day Requirement'' option for reverse distributors.

In accordance with the RFA, DEA evaluated the impact of this rule on small entities and anticipates that this rule will not have a significant economic impact on a substantial number of small entities. If promulgated, this proposed rule would affect all 1.4 million controlled substance registrants, which corresponds to approximately 381,386 businesses affected by the proposed rule. DEA estimates that 370,133 (97 percent) of the affected businesses are considered ''small entities'' in accordance with the RFA and Small Business Administration (SBA) standards. 5 U.S.C. 601(6) and 15 U.S.C. 632. DEA estimates that there should be minimal to no economic impact as a result of this proposed rule.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator hereby certifies that this proposed rulemaking has been drafted consistent with the Act and that a regulatory analysis on the effects or impacts of this proposed rulemaking on small entities has been done and that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Orders 12866 and 13563

This proposed rule was developed in accordance with the principles of Executive Orders 12866 and 13563. Based on an economic analysis, DEA does not anticipate that this rulemaking will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. An economic analysis of the Proposed Rule can be found in the rulemaking docket at *http://www.regulations.gov.* Public comment was received in public meetings held on January 19–20, 2011, to help inform and develop these proposed rules. Public comment is encouraged on this proposed rule through the internet with easy access to supporting information found at *http://www.regulations.gov.* Although not an economically significant rule, this proposed rule on the disposal of controlled substances has been reviewed by the Office of Management and Budget.

For DEA registrants that destroy controlled substances as described above, DEA anticipates that this rulemaking will have minimal or no economic impact and that modified DEA Form 41 could result in some level of cost savings. In addition, for registered reverse distributors, DEA anticipates that the security and recordkeeping requirements contained in the proposed rule will result in minimal or no costs.

DEA has determined that reverse distributors currently destroy controlled substances within the proposed ''as soon as practicable but no later than fourteen calendar day'' requirement the majority of the time. However, it is recognized that there may be instances when reverse distributors do not currently meet this proposed requirement. For these instances, DEA believes reverse distributors will be able to make modifications to their pick-up/receipt and destruction schedule to accommodate the proposed requirements with minimal to no economic impact. Moreover, DEA conservatively estimates that the voluntary provisions for collectors, reverse distributors, distributors, and law enforcement agencies will have a net economic impact of nearly zero, and invites comment on this estimate. The proposed provisions that facilitate Non-Registrant Disposal are completely voluntary, not mandated. Any collector, reverse distributor, distributor, or law enforcement agency may choose to engage in the voluntary activities based on its own evaluation of costs and benefits (tangible and intangible). For the purposes of this analysis, DEA assumes that an entity will volunteer to perform the activities to facilitate Non-Registrant Disposal only if there is a net zero or positive benefit to the entity. For example, a pharmacy may derive tangible benefits, such as additional revenue from increased retail traffic to the pharmacy. Collectors may also derive tangible benefits such as public safety and good will from its collection activities. Any collector, reverse distributor, distributor, or law enforcement agency that chooses to engage in these voluntary activities can decide to cease these activities at any time. Therefore, for the purposes of this analysis, DEA estimates that the voluntary provisions in this section have net zero economic impact on the regulated entities.

In summary, DEA estimates that there should be minimal to no annual total cost to the economy as a result of the proposed rule. Accordingly, DEA does not anticipate that this rulemaking will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

In evaluating the costs and benefits of the rule, the annual cost of the rule is compared with the anticipated reduction in the growth rate of costs associated with diversion of controlled substances and listed chemicals into the illicit market. The cost-benefit analysis uses the costs associated with the nonmedical use of prescription opioids, $8.6 billion in 2001 [45] and $53.4 billion in 2006.[46] These are conservative estimates of the rapidly growing total cost associated with diversion of controlled substances and listed chemicals into the illicit market. As DEA has determined this rule poses minimal to no economic impact, DEA concludes that this rule reduces the growth in the cost of the diversion of controlled substances and listed chemicals into the illicit market, therefore, this rule will have a positive benefit for the health and safety of the citizens and residents of the United States.

Paperwork Reduction Act

Pursuant to Section 3507(d) of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), DEA has identified the following collections of information related to this proposed rule on the disposal of controlled substances and has submitted these collection requests to the Office of Management and Budget (OMB) for review and approval. This proposed rule implements the Secure and Responsible Drug Disposal Act of 2010

[45] Clin J Pain (The Clinical Journal of Pain), Volume 22, Number 8, October 2006.

[46] Clin J Pain (The Clinical Journal of Pain), Volume 27, Number 3, March/April 2011.

(Disposal Act), in addition to reorganizing and consolidating existing regulations on disposal into a comprehensive regulatory framework for the destruction of controlled substances. In accordance with the Controlled Substances Act (CSA), which establishes a closed system of distribution for all controlled substances, DEA registrants are required to make a biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. 21 U.S.C. 827(a). These records must be in accordance with and contain such relevant information as may be required by regulations promulgated by DEA. 21 U.S.C. 827(b)(1). In this rule, DEA proposes to revise existing and add a minimum amount of new registrant recordkeeping requirements, which are consistent with those requirements that are already required by statute and the proposed new part on disposal that creates a comprehensive regulatory framework for the destruction of controlled substances.

Title: Implementation of Registrant Recordkeeping Requirements Pursuant to the Controlled Substances Act, 21 U.S.C. 827

The recordkeeping requirements that DEA registrants are required to maintain pursuant to law are a vital component of DEA's enforcement and control responsibilities—such records alert DEA to problems of diversion and ensure that the system of controlled substances distribution is open only to legitimate handlers of such substances.

As discussed in the section on reverse distributors above, DEA is proposing to revise the information that registered reverse distributors are currently required to record consistent with previous requirements as well as a minimum amount of requirements under the proposed new comprehensive regulatory framework for the destruction of controlled substances. As discussed in more detail above, DEA proposes to modify the existing information that reverse distributors are required to record for clarity and consistency. In addition, DEA proposes that for all controlled substance records, reverse distributors will be required to maintain their existing business records so that the record of receipt is maintained with the corresponding record of return or destruction. By maintaining all relevant business records together, DEA will be able to trace each substance received by a reverse distributor from its acquisition to its disposition, whether by destruction or return to the manufacturer.

DEA estimates that there will be 60 respondents to this information collection and that their estimated frequency of response will vary. DEA estimates that the frequency of response will vary, because in accordance with 21 U.S.C. 827(a), registrants make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. Because DEA is proposing recordkeeping requirements that registered reverse distributors are already required to maintain in accordance with 21 U.S.C. 827(a) and (b), DEA anticipates that the annual hour burden will not be increased by the proposed rule.

DEA is also proposing revised information that registrants are required to record in the return and recall process. DEA proposes to delete the existing rule on return and recall, 21 CFR 1307.12, and to implement separate rules on the return and recall of controlled substances for registrants and non-registrants. The return and recall recordkeeping requirements have been revised to reflect these changes.

DEA estimates that the universe of potential respondents to this information collection will be 68,344 respondents (Distributors—828, Reverse Distributors—60, Manufacturers—522, Retail Pharmacies—66,934). DEA estimates that the frequency of response will vary, because in accordance with 21 U.S.C. 827(a), registrants make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. Because DEA is proposing recordkeeping requirements that registrants are already required to maintain in accordance with 21 U.S.C. 827(a) and (b), DEA anticipates that the annual hour burden will not be increased by the proposed rule.

DEA is proposing new recordkeeping requirements for registrants that collect controlled substances from ultimate users and other non-registrants in accordance with the new authority provided in the Disposal Act. To implement the Disposal Act, DEA is proposing to provide ultimate users, long term care facilities, and other non-registrants safe and convenient options to transfer controlled substances for purposes of disposal: Take-back events, mail-back programs, and collection receptacle locations. In the proposed rule, registered manufacturers, distributors, reverse distributors, and retail pharmacies may obtain authorization from DEA to be a collector. A collector is a registered person authorized to receive a controlled substance for the purpose of disposal from non-registrants in lawful possession of controlled substances. DEA is proposing information that collectors must record based on the particular ultimate user collection method utilized (i.e., mail-back program or collection receptacle).

