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FEDERAL REGISTER

Vol. 78 Monday,

No. 4 January 7, 2013

Pages 853–1126

OFFICE OF THE FEDERAL REGISTER

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
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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

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Proclamation 8922 of December 31, 2012

National Mentoring Month, 2013

By the President of the United States of America

A Proclamation

Our American family is bound together by caring individuals who make it their mission to serve others. During National Mentoring Month, we pay special tribute to the men and women who enrich the lives of our young people and fortify the unbreakable bonds between one generation and the next.

Mentors know that helping a child unlock their full potential begins with care, guidance, and support—which is why my Administration is proud to celebrate mentorship nationwide through programs that help young people see the strength within themselves. We created the Corporate Mentoring Challenge, which encourages businesses across our country to open or expand mentoring programs that equip our youth with the tools to achieve. We have connected young men and women in the Washington, DC, area with mentors at the White House, and we have partnered with groups across the public, private, and nonprofit sectors to build pathways to summer job opportunities for low-income and disconnected youth. And since 2010, we have worked to build strong connections between children and responsible adults through our Fatherhood and Mentoring Initiative.

A supportive mentor can mean the difference between struggle and success. As we mark this important occasion, I encourage all Americans to spend time as a mentor and help lift our next generation toward their hopes and dreams. To learn more about how to get involved, visit www.Serve.gov/Mentor.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2013 as National Mentoring Month. I call upon public officials, business and community leaders, educators, and Americans across the country to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 2013–00105
Filed 1–4–13; 8:45 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8923 of December 31, 2012

150th Anniversary of the Emancipation Proclamation

By the President of the United States of America

A Proclamation

On December 31, 1862, our Nation marked the end of another year of civil war. At Shiloh and Seven Pines, Harpers Ferry and Antietam, brother had fought against brother. Sister had fought against sister. Blood and bitterness had deepened the divide that separated North from South, eroding the bonds of affection that once united 34 States under a single flag. Slavery still suspended the possibility of an America where life and liberty were the birthright of all, not the province of some.

Yet, even in those dark days, light persisted. Hope endured. As the weariness of an old year gave way to the promise of a new one, President Abraham Lincoln issued the Emancipation Proclamation—courageously declaring that on January 1, 1863, ''all persons held as slaves'' in rebellious areas ''shall be then, thenceforward, and forever free.'' He opened the Union Army and Navy to African Americans, giving new strength to liberty's cause. And with that document, President Lincoln lent new moral force to the war by making it a fight not just to preserve, but also to empower. He sought to reunite our people not only in government, but also in freedom that knew no bounds of color or creed. Every battle became a battle for liberty itself. Every struggle became a struggle for equality.

Our 16th President also understood that while each of us is entitled to our individual rights and responsibilities, there are certain things we cannot accomplish on our own. Only a Union could serve the hopes of every citizen, knocking down the barriers to opportunity and giving each of us the chance to pursue our highest aspirations. He knew that in these United States, no dream could ever be beyond our reach when we affirm that individual liberty is served, not negated, by seeking the common good.

It is that spirit that made emancipation possible and codified it in our Constitution. It is that belief in what we can do together that moved millions to march for justice in the years that followed. And today, it is a legacy we choose not only to remember, but also to make our own. Let us begin this new year by renewing our bonds to one another and reinvesting in the work that lies ahead, confident that we can keep driving freedom's progress in our time.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 1, 2013, as the 150th Anniversary of the Emancipation Proclamation. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities that celebrate the Emancipation Proclamation and reaffirm the timeless principles it upheld.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 2013–00132
Filed 1–4–13; 8:45 am]
Billing code 3295–F3

Rules and Regulations

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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0774; Directorate Identifier 2010–SW–057–AD; Amendment 39–17302; AD 2012–26–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350BA helicopters with certain AERAZUR emergency flotation gear container assemblies installed. This AD requires replacing each affected emergency flotation gear container assembly (container assembly) at specified time limits based on the date of manufacture. This AD was prompted because container assemblies with an intended operating limitation of 10 years may not have been replaced because the limit is no longer recorded in the Maintenance Program. The actions of this AD are intended to prevent failure of the emergency container assembly because of age and subsequent damage to the helicopter and injury to the occupants after an emergency water landing.

DATES: This AD is effective February 11, 2013.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On July 26, 2012, at 77 FR 43734, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model AS350BA helicopters with AERAZUR left-hand emergency flotation gear container assembly (container assembly), part number (P/N) 158170 or 158210–1, or right-hand container assembly, P/N 158171 or 158215–1, installed. That NPRM proposed to require replacing each container assembly at specified time limits based on the date of manufacture. The proposed requirements were intended to prevent failure of the emergency container assembly because of age and subsequent damage to the helicopter and injury to the occupants after an emergency water landing.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2008–0189, dated October 10, 2008, to correct an unsafe condition for the Eurocopter Model AS350BA helicopters with certain AERAZUR emergency flotation gear installed. EASA advises that that the container assemblies have an operating life limit of 10 years from the date of manufacture. The EASA AD states that ''as of June 2006, this limit is no longer recorded in the Maintenance Program; therefore, after June 2006, container assemblies having already exceeded the 10-year limit could have not been replaced yet.'' The EASA AD also states that ''floating performance of a helicopter may prove to be insufficient in the event of ditching, in case of failure of a container assembly being operated beyond its operating time limit.''

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (77 FR 43734, July 26, 2012).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 25.01.02, dated September 24, 2008 (EASB), which specifies certain times measured from the date of manufacture to replace the container assemblies. EASA classified this EASB as mandatory and issued AD No. 2008–0189, dated October 10, 2008, to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 85 helicopters of U.S. registry. We estimate that operators may incur the following costs to comply with this AD.

- It will take minimal time to determine the manufacturing date of the container and about 1/2 work-hour per helicopter to replace the container assemblies at an average labor rate of $85 per work hour.

• Required parts will cost about $21,775 for the left container assembly and $26,690 for the right container assembly per helicopter.

Based on these figures, we estimate the AD's total cost impact on U.S. operators to be $485,075, assuming 10 helicopters require replacement of the right and left container assemblies.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2012–26–07 Eurocopter France Helicopters: Amendment 39–17302; Docket No. FAA–2012–0774; Directorate Identifier 2010–SW–057–AD.

(a) Applicability

This AD applies to Model AS350BA helicopters with AERAZUR left-hand emergency flotation gear container assembly (container assembly), part number (P/N) 158170 or 158210–1, or right-hand container assembly, P/N 158171 or 158215–1, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the container assembly because of age. This condition could result in damage to the helicopter and injury to the occupants after an emergency water landing.

(c) Effective Date

This AD becomes effective February 11, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Determine the manufacturing date of each part-numbered container assembly stamped on the cover of the identification plate.

(2) Replace each container assembly with an airworthy container assembly as follows:

(i) For a container assembly with a date of manufacture 12 or more years before the effective date of this AD, replace within 30 days.

(ii) For a container assembly with a date of manufacture 10 or more years and less than 12 years before the effective date of this AD, replace within 60 days.

(iii) For a container assembly with a date of manufacture 9 or more years and less than 10 years before the effective date of this AD, replace before reaching 10 years and 60 days.

(iv) For a container assembly with a date of manufacture less than 9 years before the effective date of this AD, replace before reaching 10 years.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Aviation Safety Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Eurocopter Alert Service Bulletin No. 25.01.02, dated September 24, 2008, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety (EASA) AD No. 2008–0189, dated October 10, 2008.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3212 Emergency Flotation Section.

Issued in Fort Worth, Texas, on December 20, 2012.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–31584 Filed 1–4–13; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AD85

Final Exemptive Order Regarding Compliance With Certain Swap Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On July 12, 2012, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published for public comment, pursuant to section 4(c) of the Commodity Exchange Act (''CEA''), a proposed order (''Proposed Order'') that

would grant market participants temporary conditional relief from certain provisions of the CEA, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''Dodd-Frank''), and the Commission also published its proposed interpretive guidance and policy statement (''Proposed Guidance'') regarding the cross-border application of the swap provisions of the CEA as added by Title VII of the Dodd-Frank Act. The Commission has determined to finalize the Proposed Order, with certain modifications and clarifications to address public comments. Under this final order (''Final Order''), a non-U.S. person that registers as a swap dealer (''SD'') or major swap participant (''MSP'') may delay compliance with certain entity-level requirements of the CEA (and Commission regulations promulgated thereunder), and non-U.S. SDs and MSPs and foreign branches of U.S. SDs and MSPs may delay compliance with certain transaction-level requirements of the CEA (and Commission regulations promulgated thereunder), subject to specified conditions. In addition, the Commission is separately proposing further guidance on certain specific aspects of the Proposed Guidance (''Further Proposed Guidance'').