DEA estimates that the universe of potential participants to this information collection will be 68,344 respondents (Distributors—828, Reverse Distributors—60, Manufacturers—522, Retail Pharmacies—66,934).[47] DEA estimates that the frequency of response will vary, because in accordance with 21 U.S.C. 827(a), registrants make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. DEA notes, however, that the option to become an authorized collector is voluntary and no entity is required to establish or operate a disposal program as an authorized collector. The authorization to collect is a new activity and DEA has no criterion to determine the level of participation. As a result, the number of respondents is based on the current number of registrants which may request authorization to become a collector and the annual hour burden cannot be determined at this time. DEA will continue to monitor and analyze the potential burden of the new requirements imposed by this proposed rule and will review all comments submitted in response to this proposed rule and information collection request.

DEA is also proposing to authorize registered reverse distributors and distributors to acquire controlled substances from authorized law enforcement agencies and certain collectors that have acquired controlled substances from ultimate users and other non-registrants. DEA proposes to require these registered reverse distributors and distributors to maintain complete and accurate records of controlled substances received, delivered, or otherwise transferred for the purpose of destruction.

DEA estimates that the universe of potential respondents to this information collection will be 888 respondents (Distributors—828, Reverse

[47] The universe of potential participants includes all registrants that could potentially become authorized collectors. It is likely that this estimate will be adjusted downward once DEA obtains more information.

Distributors—60). DEA estimates that the frequency of response will vary, because in accordance with 21 U.S.C. 827(a), registrants make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. The authorization for reverse distributors and distributors to acquire controlled substances collected by law enforcement agencies and authorized collectors is new. As a result, DEA presently has no criterion to determine the level of participation and the annual hour burden cannot be determined at this time. DEA will continue to analyze the potential burden of the new requirements imposed by this proposed rule and review all comments submitted in response to this proposed rule and information collection request.

Title: Registrant Record of Controlled Substances Destroyed—DEA Form 41

OMB Control Number: 1117–0007.
Form Number: DEA Form 41.

The recordkeeping requirements that DEA registrants are required to maintain pursuant to law are a vital component of DEA's enforcement and control responsibilities—such records alert DEA to problems of diversion and ensure that the system of controlled substances distribution is open only to legitimate handlers of such substances. DEA is proposing information that registrants involved in the destruction of controlled substances must record. The record of destruction must include the signature of the two authorized employees of the registrant that witnessed the destruction, in addition to other information about the controlled substance disposed of and the method of destruction utilized. DEA proposes to modify existing DEA Form 41 to reflect the proposed record of destruction for controlled substances that remain in the closed system of distribution and to account for registrant destruction of controlled substances collected from ultimate users and other non-registrants outside the closed system pursuant to the Disposal Act. DEA Form 41 has previously been approved by OMB and assigned OMB control number 1117–0007.

In accordance with the current 21 CFR 1307.21, a DEA registrant that desires to dispose of a controlled substance must submit three copies of DEA Form 41 to the Special Agent in Charge (SAC) in their area. DEA is proposing to delete 21 CFR 1307.21 and replace it with a comprehensive part 1317 on disposal. In an effort to minimize the burden on registrants and in accordance with the proposed comprehensive regulatory framework for disposal, registrants that destroy controlled substances and utilize DEA Form 41 will no longer be required to submit three copies of DEA Form 41 to the SAC in their area. Rather, in accordance with the CSA, such registrants will be required to keep and make available the information in the specified format, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. 21 U.S.C. 827(b).

DEA estimates that there will be 68,344 respondents (Distributors—828, Reverse Distributors—60, Manufacturers—522, Retail Pharmacies—66,934) to this information collection. The number of respondents (68,344) represents the total number of registrants in business activities that are most likely to destroy controlled substances. DEA estimates that the frequency of response will vary, because in accordance with 21 U.S.C. 827(a), registrants maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of and as a result will make a record of destruction each time they destroy a controlled substance. DEA estimates that the average time per response will be 30 minutes and that the total annual burden will be 34,172 hours.

Request for Comments Regarding the Proposed Information Collection

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. DEA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of DEA, including whether the information has practical utility; the accuracy of DEA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–4654.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Drug Enforcement Administration, Attention: Office of Diversion Control (OD/DX), 8701 Morrissette Drive, Springfield, Virginia 22152.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after its publication in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

DEA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. DEA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law, impose enforcement responsibilities on any state or diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

National Environmental Policy Act (NEPA)

This proposed rule provides options for the collection of controlled substances by registrants and non-registrants consistent with DEA regulations and federal, state, tribal, and local laws and regulations. Provision of these options is intended to result in increased collection and destruction of unused controlled substances and thereby prevent diversion of such unused substances to illicit uses and result in collection and destruction of larger quantities in economical and

environmentally sound manners. This proposed rule establishes the legal requirements for the handling of controlled substances. Destruction of controlled substances must be consistent with federal, state, tribal and local laws and regulations.

DEA and the regulated community have disposed of controlled substances since passage of the CSA. DEA has published a categorical exclusion from further NEPA analysis for the storage and destruction of controlled substances. This proposed rule would not authorize any new methods of storage, transportation, or destruction of controlled substances, but is limited to the logistics and documentation of the collection of controlled substances for destruction. Accordingly, this proposed rule does not significantly affect the quality of the human environment. DEA has, therefore, determined that this proposed rule does not have significant individual or cumulative effects on the human environment and is excluded from detailed analysis pursuant to 28 CFR part 61, Appendix B.

Unfunded Mandates Reform Act

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $136,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

Executive Order 13175

This proposed rule is required by statute, will not have tribal implications and will not impose substantial direct compliance costs on Indian tribal governments.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1305

Drug traffic control.

21 CFR Part 1307

Drug traffic control.

21 CFR Part 1317

Drug traffic control, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth above, DEA proposes to amend 21 CFR parts 1300, 1301, 1304, 1305, 1307, and 1317 as follows:

PART 1300—DEFINITIONS

1. The authority citation for part 1300 is revised to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 829, 871(b), 951, 958(f).

2. Amend § 1300.01, in paragraph (b) by:

a. Alphabetically adding a definition of ''collection'';

b. Revising the third sentence of the definition of ''freight forwarding facility'';

c. Alphabetically adding definitions of ''non-retrievable'' and ''reverse distribute''; and

d. Revising the definition of ''reverse distributor''.

The additions and revisions read as follows:

§ 1300.01 Definitions relating to controlled substances.

* * * * *

(b) * * *

Collection means to receive a controlled substance for the purpose of destruction from an ultimate user, a person lawfully entitled to dispose of ultimate user decedent's property, or a long term care facility on behalf of an ultimate user that resides or has resided at that facility. The term *collector* means a registered manufacturer, distributor, reverse distributor, or retail pharmacy that is authorized under this chapter to so receive a controlled substance for the purpose of destruction.

* * * * *

Freight forwarding facility * * * For purposes of this definition, a distributing registrant is a person who is registered with the Administration as a manufacturer, distributor (excluding reverse distributor), and/or importer.

* * * * *

Non-retrievable means, for the purpose of destruction, the condition or state to which a controlled substance shall be rendered following a process that permanently alters that controlled substance's physical and/or chemical condition or state through irreversible means and thereby renders the controlled substance unavailable and unusable for all practical purposes. The process to achieve a non-retrievable condition or state may be unique to a substance's chemical and/or physical properties. A controlled substance is considered ''non-retrievable'' when it cannot be transformed to a physical and/or chemical condition or state as a controlled substance or controlled substance analogue. The purpose of destruction is to render the controlled substance(s) to a non-retrievable state and thus prevent diversion of any such substance to illicit purposes.