DATES: The Final Order is effective on December 21, 2012 and will expire on July 12, 2013.

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SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act,[1] which amended the CEA [2] to establish a new regulatory framework for swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real-time public reporting; and (4) enhancing the Commission's rulemaking and enforcement authorities over all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight. Section 722(d) of the Dodd-Frank Act also amended the CEA to add section 2(i), which provides that the swap provisions of the CEA apply to cross-border activities when certain conditions are met, namely, when such activities have a ''direct and significant connection with activities in, or effect on, commerce of the United States'' or when they contravene Commission rulemaking.[3]

In the two years since its enactment, the Commission has finalized 41 rules to implement Title VII of the Dodd-Frank Act. The finalized rules include those promulgated under CEA section 4s,[4] which address registration of SDs and MSPs and other substantive requirements applicable to SDs and MSPs. Notably, many section 4s requirements applicable to SDs and MSPs are tied to the date on which a person is required to register, unless a later compliance date is specified.[5] A number of other rules specifically applicable to SDs and MSPs have been proposed but not finalized.[6]

Further, the Commission published for public comment the Proposed Guidance,[7] which set forth the manner in which it proposed to interpret section 2(i) of the CEA as it applies to the requirements under the Dodd-Frank Act and the Commission's regulations promulgated thereunder regarding cross-border swap activities. Specifically, in the Proposed Guidance, the Commission described the general manner in which it proposed to consider: (1) Whether a non-U.S. person's swap dealing activities are sufficient to require registration as a ''swap dealer'',[8] as further defined in a joint release adopted by the Commission and the Securities and Exchange Commission (''SEC'') (collectively, the ''Commissions''); [9] (2) whether a non-U.S. person's swap positions are sufficient to require registration as a ''major swap participant,'' [10] as further defined in the Final Entities Rules; and (3) the treatment of foreign branches, agencies, affiliates, and subsidiaries of U.S. SDs and of U.S. branches of non-U.S. SDs. The Proposed Guidance also generally described the policy and procedural framework under which the Commission may permit compliance with a comparable regulatory requirement of a foreign jurisdiction to substitute for compliance with the requirements of the CEA. Last, the Proposed Guidance set forth the manner in which the Commission proposed to interpret section 2(i) of the CEA as it applies to the clearing, trading, and certain reporting requirements under the Dodd-Frank Act with respect to swaps between counterparties that are not SDs or MSPs.

Contemporaneously with the Proposed Guidance, the Commission published the Proposed Order pursuant to section 4(c) of the CEA,[11] in order to foster an orderly transition to the new swaps regulatory regime and to provide market participants greater certainty regarding their obligations with respect to cross-border swap activities during the pendency of the Proposed Order. The Proposed Order would grant temporary relief from certain swap provisions of Title VII of the Dodd-Frank Act.

The public comment periods on the Proposed Order and the Proposed Guidance ended on August 13, 2012 and August 27, 2012, respectively. The Commission received approximately 26 letters on the Proposed Order and approximately 288 letters on the Proposed Guidance from a variety of market participants and other interested

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[2] 7 U.S.C. 1 *et seq.* (amended 2010).

[3] 7 U.S.C. 2(i)

[4] 7 U.S.C 6s.

[5] Examples of section 4s implementing rules that become effective for SDs and MSPs at the time of their registration include requirements relating to swap data reporting (Commission regulation 23.204) and conflicts of interest (Commission regulation 23.605(c)–(d)). The chief compliance officer requirement (Commission regulations 3.1 and 3.3) is an example of those rules that have specific compliance dates. The compliance dates are summarized on the Compliance Dates page of the Commission's Web site. (*http://www.cftc.gov/LawRegulation/DoddFrankAct/ComplianceDates/index.htm*).

[6] These include rules under CEA section 4s(e), 7 U.S.C. 6s(e) (governing capital and margin requirements for SDs and MSPs).

[7] ''Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act,'' 77 FR 41214, Jul. 12, 2012.

[8] 7 U.S.C. 1a(49).

[9] *See* ''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 (''Final Entities Rules'').

[10] 7 U.S.C. 1a(33).

[11] ''Exemptive Order Regarding Compliance With Certain Swap Regulations,'' 77 FR 41110 Jul. 12, 2012.

parties, including major U.S. and non-U.S. banks and financial institutions that conduct global swaps business, trade associations, clearing organizations, law firms (representing international banks and dealers), individual citizens, and foreign regulators.[12] The Commission staff also held numerous meetings and discussions with various market participants, domestic bank regulators, and other interested parties to discuss the Proposed Order and the Proposed Guidance.[13]

Further, the Commission staff closely consulted with the staff of the SEC in an effort to increase understanding of each other's regulatory approaches and to harmonize the cross-border approaches of the two agencies to the greatest extent possible, consistent with their respective statutory mandates.[14] The Commission expects that this consultative process will continue as each agency works towards implementing its respective cross-border policy.

The Commission also recognizes the critical role of international cooperation and coordination in the regulation of derivatives in the highly interconnected global market, where risks are transmitted across national borders and market participants operate in multiple jurisdictions. Close cooperative relationships and coordination with other jurisdictions take on even greater importance given that, prior to the recent reforms, the swaps market has largely operated without regulatory oversight and many jurisdictions are in differing stages of implementing their regulatory reform. To this end, the Commission staff has actively engaged in discussions with their foreign counterparts in an effort to better understand and develop a more harmonized cross-border regulatory framework. The Commission expects that these discussions will continue as it finalizes the cross-border interpretive guidance and as other jurisdictions develop their own regulatory requirements for derivatives.[15]

The Commission has determined not to take further action on the Proposed Guidance at this time. The Commission believes it will be beneficial to have further consultations with other domestic and international regulators in an effort to harmonize cross-border regulatory approaches prior to taking action with respect to the Proposed Guidance. The Commission also believes that further consideration of public comments, including the comments that may be received on the Further Proposed Guidance regarding the Commission's interpretation of the term ''U.S. person,'' and its guidance regarding aggregation for purposes of SD registration, will be helpful to the Commission in issuing final interpretive guidance.

Nonetheless, the Commission has determined to issue the Final Order as a time-limited exemptive order that is substantially similar to the Proposed Order, except for the addition of provisions regarding registration and certain modifications and clarifications addressing public comments. Recently, the Commission staff granted time-limited, no-action relief to promote continuity in the application of Dodd-Frank requirements and facilitate the transition to those requirements by enabling swap market participants to apply a uniform and readily ascertainable standard regarding which swaps must be included in the calculations under the SD and MSP definitions.[16] The Final Order continues that process and furthers the same purposes.[17]

In preparing the Final Order, the Commission has attempted to be responsive to commenters' concerns and recommendations, so that market practices will not be unnecessarily disrupted during the transition to the new swap regulatory regime. At the same time, the Commission also recognizes the importance of the new SD and MSP regulatory scheme to the Dodd-Frank swap reforms and, therefore, is mindful that its implementation should not be subject to undue delay. The Commission believes that the Final Order strikes the proper balance between promoting an orderly transition to the new regulatory regime, while appropriately tailoring relief to ensure that the Commission can responsibly discharge its statutory duties.

This release is organized in seven sections. Section II provides a brief overview of the Commission's exemptive authority under section 4(c) of the CEA and the Proposed Order; Section III provides a summary of the comments received on the Proposed Order and the Commission determinations regarding the Final Order; Section IV provides the Commission's findings pursuant to CEA section 4(c); Section V addresses the Paperwork Reduction Act; Section VI discusses cost benefit considerations; and Section VII contains the Final Order.

II. Commission's Exemptive Authority and Proposed Order

A. Section 4(c) of the CEA

Section 4(c)(1) of the CEA authorizes the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transaction from any of the provisions of the CEA (subject to certain exceptions) where the Commission determines that the exemption would be consistent with the public interest and the purposes of the CEA.[18] Under section 4(c)(2) of the CEA, the Commission may not grant exemptive relief unless it determines that: (1) The exemption is appropriate

[12] Some of the commenters submitted a single comment letter addressing both the Proposed Order and the Proposed Guidance. The comment letters submitted in response to the Proposed Order and Proposed Guidance may be found on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1234.*

Approximately 200 individuals submitted substantially identical letters to the effect that oversight of the $700 trillion global derivatives market is the key to meaningful reform. The letters stated that because the market is inherently global, risks can be transferred around the world with the touch of a button. Further, according to these letters, loopholes in the Proposed Guidance could allow foreign affiliates of Wall Street banks to escape regulation. Lastly, the letters requested that the Proposed Guidance be strengthened to ensure that the Dodd-Frank derivatives protections will directly apply to the full global activities of all important participants in the U.S. derivatives markets.