* * * * *

Reverse distribute means to acquire controlled substances from another DEA registrant or a law enforcement agency for the purpose of:

(1) Return to the registered manufacturer or another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf; or

(2) Destruction.

R*everse distributor* means a person who reverse distributes a controlled substance.

* * *

* * * * *

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

3. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958.

4. Amend § 1301.13 by revising paragraph (e)(1)(i) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1)

Business activity	Controlled substances	DEA application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(i) Manufacturing	Schedules I–V	New—225 Renewal—225a	3,047 3,047	1	Schedules I–V: May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered. Schedules II–V: May conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a mfg. was issued.
*	*	*	*	*	*

* * * * *

5. Amend § 1301.25 by revising paragraph (i) to read as follows:

§ 1301.25 Registration regarding ocean vessels, aircraft, and other entities.

* * * * *

(i) Controlled substances acquired and possessed in accordance with this section shall be distributed only to persons under the general supervision of the medical officer employed by the owner or operator of the vessel, aircraft, or other entity, except in accordance with part 1317 of this chapter.

6. Revise § 1301.51 to read as follows:

§ 1301.51 Modification in registration.

(a) Any registrant may apply to modify his/her registration to authorize the handling of additional controlled substances, to change his/her name or address, or in the case of retail pharmacies, manufacturers, distributors, and reverse distributors, to authorize such registrant to be a collector, by submitting a letter of request to the Registration Unit, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address.

(1) The letter shall contain:

(i) The registrant's name, address, and registration number as printed on the certificate of registration;

(ii) The substances and/or schedules to be added to the registration, a request for authorization to collect and the type(s) of collection the registrant intends to conduct (collection receptacle or mail-back program), or the new name or address; and

(iii) A signature in accordance with § 1301.13(j) of this part.

(2) If the registrant is seeking to handle additional controlled substances listed in Schedule I for the purpose of research or instructional activities, the registrant shall attach three copies of a research protocol describing each research project involving the additional substances, or two copies of a statement describing the nature, extent, and duration of such instructional activities, as appropriate.

(3) If a registered retail pharmacy is applying for a modification in registration to authorize such registrant to be a collector and maintain a collection receptacle at a long term care facility in accordance with § 1317.80 of this chapter, the registrant shall include the physical location of each long term care facility at which the registered pharmacy intends to operate a collection receptacle.

(b) No fee shall be required to be paid for modifications. The request for modification shall be handled in the same manner as an application for registration. If the modification in registration is approved, the Administrator shall issue a new certificate of registration (DEA Form 223) to the registrant, who shall maintain it with the old certificate of registration until expiration.

7. Amend § 1301.52 by revising paragraph (c) to read as follows:

§ 1301.52 Termination of registration; transfer of registration; distribution upon discontinuance of business.

* * * * *

(c) Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall return for cancellation his/her certificate of registration, and any unexecuted order forms in his/her possession, to the Registration Unit, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for current mailing address. Any controlled substances in his/her possession may be disposed of in accordance with part 1317 of this chapter.

* * * * *

8. Amend 1301.72 by revising paragraph (a) introductory text to read as follows:

§ 1301.72 Physical security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs; storage areas.

(a) *Schedules I and II.* Raw material, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedule I or II (except GHB that is manufactured or distributed in accordance with an exemption under section 505(i) of the FFDCA which shall be subject to the requirements of paragraph (b) of this section), in addition to sealed mail-back packages and inner liners collected in accordance with part 1317 of this chapter, shall be stored in one of the following secured areas:

* * * * *

9. Amend § 1301.75 by revising paragraph (b) to read as follows:

§ 1301.75 Physical security controls for practitioners.

* * * * *

(b) Controlled substances listed in Schedules II, III, IV, and V, in addition to sealed mail-back packages and inner liners collected in accordance with part 1317 of this chapter, shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and institutional practitioners may disperse such substances, excluding sealed mail-back packages and collection receptacle inner liners, throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

* * * * *

10. Amend § 1301.76 by revising paragraph (c) to read as follows:

§ 1301.76 Other security controls for practitioners.

* * * * *

(c) Whenever the registrant distributes a controlled substance (as permitted in §§ 1301.13(e)(1), 1307.11, 1317.05, and 1317.10 of this chapter), he/she shall comply with the requirements imposed on non-practitioners in § 1301.74(a), (b), and (e).

* * * * *

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

11. The authority citation for part 1304 is revised to read as follows:

Authority: 21 U.S.C. 821, 827, 831, 871(b), 958(f) and (g), and 965, unless otherwise noted.

12. Amend § 1304.03 by revising the first two sentences of paragraph (a) to read as follows:

§ 1304.03 Persons required to keep records and file reports.

(a) Each registrant shall maintain the records and inventories and shall file the reports required by this part and part 1317 of this chapter, except as exempted by this section. Any registrant who is authorized to conduct other activities without being registered to conduct those activities, pursuant to §§ 1301.22(b), 1307.11, or 1307.13 of this chapter, shall maintain the records and inventories and shall file the reports required by this part for persons registered to conduct such activities.

* * *

* * * * *

13. Amend § 1304.04 by revising paragraph (a) introductory text to read as follows:

§ 1304.04 Maintenance of records and inventories.

(a) Except as provided in paragraphs (a)(1) and (2) of this section, every inventory and other records required to be kept under this part and part 1317 of this chapter must be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration.

* * * * *

14. Amend § 1304.11 by revising paragraph (e) introductory text, paragraph (e)(2), and paragraph (e)(3) introductory text to read as follows:

§ 1304.11 Inventory requirements.

* * * * *

(e) *Inventories of manufacturers, distributors, dispensers, researchers, importers, exporters and chemical analysts.* Each person registered or authorized (by §§ 1301.13, 1307.11, or 1307.13 of this chapter) to manufacture, distribute, dispense, import, export, conduct research or chemical analysis with controlled substances and required to keep records pursuant to § 1304.03 shall include in the inventory the information listed below.

* * * * *

(2) *Inventories of distributors.* Except for reverse distributors covered by § 1317.25 of this chapter, each person registered or authorized to distribute controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1)(iii) and (iv) of this section.

(3) *Inventories of dispensers and researchers.* Each person registered or authorized to dispense or conduct research with controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1)(iii) and (iv) of this section. In determining the number of units of each finished form of a controlled substance in a commercial container that has been opened, the dispenser or researcher shall do as follows:

* * * * *

15. Amend § 1304.22 by revising the introductory text, paragraph (b), and removing paragraph (e).

The revisions read as follows:

§ 1304.22 Records for manufacturers, distributors, dispensers, researchers, importers and exporters.

Each person registered or authorized (by §§ 1301.13(e), 1307.11, or 1307.13 of this chapter) to manufacture, distribute, dispense, import, export, or conduct research with controlled substances shall maintain records with the information listed below.

* * * * *

(b) *Records for distributors.* Except for reverse distributors covered by §§ 1317.25 and 1317.55 of this chapter, each person registered or authorized to distribute controlled substances shall maintain records with the same information required of manufacturers pursuant to paragraphs (a)(2)(i), (ii), (iv), (v), (vii), (viii), and (ix) of this section or, when applicable, § 1317.55 of this chapter.

* * * * *

16. Amend § 1304.25 by revising paragraphs (a)(9) and (b)(9) to read as follows:

§ 1304.25 Records for treatment programs which compound narcotics for treatment programs and other locations.

* * * * *

(a) * * *

(9) The quantity disposed of by destruction, including the reason, date and manner of destruction. All other destruction of narcotic controlled substances shall comply with part 1317 of this chapter.

(b) * * *

(9) The number of units of finished forms and/or commercial containers destroyed in any manner by the registrant, including the reason, the date and manner of destruction. All other destruction of narcotic controlled substances shall comply with part 1317 of this chapter.