[13] The records of these meetings and communications can be found on the Commission's Web site at: *http://cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm.*

[14] In addition to differences in the applicable statutory provisions, there are also differences in the markets and products overseen by each agency, which may lead to divergent approaches to cross-border activities.

[15] This is one aspect of the Commission's on-going bilateral and multilateral efforts to promote international coordination of regulatory reform. The Commission staff is engaged in consultations with Europe, Japan, Hong Kong, Singapore, Switzerland, Canada, Australia, Brazil, and Mexico on derivatives reform. In addition, the Commission staff is participating in several standard-setting initiatives, co-chairs the IOSCO Task Force on OTC Derivatives, and has created an informal working group of derivatives regulators to discuss implementation of derivatives reform. *See also* Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-border OTC Derivatives Market, included in CFTC Press Release 6439–12, Dec. 4, 2012.

[16] *See* CFTC Division of Swap Dealer and Intermediary Oversight, Re: Time-Limited No-Action Relief: Swaps Only With Certain Persons to be Included in Calculation of Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception and Calculation of Whether a Person is a Major Swap Participant, No-Action Letter No. 12–22, Oct. 12, 2012 (''CFTC Letter No. 12–22'').

[17] The Commission intends that the Final Order is in addition to any no-action relief issued or to be issued by the Commission staff. Unless specifically provided in any letter providing no-action relief, the Final Order does not limit the availability of any no-action relief.

[18] CEA section 4(c)(1), 7 U.S.C. 6(c)(1).

for the transaction and consistent with the public interest; (2) the exemption is consistent with the purposes of the CEA; (3) the transaction will be entered into solely between ''appropriate persons''; and (4) the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.[19] In enacting section 4(c), Congress noted that the purpose of the provision is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.[20]

B. Proposed Order

Under the Proposed Order, the Commission would allow non-U.S. SDs and MSPs to delay compliance with certain Entity-Level Requirements of the Dodd-Frank Act (and the Commission's regulations thereunder), subject to specified conditions described therein.[21] An exception to the foregoing relief from the Entity-Level Requirements related to the swap data repository (''SDR'') reporting requirement[22] and part 20 of the Commission's regulations relating to large-trader reporting (''LTR''). Specifically, non-U.S. SDs and MSPs would be required to comply with the SDR reporting and LTR requirements for all swaps with U.S. counterparties upon their compliance date. Further, for swaps with non-U.S. counterparties, the Commission proposed that only those non-U.S. SDs and MSPs that are not affiliates or subsidiaries of a U.S.-based SD would be permitted to delay compliance with the SDR reporting and LTR requirements.

With respect to U.S. SDs and MSPs, the Commission proposed to permit such registrants[23] to delay compliance with certain Entity-Level Requirements through January 1, 2013. This relief with respect to Entity-Level Requirements, however, would not extend to swap data recordkeeping, SDR reporting or LTR requirements. That is, U.S. SDs and MSPs would be required to comply with the swap data recordkeeping, SDR reporting and LTR requirements for all swaps.

The Commission also proposed to grant, with respect to certain Transaction-Level Requirements of the Dodd-Frank Act (and the Commission's regulations thereunder), temporary relief to non-U.S. SDs and MSPs, as well as foreign branches of U.S. SDs and MSPs, for swaps with a non-U.S. counterparty so that they may comply only with the regulations as may be required in the home jurisdiction of the non-U.S. registrant (or in the case of a foreign branch of a U.S. registrant, the foreign location of the branch).[24] With respect to swaps with any U.S. counterparty, however, these registrants (as well as foreign branches of U.S. SDs and MSPs) would be required to comply with all applicable Transaction-Level Requirements that are in effect. Finally, the Commission did not propose exemptive relief for swaps between market participants that are neither SDs nor MSPs.

The proposed temporary exemptive relief for non-U.S. registrants (and foreign branches of U.S. registrants with respect to Transaction-Level Requirements) would become effective on the compliance date for registration and expire 12 months following the publication of the Proposed Order in the **Federal Register** (*i.e.,* July 12, 2013). In the Proposed Order, the Commission also stated that, in the interest of promoting an orderly transition to the new swap regulatory regime, it intends to consider extending the effectiveness of the exemptive relief at its expiration based on, among other things, whether and when substituted compliance with foreign regulatory requirements for non-U.S. persons is available.

A non-U.S. registrant seeking relief under the Proposed Order would have to satisfy certain conditions. First, a non-U.S. person that is required to register as an SD or MSP would have to apply to become registered as such when registration is required. Second, within 60 days of applying for registration, a non-U.S. registrant would have to submit to the National Futures Association (''NFA'') a compliance plan addressing how it plans to comply, in good faith, with all applicable requirements under the CEA and related rules and regulations upon the effective date of final cross-border interpretive guidance.

The Commission further noted that the proposed relief would neither: (1) Limit the applicability of any CEA provision or Commission regulation to any person, entity or transaction except as provided in the Proposed Order; nor (2) affect any effective date or compliance date set out in any specific Dodd-Frank Act rulemaking by the Commission.

III. Comments on the Proposed Order and Commission Determinations

A. Comments Generally

Many commenters expressed general support for the Proposed Order but urged the Commission to broaden the scope of the relief to give market participants adequate time to implement necessary operational and compliance changes and to reflect the fact that certain key aspects of the Proposed Guidance (particularly those relating to registration determinations) were not yet final as of the date of the comments.[25] Many of the commenters supporting temporary exemptive relief also suggested specific modifications or clarifications of the Proposed Order concerning the scope and/or timing of the exemptive relief.[26]

On the other hand, other commenters—namely, public interest groups such as Americans for Financial Reform (''AFR'') and Public Citizen's Congress Watch—expressed concerns

[19] CEA section 4(c)(2), 7 U.S.C. 6(c)(2).

[20] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

[21] The ''Entity-Level Requirements'' and ''Transaction-Level Requirements'' for purposes of the Proposed Order were the same as those defined for purposes of the Final Order. *See* section II.D.1., below.

[22] *See* 7 U.S.C. 2(a)(13)(G). The Commission believes that the data reported to, and collected by, SDRs will be important to its ability to effectively monitor and address the risk exposures of individual market participants (including SDs and MSPs) and the concentration of risk within the swaps market more generally.

[23] For purposes of the Final Order, the term ''registrant'' means a registered SD or MSP.

[24] Under the Proposed Guidance, a foreign branch of a U.S. person would be deemed a U.S. person. Accordingly, swaps entered into between a foreign branch of a U.S. person and another foreign branch of a U.S. person would be subject to the Transaction-Level Requirements.

[25] *See e.g.,* Letters from Security Industry and Financial Markets Association (''SIFMA'') (Aug. 13, 2012); Institute of International Bankers (''IIB'') (Aug. 9, 2012); Cleary Gottlieb Steen & Hamilton LLP (''Cleary'') (Aug. 16, 2012); and Futures Options Association (''FOA'') (Aug. 13, 2012). Some of the commenters expressly stated that the Commission should finalize the exemptive relief as promptly as possible. *See e.g.,* IIB Letter at 1 and Cleary Letter at 3. For example, IIB stated that the proposed relief should be modified to address ''unrealistic and unwarranted'' compliance burdens related to the Proposed Guidance and certain aspects of the Commission regulations adopted to date. IIB Letter (Aug. 9, 2012) at 2. Accordingly, IIB requested limited interim relief from certain aspects of the Commission's registration and definitional rules (in particular, the aggregation requirement for purposes of the de minimis calculation). *Id.* at 3–7. Similarly, The Clearing House Association LLC (''The Clearing House'') expressed concerns that the proposed relief will be ''ultimately ineffective'' in accomplishing its objectives if concepts from the Proposed Guidance are required to be applied before they are finalized, and requested exemption from those rules or concepts that are not yet finalized. The Clearing House (Aug. 13, 2012) at 2.