PART 1305—ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

17. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

18. Amend § 1305.03 by adding paragraph (e) to read as follows:

§ 1305.03 Distributions requiring a Form 222 or a digitally signed electronic order.

* * * * *

(e) Deliveries to an authorized DEA registrant pursuant to part 1317 of this chapter by an ultimate user, a long-term care facility on behalf of an ultimate user that resides or has resided at that facility, or a person authorized to dispose of the ultimate user decedent's property.

PART 1307—MISCELLANEOUS

19. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b), unless otherwise noted.

§ 1307.11 [Amended]

20. In § 1307.11, remove and reserve paragraph (a)(2).

§ 1307.12 [Removed]

21. Remove § 1307.12.

22. Revise § 1307.13 to read as follows:

§ 1307.13 Incidental manufacture of controlled substances.

Any registered manufacturer who, incidentally but necessarily, manufactures a controlled substance as a result of the manufacture of a controlled substance or basic class of controlled substance for which he is registered and has been issued an individual manufacturing quota pursuant to part 1303 of this chapter (if such substance or class is listed in Schedule I or II) shall be exempt from the requirement of registration pursuant to part 1301 of this chapter and, if such incidentally manufactured substance is listed in Schedule I or II, shall be exempt from the requirement of an individual manufacturing quota

pursuant to part 1303 of this chapter, if such substances are disposed of in accordance with part 1317 of this chapter.

§ 1307.21 [Removed]

23. Remove § 1307.21

24. Revise § 1307.22 to read as follows:

§ 1307.22 Delivery of surrendered and forfeited controlled substances.

Any controlled substance surrendered by delivery to the Administration under part 1317 of this chapter or forfeited pursuant to section 511 of the Act (21 U.S.C. 881) may be delivered to any department, bureau, or other agency of the United States or of any state upon proper application addressed to the Office of Diversion Control, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. The application shall show the name, address, and official title of the person or agency to whom the controlled drugs are to be delivered, including the name and quantity of the substances desired and the purpose for which intended. The delivery of such controlled drugs shall be ordered by the Administrator, if, in his opinion, there exists a medical or scientific need therefor.

25. Add part 1317 to read as follows:

PART 1317—DISPOSAL

Sec.

1317.01 Scope.
1317.02 Definitions.

Subpart A—Disposal of Controlled Substances by Registrants

1317.05 Registrant disposal.
1317.10 Registrant return or recall recordkeeping and order form requirements.
1317.15 Reverse distributor registration requirements and authorized activities.
1317.20 Reverse distributor employee security requirement.
1317.25 Reverse distributor inventory, recordkeeping, reporting, and order form requirements.

Subpart B—Disposal of Controlled Substances by Ultimate Users and Other Non-Registrants

1317.30 Authorization to collect from non-registrants.
1317.35 Collection by law enforcement agencies.
1317.40 Registrants authorized to collect and authorized collection activities.
1317.45 Collector security requirements.
1317.50 Collector inventory, recordkeeping, reporting, and order form requirements.
1317.55 Registered reverse distributor and distributor acquisition of controlled substances from law enforcement agencies or authorized collectors.
1317.60 Inner liner requirements.
1317.65 Take-back events.
1317.70 Mail-back programs.
1317.75 Collection receptacles.
1317.80 Collection receptacles at long term care facilities.
1317.85 Ultimate user delivery for the purpose of recall or investigational use of drugs.

Subpart C—Destruction of Controlled Substances

1317.90 Methods of destruction.
1317.95 Destruction procedures.
1317.100 Recordkeeping requirements.

Authority: 21 U.S.C. 821; 822; 823; 827; 828; 871(b); and 958.

§ 1317.01 Scope.

This part prescribes the process and procedures for the delivery, collection, and destruction of damaged, expired, recalled, unused, or otherwise unwanted controlled substances that are lawfully possessed by DEA registrants (Subpart A) and non-registrants (Subpart B). The purpose of such procedures is to provide prompt, safe, and effective disposal methods while providing effective controls against the diversion of controlled substances.

§ 1317.02 Definitions.

(a) As used in this part, the following terms shall have the meaning specified:

Authorized Employee means an individual employed full time by the registrant, who has not been convicted of a felony offense related to controlled substances and has not, at any time, had an application for registration with DEA denied, had a DEA registration revoked or suspended, or surrendered a DEA registration for cause.

For cause means in lieu of, or as a consequence of, any federal or state administrative, civil, or criminal action resulting from an investigation of the individual's handling of controlled substances.

Inner liner means a liner that meets the specifications listed in § 1317.60 of this chapter and is used in the collection of controlled substances.

Law enforcement officer means a person that is:

(i) Employed full time by a law enforcement agency;

(ii) Under the direction and control of a federal, state, tribal, or local government;

(iii) Acting in the course of their official duty; and

(iv) Duly sworn and given the authority by any federal, state, tribal, or local government to carry firearms, execute and serve warrants, make arrests without warrant, and make seizures of property.

(b) Any other term contained in this part and not defined in paragraph (a) of this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

Subpart A—Disposal of Controlled Substances by Registrants

§ 1317.05 Registrant disposal.

(a) *Practitioner Inventory.* Any DEA registered practitioner in lawful possession of a controlled substance in its inventory who desires to dispose of that substance shall do so in one of the following ways:

(1) Promptly destroy that controlled substance in accordance with subpart C of this part using an on-site method of destruction;

(2) Promptly deliver that controlled substance to a reverse distributor's registered location by common or contract carrier or by reverse distributor pick-up at the registrant's registered location;

(3) For the purpose of return or recall, promptly deliver that controlled substance by common or contract carrier or pick-up at the registrant's registered location to: The registered person from whom it was obtained, the registered manufacturer of the substance, or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf; or

(4) Request assistance from the Special Agent in Charge of the Administration in the area in which the practitioner is located.

(i) The request shall be made by submitting one copy of DEA Form 41 to the Special Agent in Charge in the practitioner's area. The DEA Form 41 shall list the controlled substance or substances which the registrant desires to dispose.

(ii) The Special Agent in Charge shall instruct the applicant to dispose of the controlled substance in one of the following manners:

(A) By transfer to a person registered under the Act and authorized to transport or destroy the substance;

(B) By delivery to an agent of the Administration or to the nearest office of the Administration; or

(C) By destruction in the presence of an agent of the Administration or other authorized person.

(iii) In the event that a practitioner is required regularly to dispose of controlled substances, the Special Agent in Charge may authorize the practitioner to dispose of such substances, in accordance with subparagraph (a)(2) of this section, without prior application in each instance, on the condition that the practitioner keep records of such disposals and file periodic reports with the Special Agent in Charge

summarizing the disposals. The Special Agent in Charge may place such conditions as she/he deems proper on practitioner procedures regarding the disposal of controlled substances.

(b) *Non-practitioner inventory.* Any DEA registrant who is a non-practitioner in lawful possession of a controlled substance in its inventory who desires to dispose of that substance shall do so in one of the following ways:

(1) Promptly destroy that controlled substance in accordance with Subpart C of this part using an on-site method of destruction;

(2) Promptly deliver that controlled substance to a reverse distributor's registered location by common or contract carrier or by reverse distributor pick-up at the registrant's registered location;

(3) For the purpose of return or recall, promptly deliver that controlled substance by common or contract carrier or pick-up at the registrant's registered location to: The registered person from whom it was obtained, the registered manufacturer of the substance, or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf; or

(4) Promptly transport that controlled substance by its own means to the registered location of a reverse distributor, the location of destruction, or the registered location of any person authorized to receive that controlled substance for the purpose of return or recall as described in paragraph (b)(3) of this section.

(i) If a non-practitioner transports controlled substances by its own means to the location of destruction, the non-practitioner shall follow the procedures set forth at § 1317.95(b).