[26] *See, e.g.,* SIFMA (Aug. 13, 2012), at 3, 5–6, 10–13, A–50; Lloyds Banking Group (''Lloyds'') (Aug. 13, 2012) at 1–2; IIB (Aug. 9, 2012), at 5; Canadian Bankers Association (Aug. 13, 2012), at 2; Credit Suisse (Aug. 27, 2012), at 7; Cleary (Aug. 16, 2012), at 4; Deutsche Bank AG (''Deutsche Bank'') (Aug. 13, 2012), at 3, 7; Societe Generale (Aug. 8, 2012), at 2.

about delaying the implementation of the Dodd-Frank Act to overseas activities.[27] AFR stated that the Proposed Order would significantly extend the period where markets lack critical protections against derivatives risks and expressed concern about taxpayer exposure to foreign banks, particularly ''foreign affiliates of U.S. banks whose liabilities are guaranteed (implicitly or explicitly) by the parent company.'' [28] Similarly, Public Citizen's Congress Watch expressed the concern that the Proposed Order would unnecessarily delay compliance with most entity requirements and transaction requirements for foreign subsidiaries and affiliates of U.S. financial institutions and for U.S. subsidiaries and affiliates of foreign banks, further prolonging exposure of U.S. taxpayers to unnecessary systemic risks.[29]

B. Definition of ''U.S. Person''

Although at this time the Commission is not making any determinations as to the scope of the final interpretive guidance, the Commission believes that the comments received on the definition of U.S. person set forth in the Proposed Guidance are nonetheless relevant and helpful in determining the appropriate scope of exemptive relief in the Final Order. Taken together, these comments generally support, as an interim measure, the approach taken by the Commission staff in CFTC Letter No. 12–22 regarding the initial scope of the application of the CEA to swaps activities. Accordingly, in light of the Commission's experience to date with CFTC Letter No. 12–22 and these comments, it is taking a similar approach to the definition of U.S. person to that set forth in the staff no-action letter and supported by many commenters.

To be clear, the Commission wishes to emphasize that the discussion here is not, and should not be construed as, an indication of, or a limitation on, the definition of the term ''U.S. person'' that the Commission may adopt in final cross-border interpretive guidance. As discussed further below, the Commission is seeking further comment on this issue. However, the Commission is aware that the terms ''U.S. person'' and ''non-U.S. person'' are commonly used in the discussion of these issues. For ease of reference, therefore, this release and the Final Order use the term ''U.S. person'' to refer to a person that is described by the criteria discussed below, and the term ''non-U.S. person'' to refer to any other person.[30]

1. Proposed Definition in the Proposed Guidance

Under the Proposed Guidance, the term ''U.S. person'' would be defined by reference to the extent to which swap activities or transactions involving one or more such persons have the relevant connection with activities in, or effect on, U.S. commerce.[31] As proposed, the term ''U.S. person'' would encompass both: (1) Persons (or classes of persons) located within the United States; as well as (2) persons that may be domiciled or operating outside the United States, but whose swap activities have a ''direct and significant connection with activities in, or effect on, commerce of the United States'' within the meaning of CEA section 2(i).[32] That is, the term ''U.S. person'' identifies those persons whose swap activities—either individually or in the aggregate—satisfy the jurisdictional nexus under section 2(i) of the CEA.

2. Comments

In general, commenters stated that the proposed ''U.S. person'' definition presented significant interpretive issues and implementation challenges.[33] The commenters contended that it would be difficult to determine U.S. person status because the proposed definition was, they said, overly broad, contained ambiguities, and would require collection of information not readily accessible at this time. The commenters, therefore, urged the Commission to provide market participants with sufficient time to implement a final definition of the term ''U.S. person'' and to reconsider the proposed definition in favor of ''a simpler, more easily applied'' definition of ''U.S. person.'' [34]

A number of commenters requested that the Commission adopt an interim definition of ''U.S. person'' that would allow firms to rely on their existing systems and classifications and avoid the need to develop systems to achieve temporary compliance with standards that may change when a definition of the term ''U.S. person'' is finalized.[35] IIB explained that applying any definition of ''U.S. person'' that departs from status based on residence or jurisdiction of organization, and in some cases principal place of business, will require time to implement relevant documentation conventions and diligence procedures.[36] IIB, therefore, requested that the Commission implement a phased-in interim approach to the ''U.S. person'' definition that would encompass, in general, (1) a natural person who is a U.S. resident; and (2) a corporate entity

[27] *See* AFR (Aug. 13, 2012), at 1–4. AFR stated that, while it recognized the complexities and challenges the industry faces, ''the large swap entities designated under the Dodd-Frank Act have been aware of the general contours of these requirements for several years, and there have already been significant delays in implementation.'' AFR Letter at 2. Public Citizen's Congress Watch expressed concerns that delayed compliance would unnecessarily prolong American taxpayers' exposure to the systemic risks of U.S. institutions and interests. *See* Public Citizen's Congress Watch (submitted by Professor I. Michael Greenberger) (''Public Citizen's Congress Watch'') (Aug. 14, 2012) at 1–13.

[28] AFR (Aug. 13, 2012) at 2.

[29] *See* Public Citizen's Congress Watch (Aug. 14, 2012) at 1–2.

[30] A number of commenters voiced concerns regarding potential expansion of the term ''U.S. person'' that they thought could result from the prefatory phrase ''includes, but is not limited to'' that appeared in the Proposed Guidance. These commenters requested that the Commission affirmatively state that non-U.S. persons are any persons that do not meet the definition of ''U.S. person.'' *See* SIFMA (Aug. 27, 2012) at A–15; IIB (Aug. 27, 2012) at 11–12; European Commission (''EC'') (Aug. 24, 2012) at 1–2; and Australian Bankers Association Inc. (''Australian Bankers'') (Aug. 27, 2012) at 4.

[31] *See* Proposed Guidance, 77 FR at 41218.

[32] Specifically, as set forth in the Proposed Guidance, the definition of the term ''U.S. person'' would include, but not be limited to:

(i) Any natural person who is a resident of the United States;

(ii) Any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is either (A) organized or incorporated under the laws of the United States or having its principal place of business in the United States (legal entity) or (B) in which the direct or indirect owners thereof are responsible for the liabilities of such entity and one or more of such owners is a U.S. person;

(iii) Any individual account (discretionary or not) where the beneficial owner is a U.S. person;

(iv) Any commodity pool, pooled account or collective investment vehicle (whether or not it is organized or incorporated in the United States) of which a majority ownership is held, directly or indirectly, by a U.S. person(s);

(v) Any commodity pool, pooled account or collective investment vehicle the operator of which would be required to register as a commodity pool operator under the CEA;

(vi) A pension plan for the employees, officers or principals of a legal entity with its principal place of business inside the United States; and

(vii) An estate or trust, the income of which is subject to U.S. income tax regardless of source.

Under the proposal, a ''U.S. person'' would include a foreign branch of a U.S. person; on the other hand, a non-U.S. affiliate or subsidiary guaranteed by a U.S. person would not be deemed a ''U.S. person.''

[33] *See* SIFMA (Aug. 27, 2012) at 5; Societe Generale (Aug. 8, 2012) at 4; IIB (Aug. 27, 2012), at 4–14; Deutsche Bank (Aug. 27, 2012), at 1–4; Goldman Sachs Group, Inc. (''Goldman'') (Aug. 27, 2012), at 3; The Hong Kong Association of Banks (''Hong Kong Banks'') (Aug. 27, 2012), at 4; Australian Bankers (Aug. 27, 2012) at 4.

[34] *See* SIFMA (August 27, 2012) at A–10.

[35] *See e.g.,* Cleary (Aug. 16, 2012) at 6; SIFMA (Aug. 27, 2012) at A–8–A9; IIB (Aug. 9, 2012) at 4; Deutsche Bank (Aug. 13, 2012) at 2; State Street Corporation (''State Street'') (Aug. 27, 2012) at 2; and Goldman (Aug. 27. 2012) at 3.

[36] *See* IIB (Aug. 9, 2012) at 4.

that is organized or incorporated under the laws of the United States or has its place of business in the United States.[37]

SIFMA also urged the Commission to phase in the ''U.S. person'' definition, citing the implementation difficulties identified by IIB. Specifically, SIFMA recommended that the Commission allow market participants to apply an interim definition of ''U.S. person'' until 90 days after the final definition of ''U.S. person'' is published.[38] SIFMA stated that its interim definition—which was identical to IIB's interim definition—should identify ''core'' U.S. persons and allow its members to phase in compliance with the Dodd-Frank requirements without building new systems that might have to be changed when a final definition is adopted.

3. Commission Determination on Definition of ''U.S. Person''

The Commission finds merit in the comments suggesting that it should adopt a phased approach to cross-border activities. The Commission understands, from the comments, that market participants may need additional time to assess their businesses in light of the Final Order and to institute necessary changes to their systems and operations. Therefore, for purposes of the Final Order, the Commission will apply a definition of the term ''U.S. person'' based upon the counterparty criteria set forth in CFTC Letter No. 12–22[39] with certain modifications as described below. With respect to the other issues raised by commenters regarding the definition of ''U.S. person,'' the Commission believes that further public comment and consideration during the effectiveness of the Final Order will be helpful.

For purposes of the Final Order, the Commission will treat as a ''U.S. person'' any person identified by the following five criteria:[40]

(i) A natural person who is a resident of the United States;

(ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or (B) effective as of April 1, 2013 for all such entities other than funds or collective investment vehicles, having its principal place of business in the United States;

(iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is primarily for foreign employees of such entity;

(iv) An estate of a decedent who was a resident of the United States at the time of death, or a trust governed by the laws of a state or other jurisdiction in the United States if a court within the United States is able to exercise primary supervision over the administration of the trust; or

(v) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (iv) above.