(ii) If a non-practitioner transports controlled substances by its own means to a registered location for any other authorized purpose described in this paragraph (b)(4), transportation shall be directly to the authorized registered location and two authorized employees of the transporting non-practitioner shall accompany the controlled substances to the destination registered location.

(c) *Collected Controlled Substances.* Any authorized collector in lawful possession of a controlled substance acquired by collection from an ultimate user or other authorized non-registrant person shall dispose of that substance in the following ways:

(1) *Mail-Back Program.* Upon receipt of a sealed mail-back package, the authorized collector shall promptly:

(i) Destroy the package in accordance with Subpart C of this part using an on-site method of destruction; or

(ii) Securely store the package in a manner consistent with the security requirements for Schedule II controlled substances until prompt on-site destruction can occur or, with regard to the receipt of unauthorized packages, until instructions from the Administration are received.

(2) *Collection Receptacles.* Upon removal from the permanent outer shell, the authorized collector shall promptly:

(i) Destroy the inner liner and its contents; or

(ii) Store the inner liner and its contents at the collector's registered location in a manner consistent with the security requirements for Schedule II controlled substances until prompt destruction can occur.

(iii) *Practitioner Methods of Destruction.* Authorized collectors who are registered practitioners shall dispose of sealed inner liners and their contents by utilizing any method in § 1317.05(a)(1), (a)(2), or (a)(4), or by delivering sealed inner liners and their contents to a distributor's registered location by common or contract carrier or by distributor pick-up at the collector's authorized collection location for destruction.

(iv) *Non-Practitioner Methods of Destruction.* Authorized collectors who are non-practitioners shall dispose of sealed inner liners and their contents utilizing any method in § 1317.05(b)(1), (b)(2), or (b)(4), or by delivering sealed inner liners and their contents to a distributor's registered location by common or contract carrier or by distributor pick-up at the collector's authorized collection location for destruction. Except distributing registrants shall not utilize freight forwarding facilities to transfer sealed inner liners and their contents.

§ 1317.10 Registrant return or recall recordkeeping and order form requirements.

(a) Each registrant shall maintain a record of each return or recall transaction in accordance with part 1304 of this chapter.

(1) Each registrant that delivers a controlled substance to another registrant for the purpose of return or recall shall maintain a record pursuant to § 1304.22(b).

(2) Each registrant that receives a controlled substance for the purpose of return or recall shall maintain a record that includes the following information: the date of the transaction; the name, form, and quantity of each controlled substance received; and the name, address, and registration number of the delivering registrant from whom the substance was received.

(b) Each registrant that delivers a controlled substance in Schedule I or II for the purpose of return or recall shall use an order form in the manner prescribed in part 1305 of this chapter.

(c) Deliveries for the purpose of return or recall may be made through a freight forwarding facility operated by the person to whom the controlled substance is being returned provided that advance notice of the return is provided and delivery is directly to an agent or employee of the person to whom the controlled substance is being returned.

§ 1317.15 Reverse distributor registration requirements and authorized activities.

(a) Any person that reverse distributes a controlled substance shall be registered with DEA as a reverse distributor, unless exempted by law or otherwise authorized pursuant to this chapter.

(b) A registered reverse distributor shall acquire controlled substances from a DEA registrant pursuant to §§ 1317.05 and 1317.55(a) in the following manner:

(1) The registered reverse distributor may pick-up controlled substances from a DEA registrant at the DEA registrant's registered location; or

(2) The registered reverse distributor may receive controlled substances delivered by common or contract carrier or delivered directly by a registrant who is a non-practitioner.

(i) Delivery to the registered reverse distributor by an authorized DEA registrant directly or by common or contract carrier may only be made to the reverse distributor at the reverse distributor's registered location. Once en route, such deliveries may not be re-routed to any other location or person, regardless of registration status.

(ii) All controlled substance deliveries to a registered reverse distributor shall be personally received by an authorized employee of the reverse distributor at the registered location.

(c) Upon acquisition of a controlled substance by pick-up or delivery, a registered reverse distributor shall:

(1) Immediately and securely store the controlled substance at the reverse distributor's registered location, or immediately transfer the controlled substance to the reverse distributor's registered location for secure storage until timely destruction or timely return of the substance to the registered manufacturer or other registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf;

(2) Immediately deliver the controlled substance to the registered manufacturer or another registrant authorized by the

manufacturer to accept returns or recalls on the manufacturer's behalf;

(3) Timely destroy the controlled substance in a manner prescribed in Subpart C of this part; or

(4) Immediately deliver the controlled substance to the location of destruction for timely destruction pursuant to paragraph (d) of this section.

(d) A registered reverse distributor shall destroy or cause the destruction of any controlled substance received for the purpose of destruction as soon as practicable but no later than fourteen calendar days of receipt.

§ 1317.20 Reverse distributor employee security requirement.

A registered reverse distributor shall not employ, as an agent or employee who has access to or influence over controlled substances, any person who has been convicted of any felony offense relating to controlled substances or who, at any time, had an application for registration with DEA denied, had a DEA registration revoked or suspended, or has surrendered a DEA registration for cause.

§ 1317.25 Reverse distributor inventory, recordkeeping, reporting, and order form requirements.

(a) A registered reverse distributor that acquires controlled substances from a registrant shall maintain the records, reports, and order forms described in this section and part 1304 of this chapter, except that a reverse distributor that acquires controlled substances from law enforcement agencies or authorized collectors pursuant to subpart B of this part shall follow § 1317.55(d) through (f) of this chapter.

(b) *Inventory requirements.* Each person registered as a reverse distributor shall include the following information in the inventory records required by § 1304.11 of this chapter:

(1) The name of the substance; and

(2) The total quantity of the substance:

(i) For controlled substances in bulk form, to the nearest metric unit weight consistent with unit size;

(ii) For each controlled substance in finished form: Each finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter); the number of units or volume of each finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and the number of commercial containers of each such finished form (e.g. four 100-tablet bottles or six 3-milliliter vials); and

(iii) For controlled substances in a commercial container, carton, crate, drum, or other receptacle that has been opened: If the substance is listed in Schedule I or II, make an exact count or measure of the contents; or if the substance is listed in Schedule III, IV or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made.

(c) *Record requirements.* Each person registered as a reverse distributor shall maintain records with the following information required by § 1304.21 of this chapter:

(1) For return or recall to manufacturers:

(i) The date of receipt; the name and quantity of each controlled substance received; the name, address, and DEA number of the person from whom the substance was received; and the reason for return (e.g., recall or return); and

(ii) The date of return to the manufacturer or other registrant authorized by the manufacturer to accept returns on the manufacturer's behalf; the name and quantity of each controlled substance returned; the name, address, and DEA number of the person from whom the substance was received; the name, address, and DEA number of the registrant to whom the substance was returned; and the method of return (e.g., common or contract carrier).

(2) For destruction:

(i) The date of receipt; the name and quantity of each controlled substance received; and the name, address, and DEA number of the person from whom the substance was received; and

(ii) The date of destruction; the method of destruction; the name and quantity of each controlled substance destroyed; the name, address, and DEA number of the person from whom the substance was received; the place of destruction; and the name and signature of the two authorized employees of the registered reverse distributor that witnessed the destruction.

(3) The total quantity of each controlled substance shall be recorded in accordance with the following:

(i) For controlled substances in bulk form: To the nearest metric unit weight or volume consistent with unit size;

(ii) For controlled substances in finished form: Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter); the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and the number of commercial containers of each such finished form (e.g., four 100-tablet bottles or six 3-milliliter vials); and

(iii) For controlled substances in a commercial container, carton, crate, drum, or other receptacle that has been opened: If the substance is listed in Schedule I or II make an exact count or measure of the contents; or if the substance is listed in Schedule III, IV or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made.

(4) For all records, the record of receipt shall be maintained together with the corresponding record of return or destruction.

(d) *Reports to ARCOS.* Registered reverse distributors shall report acquisition/distribution transactions pursuant to § 1304.33 of this chapter.

(e) *Order forms.* Each person registered to reverse distribute controlled substances in Schedules I or II shall comply with the requirements in part 1305 of this chapter.

Subpart B—Disposal of Controlled Substances by Ultimate Users and Other Non-Registrants

§ 1317.30 Authorization to collect from non-registrants.

(a) The following persons are authorized to collect controlled substances from ultimate users and other non-registrants for destruction in compliance with this chapter:

(1) Any registrant authorized by DEA to be a collector pursuant to § 1317.40 of this chapter; and

(2) Any federal, state, tribal, or local law enforcement agency or any law enforcement officer employed thereby acting in the course of that person's official duties and pursuant to § 1317.35 of this chapter.

(b) The following non-registrant persons in lawful possession of a controlled substance in Schedules II, III, IV, or V may transfer that substance to the authorized persons listed in paragraph (a) of this section, and in a manner authorized by this part, for the purpose of disposal:

(1) An ultimate user in lawful possession of a controlled substance;

(2) Any person lawfully entitled to dispose of a decedent's property if that decedent was an ultimate user that died while in lawful possession of a controlled substance; and

(3) A long term care facility on behalf of an ultimate user who resides or resided at such long term care facility and is/was in lawful possession of a controlled substance in accordance with § 1317.80 of this chapter only.

§ 1317.35 Collection by law enforcement agencies.

(a) A Federal, state, tribal, or local law enforcement agency may collect controlled substances from ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property using the following collection methods:

(1) Take-back events in accordance with § 1317.65 of this chapter;

(2) Mail-back programs in accordance with § 1317.70 of this chapter; or

(3) Collection receptacles located at the law enforcement agency's physical address and in accordance with § 1317.75 of this chapter.

(b) A law enforcement agency that conducts a take-back event or a mail-back program or maintains a collection receptacle should maintain any records of removal, storage, or destruction of the controlled substances collected in a manner that is consistent with that agency's recordkeeping requirements for illicit controlled substances evidence.

(c) Any controlled substances collected by a law enforcement agency through a take-back event, mail-back program, or collection receptacle should be stored in a manner that prevents the diversion of controlled substances and is consistent with that agency's standard procedures for storing illicit controlled substances.

(d) Any controlled substances collected by a law enforcement agency through a take-back event, mail-back program, or collection receptacle should be transferred to a destruction location in a manner that prevents diversion.

(e) A law enforcement agency that transfers controlled substances collected from ultimate users pursuant to this part to a reverse distributor for destruction should maintain a record that contains the following information: if an inner liner as described in § 1317.60 of this chapter is used, the unique identification number of the inner liner transferred, the size of the inner liner transferred (e.g., 5 gallon, 10 gallon, etc.); if a mail-back package as described in § 1317.70 is used, the unique identification number of each package; the date of the transfer; and the name, address, and DEA registration number of the reverse distributor to whom the controlled substances were transferred.

§ 1317.40 Registrants authorized to collect and authorized collection activities.

(a) Manufacturers, distributors, reverse distributors, and retail pharmacies may apply to modify their registration to obtain authorization to be a collector in accordance with § 1301.51 of this chapter. Authorization to be a collector is subject to renewal. If a registrant who is authorized to collect ceases activities as a collector, such registrant shall apply to modify its registration in accordance with § 1301.51 of this chapter to indicate that the registrant no longer collects.

(b) Collection by registrants shall occur only at the following locations:

(1) Those registered locations of manufacturers, distributors, reverse distributors, and retail pharmacies that are authorized for collection; and

(2) Long term care facilities at which registered retail pharmacies are authorized to maintain collection receptacles.

(c) Authorized collectors may conduct the following activities:

(1) Receive mail-back packages at a registered location that has an on-site method of destruction pursuant to § 1317.70 of this chapter;

(2) Install, manage, and maintain collection receptacles located at their authorized collection location(s); and

(3) Promptly dispose of sealed inner liners and their contents as provided for in § 1317.05(c)(2).

§ 1317.45 Collector security requirements.

An authorized collector shall not employ, as an agent or employee who has access to or influence over controlled substances acquired by collection, any person who has been convicted of any felony offense relating to controlled substances or who, at any time, had an application for registration with DEA denied, had a DEA registration revoked or suspended, or has surrendered a DEA registration for cause.

§ 1317.50 Collector inventory, recordkeeping, reporting, and order form requirements.

(a) *Inventory record requirements.* Each authorized collector shall maintain the following information in the inventory:

(1) For registrants authorized to collect through a mail-back program, the record shall include the following information about each unused mail-back package and each returned mail-back package on hand awaiting destruction:

(i) The date of the inventory;

(ii) The number of mail-back packages; and

(iii) The unique identification number of each package on hand, whether unused or awaiting destruction.

(2) For registrants authorized to collect through a collection receptacle, the record shall include the following information about each unused inner liner on hand and each inner liner on hand awaiting destruction:

(i) The date of the inventory;

(ii) The number of inner liners;

(iii) The unique identification number of each inner liner; and

(iv) The size (e.g., 5 gallon, 10 gallon, etc.) of each inner liner.

(b) *Continuing record requirements.* Each authorized collector shall maintain the following records:

(1) For registrants authorized to collect through a mail-back program, the record shall include the following:

(i) For those unused packages that the collector makes available to ultimate users and other authorized non-registrants at the authorized collector's registered address: The date made available, the number of packages, and the unique identification number of each package;

(ii) For those unused packages provided to a third party to make available to ultimate users and other authorized non-registrants (e.g., a pharmacy, grocery store, etc.): The name of the third party and physical address of the location receiving the unused packages, date sent, and the number of unused packages sent with the corresponding unique identification numbers;

(iii) Upon receipt of a sealed package: The date of receipt and the unique identification number on the individual package; and

(iv) Upon destruction of a sealed package pursuant to Subpart C of this chapter: In accordance with the recordkeeping requirements in § 1317.100 of this chapter.

(2) For registrants authorized to collect through a collection receptacle, the record shall include the following:

(i) Upon acquisition of each inner liner: The date the inner liner is acquired, the corresponding unique identification number of each inner liner, and the size (e.g., 5 gallon, 10 gallon, etc.) of each inner liner.

(ii) Upon installation of each inner liner in a collection receptacle: The date of installation, the address and DEA registration number of the location of the collection receptacle where the inner liner is installed, the unique identification number of the inner liner, the size of the inner liner (e.g., 5 gallon, 10 gallon, etc.), and the name of two authorized employees who witnessed the installation;

(iii) Upon removal of the inner liner: The date of removal, the address and DEA registration number of the collection location, the unique identification number of the inner liner, the size of the inner liner (e.g., 5 gallon, 10 gallon, etc.), and the name of two authorized employees who witnessed the removal;

(iv) Upon secure storage of a sealed inner liner: The date of the transfer to storage, the unique identification number of the inner liner stored, the size of the inner liner stored (e.g., 5 gallon, 10 gallon, etc.), and the name of two authorized employees who transferred the inner liner to secure storage;

(v) Upon transfer of a sealed inner liner to a reverse distributor or distributor: The date of the transfer, the address and DEA registration number of the reverse distributor or distributor to whom the inner liner was transferred, the unique identification number of the inner liner transferred, the size of the inner liner transferred (e.g., 5 gallon, 10 gallon, etc.), and the name of the two authorized employees who transferred the inner liner to the reverse distributor or distributor; and

(vi) Upon destruction pursuant to subpart C of this chapter: In accordance with the recordkeeping requirements in § 1317.100 of this chapter.

(c) *Reports to ARCOS.* Authorized collectors are exempt from the ARCOS reporting requirements in § 1304.33 of this chapter for controlled substances collected through mail-back programs and collection receptacles for the purpose of disposal.