The modifications made by the Commission to the counterparty criteria set forth in CFTC Letter No. 12–22 relate to (1) the location of an entity's principal place of business, (2) the treatment of pension plans for foreign employees, (3) the treatment of estates and trusts, and (4) the treatment of joint accounts.[41]

First, regarding the location of an entity's principal place of business, the Commission considered that the second counterparty criterion in CFTC Letter No. 12–22 is generally intended to cover legal entities that are physically located or incorporated within U.S. territory. For purposes of the Final Order, the Commission believes it is appropriate to treat as a ''U.S. person'' a legal entity that is not incorporated in the United States but that nonetheless has its ''principal place of business'' in the United States.[42] The Commission believes that it is appropriate to consider an entity that is organized outside the United States but nonetheless has its ''principal place of business'' within the United States in the same manner as an entity organized or incorporated under the laws of the United States, because the center of direction, control and coordination of its business activities is located in the United States.[43] However, the Commission understands from commenters that market participants will need a short period of time to implement the treatment of entities with a principal place of business in the United States as ''U.S. persons.''[44] Therefore, the Commission will not treat

[37] *Id.* For purposes of IIB's suggested definition, a foreign branch of a U.S. SD would be considered a non-U.S. person. IIB added that it believed that the Commission should adopt a final definition of ''U.S. person'' that is consistent with IIB's proposed interim definition.

[38] *See* SIFMA (Aug. 25, 2012) at A–8.

[39] The counterparty criteria set forth in CFTC Letter No. 12–22 are:

(i) A natural person who is a resident of the United States;

(ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is organized or incorporated under the laws of the United States;

(iii) A pension plan for the employees, officers, or principals of a legal entity described in (ii) above, unless the pension plan is exclusively for foreign employees of such entity;

(iv) An estate or trust, the income of which is subject to U.S. income tax, regardless of source; or

(v) An individual account (discretionary or not) where the beneficial owner is a person described in (i) through (iv) above.

[40] The Commission understands that persons may currently be relying upon the counterparty criteria set forth in CFTC Letter No. 12–22. Thus, until December 31, 2012, persons may continue to apply those criteria for purposes of the Final Order. In effect, until December 31, 2012, a person may apply either the counterparty criteria in CFTC Letter No. 12–22, or the definition set forth herein for purposes of the Final Order. Beginning on January 1, 2013 (*i.e.,* following the expiration of CFTC Letter No. 12–22), a person must apply the definition set forth in the Final Order for purposes of swaps entered into on or after that date.

[41] Also, the Commission is clarifying that language in the second counterparty criterion in CFTC Letter No. 12–22 referring to an entity ''incorporated under the laws of the United States'' includes an entity incorporated under the laws of a state or other jurisdiction in the United States.

[42] For purposes of the Final Order, the Commission will construe the term ''principal place of business'' as referring to the single place where a corporation's officers direct, control, and coordinate the corporation's activities. Typically, the principal place of business will be where the corporation maintains its headquarters. *See Hertz* v *Friend,* 559 U.S. ____, 130 S.Ct. 1181, 1192, 175 L.Ed. 2d 1029 (2010) (''[I]n practice [a company's principal place of business] should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control and coordination, *i.e.,* the 'nerve center' '').

[43] Commenters supported inclusion of the principal place of business element in the interim definition. *See* Cleary (Aug. 16, 2012) at 6 (''the Firms respectfully request that the Commission adopt an interim 'U.S. person' definition based on factors such as residence, place of organization or incorporation and principal place of business''); *see also* IIB (Aug. 27, 2012) at 13 (suggested definition of ''U.S. person'' that includes ''Any corporation, partnership, limited liability company, business or other trust, association, joint stock company or any form of enterprise similar to the foregoing (other than a collective investment vehicle, employee benefit plan, estate or trust) that is organized or incorporated under the laws of the United States or having its principal place of business in the United States.''); SIFMA (Aug. 13, 2012) at 4 (''The Commission should include as part of the Final Exemptive Order a workable, uniform definition of U.S. person for this transitional time period* * *. For most [of our members] this would consist of Any natural person who is a resident of the U.S.; and Any corporation, partnership, LLC, business or other trust, association, joint-stock company, fund, or any form of enterprise similar to any of the foregoing that is organized or incorporated under the laws of the United States or has its principal place of business in the United States* * *. [S]uch a definition would allow most of our members to identify those counterparties that are U.S. persons during the Interim Period without the necessity of building new, interim systems that might have to be changed when a Final Definition is adopted.'').

[44] *See, e.g.,* SIFMA (Aug. 25, 2012) at A–8 (suggesting 90-day period to transition to definition including principal place of business element).

entities incorporated or organized outside the United States and with a principal place of business in the United States as U.S. persons until April 1, 2013 (*i.e.,* approximately 90 days after effectiveness of the Final Order). The Commission also understands from commenters that the application of the principal place of business element may be complex for funds and collective investment vehicles and require further guidance in this regard; therefore, at this time for purposes of the Final Order, the Commission has determined that this element will not apply to funds or collective investment vehicles.[45]

Second, regarding the treatment of pension plans, the Commission is refining the third counterparty criterion in CFTC Letter No. 12–22 to indicate that a pension plan that is ''primarily'' (rather than exclusively) for the foreign employees of an entity is also a ''U.S. person'' for purposes of the Final Order.[46]

Third, regarding the treatment of estates and trusts, the Commission is refining the fourth counterparty criterion in CFTC Letter No. 12–22 so that the treatment of an estate or trust for purposes of this relief does not depend on whether the income of the estate or trust is subject to U.S. income tax.[47] The Commission understands that whether income is subject to U.S. tax can depend on a variety of factors, including the source of the income, which may not be relevant for purposes of the Dodd-Frank Act. Accordingly, for purposes of the Final Order, the Commission is of the view that an estate should be treated as a ''U.S. person'' if the decedent was a resident of the United States at the time of death, and a trust should be treated as a ''U.S. person'' if it is governed by the law of a state or other jurisdiction in the United States and a court within the United States is able to exercise primary supervision over the administration of the trust.

The Commission believes that this approach is appropriate in view of how estates and trusts use swaps, and is consistent with how they are treated for other purposes under law. For estates, if the decedent was a party to any swaps at the time of death, then those swaps would continue to be treated in the same way after the decedent's death, when the swaps would most likely pass to the decedent's estate. Also, this test will be predictable and easy to apply for natural persons planning for how their swaps will be treated after death, for executors and administrators of estates, and for the swap counterparties to natural persons and estates.

With respect to trusts, the Commission considered that each trust is governed by the laws of a particular jurisdiction, which may depend on steps taken when the trust was created or other circumstances surrounding the trust. The Commission believes that if a trust is governed by U.S. law (*i.e.,* the law of a state or other jurisdiction in the United States), then it is reasonable to treat the trust as a U.S. person for purposes of the Final Order. The definition also requires that a court within the United States be able to exercise primary supervision over the administration of the trust.[48] Including this element of the definition will ensure that the treatment of the trust for purposes of the Final Order will be in line with how the trust is treated for other legal purposes.

Finally, regarding the treatment of joint accounts, the Commission is refining the fifth counterparty criterion in CFTC Letter No. 12–22 to include not only individual accounts where the beneficial owner is a person described in the preceding counterparty criteria, but also joint accounts where any of the beneficial owners is such a person.

Due Diligence. As described above, many commenters said that the information necessary to accurately assess the status of their counterparties as U.S. persons may not be available, or may be available only through overly burdensome due diligence. For this reason, these commenters requested that the Commission allow for reasonable reliance on counterparty representations as to their ''U.S. person'' status.[49]

The Commission agrees with the commenters that a party to a swap, in order to rely upon the exemptive relief provided in the Final Order, should be able to reasonably rely on its counterparty's representation in determining whether the counterparty is a ''U.S. person.'' In this context, the Commission interprets the ''reasonable'' standard to mean that a party to a swap should conduct reasonable due diligence on its counterparties, with what is reasonable in a particular situation to depend on the relevant facts and circumstances. The Commission notes that under its external business conduct rules, an SD or MSP generally meets its due diligence obligations if it reasonably relies on counterparty representations, absent indications to the contrary.[50] Similarly here, the Commission believes that allowing for reasonable reliance on counterparty representations provides for an objective standard and avoids subjective evaluations. This, in turn, facilitates a more consistent and foreseeable determination of whether a person is a ''U.S. person'' for purposes of relying on temporary exemptive relief.