(d) *Order forms.* Authorized collectors are exempt from the requirements in part 1305 of this chapter for controlled substances collected through mail-back programs and collection receptacles for the purpose of disposal.

§ 1317.55 Registered reverse distributor and distributor acquisition of controlled substances from law enforcement agencies or authorized collectors.

(a) A registered reverse distributor is authorized to acquire controlled substances from law enforcement agencies that collect controlled substances from ultimate users. A registered reverse distributor is authorized to acquire controlled substances from authorized collectors that collect controlled substances through a collection receptacle in accordance with §§ 1317.75 and 1317.80 of this chapter.

(b) A registered distributor is authorized to acquire controlled substances from authorized collectors that collect controlled substances through a collection receptacle pursuant to §§ 1317.75 and 1317.80 of this chapter.

(c) A registered reverse distributor or a registered distributor that acquires controlled substances in accordance with paragraphs (a) or (b) of this section shall:

(1) Acquire the controlled substances in the manner prescribed in § 1317.15(b) of this part;

(2) Dispose of the controlled substances in the following manner:

(i) Immediately and securely store the controlled substance at the reverse distributor's registered location, or immediately transfer the controlled substances to the reverse distributor's registered location for secure storage, until timely destruction; or

(ii) Immediately deliver the controlled substance to the location of destruction for timely destruction.

(iii) Destroy, or cause the controlled substances to be destroyed, as soon as practicable but no later than fourteen calendar days of receipt.

(iv) Destruction shall be in accordance with Subpart C of this part.

(3) Secure storage of the controlled substances shall be in a manner consistent with the security requirements for Schedule II controlled substances until timely destruction can occur.

(d) *Record requirements.* A registered reverse distributor or a registered distributor that acquires controlled substances pursuant to paragraphs (a) or (b) of this section shall maintain the following records:

(1) Upon receipt: The date of receipt; the name and address of the law enforcement agency or the name, address, and DEA registration number of the authorized collector from whom the inner liner (or mail-back package if from a law enforcement agency) was received; the unique identification number of the inner liner (or mail-back package if from a law enforcement agency) received; and the size of the inner liner received (e.g., 5 gallon, 10 gallon, etc.);

(2) Upon transfer to secure storage: The date of storage; the address and DEA number of the storage location; the unique identification number of the inner liner or mail-back package stored (if available in the case of a law enforcement agency); and the size of the inner liner stored (e.g., 5 gallon, 10 gallon, etc.);

(e) *Reports to ARCOS.* Reverse distributors and distributors that acquire controlled substances pursuant to paragraphs (a) or (b) of this section are exempt from the ARCOS reporting requirements in § 1304.33 of this chapter with regard to any controlled substances acquired pursuant to paragraphs (a) or (b) of this section.

(f) *Order forms.* Reverse distributors and distributors that acquire controlled substances pursuant to paragraphs (a) or (b) of this section are exempt from the requirements in part 1305 of this chapter with regard to any controlled substances acquired pursuant to paragraphs (a) or (b) of this section.

§ 1317.60 Inner liner requirements.

For the purpose of part 1317 of this chapter, an inner liner shall fulfill the following requirements:

(a) The inner liner shall be waterproof, tamper-evident, and tear-resistant;

(b) The inner liner shall be removable and sealable immediately upon removal without emptying or touching the contents;

(c) The contents of the inner liner shall not be viewable from the outside when sealed;

(d) The size of the inner liner shall be clearly marked on the outside of the liner (e.g., 5 gallon, 10 gallon, etc.); and

(e) The inner liner shall bear a permanent, unique identification number that enables the liner to be tracked.

§ 1317.65 Take-back events.

(a) Any Federal, state, tribal, or local law enforcement agency may conduct a take-back event and collect controlled substances from ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property in accordance with this section. Any person may partner with a law enforcement agency to hold a collection take-back event in accordance with this section.

(b) The law enforcement agency shall appoint a law enforcement officer employed full time by the agency to oversee the collection. Law enforcement officers employed and authorized by the law enforcement agency conducting a take-back event shall maintain control and custody of the collected substances from the time the substances are collected from the ultimate user or person authorized to dispose of the ultimate user decedent's property until secure transfer, storage, or destruction of the controlled substance has occurred.

(c) Each take-back event should have at least one receptacle for the collection of permitted substances. The collection receptacle should be a securely locked, substantially constructed container with an outer shell and a removable inner liner as specified in § 1317.60 of this chapter. The outer shell should include a small opening that allows contents to be added to the inner liner, but that does not allow removal of the inner liner's contents.

(d) Only those controlled substances listed in Schedule II, III, IV, or V that are lawfully possessed by an ultimate user or person entitled to dispose of an ultimate user decedent's property may

be collected. Controlled and non-controlled substances may be collected together and be comingled.

(e) Only ultimate users and persons entitled to dispose of an ultimate user decedent's property in lawful possession of a controlled substance in Schedule II, III, IV, or V may transfer such substances to the law enforcement agency during the take-back event. No other person may handle the controlled substances at any time.

§ 1317.70 Mail-back programs.

(a) A mail-back program may be conducted by any federal, state, tribal, or local law enforcement agency or any authorized collector. An authorized collector conducting a mail-back program shall have and utilize at their registered location a method of destruction consistent with § 1317.90 of this chapter.

(b) Only those controlled substances listed in Schedule II, III, IV, or V that are lawfully possessed by an ultimate user or person lawfully entitled to dispose of an ultimate user decedent's property may be collected. Controlled and non-controlled substances may be collected together and be comingled.

(c) A law enforcement agency or authorized collector that conducts a mail-back program shall make packages available (for sale or for free) as specified in this paragraph to ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property, for the collection of controlled substances by mail. Any person may partner with an authorized collector or law enforcement agency to make such packages available in accordance with this section. The packages made available shall meet the following specifications:

(1) The package shall be nondescript and shall not include any markings or other information that might indicate that the package contains controlled substances;

(2) The package shall be water- and spill-proof; tamper-evident, tear-resistant, and sealable;

(3) The package shall be preaddressed with and delivered to the authorized collector's registered address or the participating law enforcement agency's physical address;

(4) The cost of shipping the package shall be postage paid;

(5) The package shall have a unique identification number that enables the package to be tracked; and

(6) The package shall include instructions for the user that indicate the process for mailing back the package, the permitted substances that can be sent, and notice that only packages provided by the authorized collector will be accepted for destruction.

(d) Ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property shall not be required to provide any personally identifiable information when mailing back controlled substances to an authorized collector. The authorized collector or law enforcement agency may implement a system that allows ultimate users or persons lawfully entitled to dispose of an ultimate user decedent's property to notify the collector or agency that they are sending one of the designated packages by giving the unique identification number on the package.

(e) An authorized collector that conducts a mail-back program pursuant to paragraph (a) shall:

(1) Accept only those controlled substances contained within packages that the collector made available for the collection of controlled substances by mail.

(2) Within three business days of receipt, notify the Field Division Office of the Administration in their area of the receipt of a package that likely contains controlled substances and that the authorized collector did not make available for the collection of controlled substances by mail.

(f) Only law enforcement officers employed by the law enforcement agency and authorized employees of the collector shall handle packages received through an authorized mail-back program. Upon receipt of a mail-back package by an authorized collector conducting a mail-back program, the package shall not be opened, x-rayed, analyzed, or otherwise penetrated.

§ 1317.75 Collection receptacles.

(a) Any federal, state, tribal, or local law enforcement agency or authorized collector may manage, maintain, and empty collection receptacles for disposal.

(b) Only those controlled substances listed in Schedule II, III, IV, or V that are lawfully possessed by an ultimate user or other authorized non-registrant person may be collected. Controlled and non-controlled substances may be collected together and be comingled.

(c) Only ultimate users and other authorized non-registrant persons in lawful possession of a controlled substance in Schedule II, III, IV, or V may put such substances in a collection receptacle at a registered location (e.g., ultimate user cannot transfer such substance to pharmacy staff to put into a collection receptacle).

(d) Collection receptacles shall be securely placed and maintained:

(1) At an authorized collector's registered location, which shall have proper building security in accordance with §§ 1301.71 to 1301.77 of this chapter;

(2) At a long term care facility in accordance with § 1317.80 of this chapter; or

(3) At a law enforcement agency's physical location.

(e) For authorized collectors, a controlled substance collection receptacle shall:

(1) Be securely fastened to a permanent structure so that it cannot be removed;

(2) At a registered location, be located in the immediate proximity of a designated area where controlled substances are stored and at which an authorized employee is present (e.g., can be seen from the pharmacy counter); or at a long term care facility pursuant to § 1317.80, be located in a secured area regularly monitored by personnel of that long term care facility;

(3) Meet the following design specifications:

(i) A securely locked, substantially constructed container with a permanent outer shell and a removable inner liner as specified in § 1317.60 of this chapter.

(ii) The outer container shall include a small opening that allows contents to be added to the inner liner, but does not allow removal of the inner liner's contents;

(iii) The outer container shall prominently display a sign indicating that only non-controlled drugs and Schedule II, III, IV, or V controlled substances are acceptable (Schedule I controlled substances, controlled substances that are not lawfully possessed by the ultimate user, and other illicit or dangerous substances are not permitted); and

(iv) Access to the inner liner shall be restricted to authorized employees of the authorized collector.

(f) At a registered location, the small opening in the outer container of the collection receptacle shall be locked or made otherwise inaccessible to the public when an authorized employee is not present (e.g., when the pharmacy is closed).

(g) The installation and removal of the inner liner of the collection receptacle shall be performed by or under the supervision of at least two authorized employees of the authorized collector. The inner liner shall be sealed immediately upon removal from the permanent outer shell and the sealed inner liner shall not be opened, x-rayed, analyzed, or otherwise penetrated.

§ 1317.80 Collection receptacles at long term care facilities.

(a) A long term care facility may dispose of controlled substances in Schedules II, III, IV, and V on behalf of an ultimate user who resides or resided at such long term care facility when such disposal occurs immediately, but no longer than three business days after the discontinuation of use by the ultimate user. A long term care facility shall dispose of such controlled substances only by transferring those controlled substances into an authorized collection receptacle located at that long term care facility.

(b) Only a registered retail pharmacy authorized to collect at the long term care facility may manage and maintain collection receptacles at that long term care facility and remove or supervise the removal of the inner liner of the collection receptacles at that long term care facility in accordance with § 1317.75(g) of this chapter. The registered retail pharmacy shall comply with all other requirements in § 1317.75 of this chapter.

(c) A registered retail pharmacy that intends to operate a collection receptacle at a long term care facility shall apply to modify its registration in accordance with § 1301.51 of this chapter and shall include in the application for modification in registration the physical location of each long term care facility at which the registered pharmacy intends to operate a collection receptacle.

§ 1317.85 Ultimate user delivery for the purpose of recall or investigational use of drugs.

(a) In the event of a product recall, an ultimate user in lawful possession of a controlled substance listed in Schedule II, III, IV, or V may deliver the recalled substance to the manufacturer of the substance or another registrant authorized by the manufacturer to accept recalled controlled substances on the manufacturer's behalf.

(1) *Continuing record requirements.* Such registrant accepting recalled controlled substances shall maintain a record of each recalled controlled substance received from an ultimate user, to include the following information: The date of receipt, and the name, form, and quantity of each controlled substance received.

(2) *Order forms.* Such registrant accepting recalled controlled substances is exempt from the requirements in part 1305 of this chapter for the receipt of recalled controlled substances from ultimate users.

(3) *Reports to ARCOS.* Such registrant accepting recalled controlled substances may report as a single transaction all recalled controlled substances of the same name and finished form (e.g., all 10-milligram tablets or all 5-milligram concentration per fluid ounce or milliliter) received from ultimate users for the purpose of reporting acquisition transactions pursuant to § 1304.33 of this chapter.

(b) An ultimate user that is participating in an investigational use of drugs pursuant to 21 U.S.C. 355(i) and 360b(j) and wishes to deliver any unused controlled substances received as part of that research to the registered dispenser from which the ultimate user obtained those substances may do so in accordance with regulations promulgated by the Secretary of Health and Human Services pursuant to 21 U.S.C. 355(i) and 360b(j).

Subpart C—Destruction of Controlled Substances

§ 1317.90 Methods of destruction.

(a) All controlled substances to be destroyed shall be destroyed in compliance with applicable federal, state, tribal, and local laws and regulations and shall be rendered non-retrievable.

(b) Where multiple controlled substances are comingled, the method of destruction shall be sufficient to render all such controlled substances non-retrievable. When the actual substances collected for destruction are unknown but may reasonably include controlled substances, the method of destruction shall be sufficient to render non-retrievable any controlled substance likely to be present.

(c) The method of destruction shall be consistent with the purpose of rendering all controlled substances to a non-retrievable state in order to prevent diversion of any such substance to illicit purposes and to protect the public health and safety.

§ 1317.95 Destruction procedures.

The destruction of any controlled substance shall be in accordance with the following requirements:

(a) If the controlled substances are transferred to a person registered under the Act and authorized to accept the controlled substances for purposes of disposal, two authorized employees of the transferring registrant shall load and unload or observe the loading and unloading of any controlled substances until transfer is complete.

(b) If the controlled substances are transported by a registrant to the location of destruction, the following procedures shall be followed:

(1) Transportation shall be directly to the destruction location;

(2) Two authorized employees of the transporting registrant shall accompany the controlled substances to the destruction location;

(3) Two authorized employees of the transporting registrant shall load and unload or observe the loading and unloading of the controlled substances;

(4) Two authorized employees of the transporting registrant shall handle or observe the handling of any controlled substance until the substance is rendered non-retrievable; and

(5) Two authorized employees of the transporting registrant shall personally witness the destruction of the controlled substance until it is rendered non-retrievable.

(c) If the controlled substances are destroyed at a registrant's registered location utilizing an on-site method of destruction, the following procedures shall be followed:

(1) Two authorized employees of the registrant shall handle or observe the handling of any controlled substance until the substance is rendered non-retrievable; and

(2) Two authorized employees of the registrant shall personally witness the destruction of the controlled substance until it is rendered non-retrievable.

§ 1317.100 Recordkeeping requirements.

(a) In addition to any other recordkeeping requirements, any registered person that destroys or causes the destruction of a controlled substance shall maintain a record of destruction on a form issued by DEA that includes the following information: The date of destruction; the method of destruction; the name and address of the place of destruction; the name and quantity of the controlled substances destroyed or the unique identification number of the inner liner or mail-back package destroyed; the size of the inner liner destroyed (e.g., 5 gallon, 10 gallon, etc.); and the name and signature of the two authorized employees who witnessed the destruction.

(b) If the controlled substances destroyed were received from another registrant, the registrant destroying the controlled substances shall maintain a copy of the record transferring the substances or a copy of the DEA Form 222.

Dated: December 17, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–30699 Filed 12–20–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Friday,

No. 246 December 21, 2012

Part VI

The President

Proclamation 8919—Death of Senator Daniel K. Inouye, President Pro Tempore of the Senate

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Friday, December 21, 2012

Presidential Documents

Title 3—

The President

Proclamation 8919 of December 18, 2012

Death of Senator Daniel K. Inouye, President Pro Tempore of the Senate

By the President of the United States of America

A Proclamation

As a mark of respect for the memory and longstanding service of Senator Daniel K. Inouye, President pro tempore of the Senate, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, and consistent with President Nixon's Proclamation 3948, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on the day of his interment. I further direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of December, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–30982
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