Finally, the Commission confirms that this definition of ''U.S. person'' applies only for purposes of the Final Order. Further, the Commission confirms that the definition of ''U.S. person'' applies only to Commission regulations promulgated under Title VII's swap provisions. Thus, for example, it would

[45] *See, e.g.,* Cleary (Aug. 16, 2012) at 7; IIB (Aug. 27, 2012 at 6–7. The Commission is separately proposing further guidance regarding the treatment of funds and other collective investment vehicles for purposes of the definition of the term ''U.S. person.''

[46] In a letter to the Commissioners dated November 30, 2012 requesting transition relief under Title VII of the Dodd-Frank Act, the Futures Industry Association (''FIA''), IIB and SIFMA suggested that this criterion be modified to replace the word ''exclusively'' with ''primarily.'' *See* joint letter from FIA, IIB and SIFMA (Nov. 30, 2012) at 14, fn. 14.

[47] *See, e.g.,* IIB Letter (Aug. 27, 2012) at 12 (market participants do not typically identify an estate's or trust's regulatory status on the basis of its tax status); *see also* joint letter from FIA, IIB and SIFMA at 14, fn. 14 (suggesting that the fourth criterion from CFTC Letter No. 12–22 be limited to estates and trusts organized under the laws of the United States).

[48] The Commission is aware that one element of the test applied by the Internal Revenue Service to determine if a trust is a U.S. person for tax purposes depends on whether a court within the United States is able to exercise primary supervision over the administration of the trust. *See* 26 CFR 301.7701–7(a)(1)(ii). However, the Commission does not intend to formally adopt the Internal Revenue Service test for this purpose.

[49] For example, SIFMA stated that a swap counterparty should be responsible for determining its own U.S.-person status but in the alternative, recommended that the Commission allow for reasonable reliance on counterparty representations. *See* SIFMA (Aug. 27, 2012) at A–16–18. SIFMA and Cleary further pointed out that the Commission has accepted reasonable reliance on counterparty representations in the context of the external business conduct rules. *See* SIFMA/AMG (Aug. 27, 2012) at 4–5; and Cleary (Aug. 16, 2012) at 6.

[50] *See* 77 FR 9734, Feb. 17, 2012. Consistent with the ''reasonable reliance'' standard in the external business conduct rules, an SD or MSP may rely on the written representations of a counterparty in performing its due diligence. However, an SD or MSP cannot rely on a written representation and continue to claim the exemptive relief if it has information that would cause a reasonable person to question the accuracy of the representation. In other words, an SD or MSP cannot ignore red flags when relying on written representations in performing its due diligence. Further, if agreed to by the counterparty, the written representations may be included in counterparty relationship documentation. However, an SD or MSP may only rely on such representations in the counterparty relationship documentation if the counterparty agrees to timely update any material changes to the representations. In addition, the Commission expects SDs and MSPs to review the written representations on a periodic basis to ensure that they remain appropriate for their intended purpose.

not apply to the CEA provisions (and Commission regulations promulgated thereunder) relating to the futures markets.

Foreign Branch of U.S. Person. The Commission views as a ''U.S. person'' the foreign branch of a U.S. person. As the Commission explained in the Proposed Guidance, a branch does not have a legal identity separate from that of its principal entity. In this respect, the Commission notes that branches are neither separately incorporated nor separately capitalized and, more generally, the rights and obligations of a branch are the rights and obligations of its principal entity (and vice versa). Under these circumstances, the Commission views the activities of a foreign branch as the activities of the principal entity. [51]

Accordingly, the Commission declines to recognize foreign branches of U.S. persons separately from their U.S. principals for purposes of the Dodd-Frank swap provisions, including registration and Entity-Level and Transaction-Level Requirements. Therefore, if a foreign branch were to be an SD or MSP, as discussed further below, its U.S. principal would be required to register, and that registration would encompass the foreign branch. Based on the same rationale, the Dodd-Frank Act fully applies to a swap between a foreign branch of a U.S. person and a foreign branch of another U.S. person. Nevertheless, for purposes of the Final Order, as discussed further below, foreign branches of U.S. persons may comply only with transaction-level requirements as may be required in the location of the foreign branch with respect to swaps with foreign counterparties. Further, non-U.S. persons may exclude swaps with foreign branches of registered SDs for purposes of determining whether they have exceeded the de minimis level of swap dealing activity under the SD definition. Finally, for purposes of the Final Order, as further discussed below, the Transaction-Level Requirements will not apply to a swap transaction between foreign branches of U.S. SDs or foreign branches of U.S. MSPs. The Commission believes that it is appropriate to extend the foregoing relief on a temporary basis while the Commission continues to consider, and works with foreign regulators regarding, the treatment of foreign branches of U.S. registrants.

C. Registration

1. Timing of Registration for All Prospective SDs and MSPs

i. Comments

The Proposed Order did not include any delay in the timing of the registration requirement for either U.S. or non-U.S. prospective registrants. A number of commenters urged the Commission to delay registration of SDs and MSPs.[52] Some of these commenters noted that final regulatory determinations essential to the implementation of Commission regulations are either still in proposed form or have only recently been finalized.[53] As a result, commenters said, firms will need additional time to assess whether they will be required to register as an SD or MSP and the consequences of doing so.[54]

SIFMA recommended a delay of at least 90 days following the publication of final interpretive guidance; [55] Societe Generale recommended delaying registration at least until the Proposed Guidance has been finalized.[56] Cleary recommended a delay of at least 90 days after a final exemptive order is issued, explaining that firms will need additional time to assess and comply with the determinations therein.[57] Lloyds suggested that registration be delayed for non-U.S. SDs for at least 12 months after the publication of final guidance, with computation of the de minimis threshold starting from that date.[58]

ii. Commission Determination on Timing of Registration

Throughout the Dodd-Frank rulemaking process, the Commission consistently has strived to strike the proper balance between the need to implement the new regulatory framework for swaps without undue delay, and the need to minimize disruption and hardships for market participants. Consistent with that goal, the Commission has taken steps to provide greater certainty to market participants regarding registration determinations and their compliance obligations. The Commission is also mindful that more than two years have passed since the Dodd-Frank Act—a comprehensive reform of the swaps market—was enacted as a direct response to the financial crisis of 2008. A central element of this reform is the registration and regulation of SDs and MSPs. For example, registered SDs and MSPs are required to clear swaps with certain counterparties, are subject to detailed reporting and recordkeeping requirements and must comply (when final) with new capital and margin requirements—all of which are designed to enhance market transparency and protections against systemic risk.

In the Commission's view, any further delay in the registration of SDs and MSPs would effectively postpone Dodd-Frank's comprehensive new regulatory regime for swaps, frustrating the congressional mandate embodied in the Dodd-Frank Act. Further, given the global nature of the swaps market, an SD or MSP—whether operating in or outside the United States—plays an important role in the U.S. swaps market. Under these circumstances, the Commission believes that a further delay in the compliance date for registration as an SD or MSP would adversely affect the Commission's ability to discharge its responsibilities under the CEA and would be contrary to the public interest. Therefore, the Commission declines to delay the registration requirement for non-U.S. SDs and MSPs.

However, the Commission believes it is appropriate to provide targeted, time-limited exemptive relief with respect to the swap dealing transactions to be

[51] In the Proposed Guidance, the Commission asked whether a foreign branch of a U.S. SD should be defined as a ''U.S. person.'' Some commenters recommended that a foreign branch of a U.S. SD be excluded from the definition of ''U.S. person.'' Sullivan & Cromwell on behalf of Bank of America, Citigroup, and J.P. Morgan (''S&C'') argued that a foreign branch should not be considered a U.S. person solely on the basis that it is a part of a U.S. bank. *See* S&C (Aug. 13, 2012) at 6–7. Citigroup Inc. (''Citi'') recommended that the Commission define a foreign branch of a U.S. SD as a non-U.S. person, so long as the branch remains subject to Entity-Level Requirements and obtains substituted compliance for Transaction-Level Requirements for transactions with non-U.S. persons. *See* Citi (Aug. 27, 2012) at 2–4. In Citi's view, this would address comments by the foreign branch's non-U.S. clients that they would have to register as SDs or MSPs, while assuring that such non-U.S. clients' swaps with the foreign branch are covered by the Transaction-Level Requirements or substituted compliance. *See also* State Street (Aug. 27, 2012) at 3; and IIB (Aug. 27, 2012) at 8.

[52] *See e.g.,* SIFMA (Aug. 13, 2012) at 3, 5; IIB (Aug. 9, 2012) at 5; Societe Generale (Aug. 9, 2012) at 2, Citi (Aug. 13, 2012) at 2; Goldman (Aug. 27, 2012) at 8–9; and Lloyds (Aug. 13, 2012) at 1–2.

[53] *See e.g.,* Goldman (Aug. 27, 2012) at 9 (citing the Commission's proposed rule on the treatment of inter-affiliate transactions for purposes of mandatory clearing and the anticipated Commission action on the status of guarantees of swaps); Societe Generale (Aug. 9, 2012) at 2; and IIB (Aug. 9, 2012) at 2.

[54] Without such relief, commenters are concerned that they will be required to register based on requirements that are subject to change at a later date. *See* Cleary (Aug. 16, 2012) at 6; SIFMA (Aug. 27, 2012) at A1–8; IIB (Aug. 9, 2012) at 4–5).

[55] *See also* Goldman (Aug. 27, 2012) at 9.

[56] *See* Societe Generale (Aug. 9, 2012) at 2.

[57] *See* Cleary (Aug. 16, 2012) at 4. IIB suggested a delay until a ''reasonable'' period after the final exemptive order is issued. *See* IIB (Aug. 9, 2012) at 9. IIB also noted that this is particularly important for non-U.S. firms that are required to coordinate their registration plans with their home country regulators.

[58] *See* Lloyds (Aug. 13, 2012) at 1–2.

included in the de minimis threshold calculation that applies for purposes of the SD definition. The Commission expects that this step, and the other relief provided in the Final Order, will substantially address commenters' concerns regarding the complexity of implementing the swap requirements for the interim period during which the Final Order is in effect.

2. Scope of Transactions To Be Included in Registration Calculations

The Commission has adopted final rules and interpretive guidance implementing the statutory definitions of the terms ''swap dealer'' and ''major swap participant'' in CEA sections 1a(49) and 1a(33).[59] The Final Entities Rules delineate the activities that cause a person to be an SD and the level of swap positions that cause a person to be an MSP. In addition, the Commission has adopted rules concerning the statutory exceptions from the definition of an SD, including the de minimis exception.[60] Commission regulation 1.3(ggg)(4) sets forth a de minimis threshold of swap dealing, which takes into account the notional amount of a person's swap dealing activity over the prior 12 months.[61] When a person engages in swap dealing transactions above that threshold, the person meets the SD definition in section 1a(49) of the CEA.[62] Commission regulations 1.3(jjj)(1) and 1.3(lll)(1) set forth swap position thresholds for the MSP definition in Commission regulation 1.3(hhh). When a person holds swap positions above those thresholds, such person meets the MSP definition in section 1a(39) of the CEA.

i. Proposed Guidance

In the Proposed Guidance, the Commission addressed the general manner in which a person's overseas swap dealing activities or positions may require registration as an SD or MSP, respectively. Specifically, under the Proposed Guidance, a non-U.S. person whose swap dealing transactions with U.S. persons exceed the de minimis threshold would be required to register as an SD.[63] Likewise, under the Proposed Guidance, a non-U.S. person who holds swap positions with U.S. counterparties that are above the specified MSP thresholds would be required to register as an MSP.[64] In determining whether a non-U.S. person is engaged in more than a de minimis level of swap dealing, the Proposed Guidance would include the notional value of any swap transactions between such non-U.S. person (or any of its non-U.S. affiliates under common control) and a U.S. person, other than foreign branches of registered SDs.[65] Following a similar rationale, the Proposed Guidance stated that in calculating whether a non-U.S. person meets an MSP threshold, the non-U.S. person would include the notional value of any swaps entered into between such non-U.S. person and a U.S. person.[66]

In general, commenters did not raise concerns or objections to the Commission's interpretation that non-U.S. persons who engage in more than a de minimis level of swap dealing with U.S. persons would be required to register as SDs.[67] A number of commenters argued, however, that a non-U.S. person should not be required to register as an SD solely by reason of its swap obligations being guaranteed by a U.S. person.[68] SIFMA stated that the ''connection between a non-U.S. swap dealing entity and its U.S. guarantor creates too tenuous a nexus to justify registration on the basis of this relationship alone.'' [69] Other commenters raised various other issues with respect to the treatment of guarantees.[70]

[59] 7 U.S.C. 1a(49) and 1a(33). *See* Final Entities Rules.

[60] Section 1a(49)(D) of the CEA (7 U.S.C. 1a(49)(D)) provides that ''[t]he Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.'' This provision is implemented in Commission regulation 1.3(ggg)(4).

[61] As used in this release, the meaning of the term ''swap dealing'' is consistent with that used in the Final Entities Rules.

[62] Under Commission regulation 3.10(a)(1)(v)(C) and Commission regulation 23.21, a person is required to register as an SD when, on or after October 12, 2012, the person falls within the definition of an SD. However, the rule defining ''swap dealer'' includes a de minimis threshold so that an entity is not an SD if it, together with the entities controlling, controlled by, and under common control with it, engages in swap dealing activity during the prior 12 months in an aggregate gross notional amount of less than the specified thresholds. The rule further specifies that swap dealing activity engaged in before the effective date of both the ''swap dealer'' and ''swap'' definition rules (*i.e.,* before October 12, 2012) does not count toward the de minimis threshold. The rule also provides that an entity that exceeds the de minimis threshold must register as an SD two months after the end of the month in which it exceeds the threshold. *See* Commission regulation 1.3(ggg)(4).

[63] *See* Proposed Guidance, 77 FR at 41218–41219.

[64] *Id.* CFTC Letter 12–22 applied a similar approach for both SD and MSP purposes.

[65] Proposed Guidance, 77 FR at 41218–41220. Further, where the potential non-U.S. SD's swap obligations are guaranteed by a U.S. person, the non-U.S. person would be required to register with the Commission as an SD when the aggregate notional value of its swap dealing activities (along with the swap dealing activities of its non-U.S. affiliates that are under common control and also guaranteed by a U.S. person) with U.S. persons and non-U.S. persons exceeds the de minimis threshold. Additionally, the Proposed Guidance clarified that a non-U.S. person without a guarantee from a U.S. person would not be required to register as an SD if it does not engage in swap dealing with U.S. persons as part of ''a regular business'' with U.S. persons, even if the non-U.S. person engages in dealing with non-U.S. persons.

[66] *Id.* at 41221. The Proposed Guidance also provided that if the non-U.S. person's swaps are guaranteed by a U.S. person, then such swaps will be attributed to the U.S. guarantor and not the potential non-U.S. MSP. Further, the non-U.S. person would be required to include in its MSP calculation any swaps between another non-U.S. person and a U.S. person if the potential non-U.S. MSP guarantees the obligations of the other non-U.S. person thereunder.

[67] One commenter, Japanese Bankers Association, stated that the cross-border application of Dodd-Frank is overbroad because it would capture even hedging transactions of a non-U.S. SD with a U.S. SD that is making a market. The definition of ''dealing activity'' is ambiguous, this commenter asserted, and might require the non-U.S. SD to register. *See* Japanese Bankers Association (''Japanese Banks'') (Aug. 27, 2012) at 1.

[68] *See e.g.,* Goldman (Aug. 27, 2012) at 5; ISDA (Aug. 10, 2012) at 12 (in the typical case, an intra-group guarantee allocates risks and activities within the corporate group and is not a dealing activity of the non-U.S. person); Commercial Energy Working Group (''CEWG'') (submitted by Sutherland Asbill) (Aug. 27, 2012), at 6–7 (Proposed Guidance should not include swap guarantees for aggregation purposes because it is contrary to the Final Entities Rules; jurisdiction should not be extended to transactions between two non-U.S. persons if the swap obligations of one party are guaranteed by a U.S. person because U.S. jurisdiction in these circumstances is not supported by law or existing international conventions).

[69] *See* SIFMA (Aug. 27, 2012) at A–29. As an alternative, SIFMA posited that only guarantees by a U.S. person for which there is a material likelihood of payment by the U.S. guarantor should be counted towards the de minimis calculation. To implement this recommendation, SIFMA suggested that the Commission establish a standard for determining that the likelihood of payment is remote, such as a comparison of the aggregate contingent liability of the U.S. person guarantor to the net equity of that guarantor. *Id.* at A–29—A–30.

[70] *See* Goldman (Aug 27, 2012) at 5 (inconsistent to require SD registration solely on the basis of guarantees by a U.S. parent, absent any showing of a ''direct and significant'' jurisdictional nexus; concerns can be addressed through anti-evasion authority). *See also* CEWG (Aug. 27, 2012) at 7 (because there is no legal basis under CEA section 2(i) for asserting jurisdiction based on a guaranty, Commission should clarify that a non-U.S. person is not subject to Commission regulation, even where a U.S. person guarantees either counterparty); The Hong Kong Association of Banks (''HKAB'') (Aug. 27, 2012) at 8 (swaps between non-U.S. persons should be excluded from the de minimis determination regardless of whether a counterparty is guaranteed); ISDA (Aug. 10, 2012) at 12 (focus should be on whether a U.S. guarantor of a non-U.S. person should register); Investment Industry Association of Canada (''IIAC'') (Aug. 27, 2012) at 6 (seeking confirmation that indirect holding company ownership alone does not constitute a guarantee); and JP Morgan (Aug. 27, 2012) at 10 (term ''guarantee'' should not include keepwells and liquidity puts that do not create the same third-party rights and may be unenforceable by third parties). *But see contra* AFR (June 14, 2012) at 2 (failure to include guaranteed affiliates as U.S. persons and to capture the ''large grey area'' between explicit and informal guarantees creates opportunities to escape Dodd-Frank regulations by

ii. Commission Determination on Exemptive Relief Regarding Registration

Registration Thresholds for Non-U.S. Persons. As noted above, the Commission is not, at this time, taking action on the Proposed Guidance. Under CEA sections 1a(49) and 1a(33) and Commission regulations 1.3(ggg)(4) and 1.3(hhh),[71] a person is required to take account of the notional amount of all of its swap dealing activity over the prior 12 months for purposes of the SD determination, and all of its swap positions for purposes of the MSP determination. These CEA provisions and the Commission's regulations apply to activities within the United States and, as provided in section 2(i), to certain activities outside the United States.

However, while the Commission continues to consider the comments on its Proposed Guidance regarding section 2(i), the Commission believes it appropriate to provide, under the Final Order, relief for non-U.S. persons (regardless of whether the non-U.S. persons' swap obligations are guaranteed by U.S. persons) from the requirement that a person include all its swaps in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for SD purposes or in its calculations for MSP purposes. On the other hand, the Commission believes that it is not appropriate to provide a non-U.S. person with relief from the registration requirement when the aggregate level of its swap dealing with U.S. persons, as that term is defined above, exceeds the de minimis level of swap dealing, or when the level of its swap positions with U.S. persons, again as that term is defined above, exceeds one of the MSP thresholds. In the Commission's view, such relief from the registration requirement is inappropriate when a level of swap activities that is substantial enough to require registration as an SD or an MSP when conducted by a U.S. person, is conducted by a non-U.S. person with U.S. persons as counterparties.

Therefore, the Final Order provides that a non-U.S. person (regardless of whether the non-U.S. persons' swap obligations are guaranteed by U.S. persons) does not need to include in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4) or in its calculation of whether it is an MSP for purposes of Commission regulation 1.3(hhh), any swaps where the counterparty is a non-U.S. person.

Exclusion for Swaps with Foreign Branches of U.S. Swap Dealers. The Proposed Guidance would exclude from a non-U.S. person's de minimis threshold calculation its swap transactions with foreign branches of U.S. SDs. This exclusion was intended to allow non-U.S. persons to continue their swap activities with foreign branches of U.S. SDs without exceeding the de minimis threshold, thereby triggering a requirement to register as an SD.

In CFTC Letter 12–22, the Commission staff noted that because the proposed exclusion would be limited to registered U.S. SDs and many of the persons who expect to register as U.S. SDs may not do so until December 31, 2012, or later, market participants had expressed concern that a non-U.S. person could be required after October 12, 2012, to begin counting toward the de minimis threshold any swap dealing transactions with a foreign branch of any person that may meet the definition of ''U.S. person'' and that is not yet registered (and consequently be required to register as an SD) even though many U.S. persons with foreign branches intend to register as SDs later in 2012 or in early 2013.[72] The Commission staff noted that this potential outcome would not be consistent with the scope of relief intended to be provided in the Proposed Guidance.[73]

The Commission believes it appropriate to provide, in this Final Order, the scope of relief afforded in CFTC Letter No. 12–22 while it considers action on the Proposed Guidance. Accordingly, for purposes of the Final Order, swap transactions by a non-U.S. person with a foreign branch of a registered U.S. SD, or with a foreign branch of a U.S. person that is not yet registered as a U.S. SD but that does intend to register as such when required, are not required to be included in the calculations for SD and MSP registration purposes.

Therefore, the Final Order provides that a non-U.S. person does not need to include in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4) or in its calculation of whether it is an MSP for purposes of Commission regulation 1.3(hhh), any swap where the counterparty is a foreign branch of a U.S. person that is registered as an SD or that represents that it intends to register with the Commission as an SD by March 31, 2013.[74]

Aggregation for the De Minimis Calculation. Commission regulation 1.3(ggg)(4) requires that a person include, in determining whether its swap dealing activities exceed the de minimis threshold, the aggregate notional value of swap dealing transactions entered by its affiliates under common control. Additionally, under the Proposed Guidance, a non-U.S. person, in determining whether its swap dealing transactions exceed the de minimis threshold, would include the

shifting business overseas; Commission should clarify that it will ''follow through on properly implementing these principles and will not enable a 'race to the bottom' in which incentives are created for derivatives affiliates of global banks that are able to relocate to areas of lax regulation to take advantage of an inadequate 'substituted compliance' regime.'').

[71] 7 U.S.C. 1a(49) and 1a(33). *See* Final Entities Rules.

[72] Similarly, if a non-U.S. person must include swaps with such foreign branches in its calculation of whether it is within the definition of MSP in Commission regulation 1.3(hhh), it could be required to register with the Commission in that capacity. Although the Proposed Guidance did not provide for a similar exclusion with respect to the consideration of a non-U.S. person's swaps with foreign branches of U.S. SDs with respect to determining whether the non-U.S. person must register as an MSP, some commenters requested that the Commission provide a similar exclusion. *See* SIFMA (Aug. 27, 2012) at 9, A–28, A–29; Citi (Aug. 27, 2012) at 2–3.

[73] Commenters, such as Goldman, argued that the rationale for this exclusion is equally applicable to non-U.S. persons that are banks or broker-dealers when dealing with U.S. SDs that do not conduct overseas business through foreign branches. Absent a similar interpretation in these circumstances, they argued, U.S. SDs would be at a competitive disadvantage vis-à-vis foreign branches of U.S. SDs since non-U.S. persons will limit their dealing activities to foreign branches of U.S. SDs. *See* Goldman (Aug. 27, 2012) at 5–6. The Commission does not believe that it would be appropriate for a non-U.S. person to exclude from the de minimis calculation swap dealing transactions with U.S. SDs (other than their foreign branches). By way of comparison, however, for purposes of the Final Order, a swap that a non-U.S. person enters into with a non-U.S. affiliate of a U.S. SD (whether guaranteed by a U.S. person or not) is not a swap with a U.S. person and, thus, need not be counted towards the de minimis calculation. The Commission proposed to interpret section 2(i) so as to exclude swap dealing transactions with a foreign branch of a U.S. SD in order to avoid the otherwise potential result that foreign entities would cease doing swap dealing business with foreign branches of U.S. SDs in order to avoid SD status, while continuing to do business with foreign affiliates of U.S. SDs located in the same jurisdiction. The Commission does not believe relief should be provided in a manner that would lead to such disparate treatment of entities located outside the United States, *i.e.,* foreign branches and foreign affiliates of U.S. SDs that are located in the same jurisdiction but that happen to bear a different legal structure. Similar considerations of potentially discriminatory results do not apply, however, with respect to swaps directly with U.S. SDs. Such U.S. SDs are different in kind from a foreign affiliate of a U.S. SD, and the rationale for the foreign branch exclusion is inapposite in these circumstances.

[74] The representation of the intention to register with the Commission as a swap dealer need not be obtained prior to execution of a swap.

aggregate notional value of swap dealing transactions entered into by its non-U.S. affiliates under common control but would not include the aggregate notional value of swap dealing transactions entered into by its U.S. affiliates.

Numerous comments on the Proposed Guidance discussed considerations relating to when the swap dealing activities of affiliates should be aggregated for purposes of determining if a non-U.S. person is required to register as an SD. The Commission is considering these comments, and intends to address them in preparing final guidance on this issue. However, the Commission believes it is appropriate to provide, in the Final Order, temporary relief from the requirement in Commission regulation 1.3(ggg)(4) to include the swap dealing activities of certain affiliates in the de minimis calculation.

For purposes of the Final Order, the Commission believes that a non-U.S. person that is engaged in swap dealing activities with U.S. persons as of the effective date of the Final Order should not be required to include, in its determination of whether it exceeds the de minimis threshold, the swap dealing transactions of any of its U.S. affiliates.[75] In addition, the Commission believes it is appropriate that if the non-U.S. person is an affiliate of a person that is registered as an SD, it should not be required to include, in its determination of whether it exceeds the de minimis threshold, the swap dealing transactions of any of its non-U.S. affiliates that engage in swap dealing activities, so long as each such excluded affiliate is either (i) engaged in swap dealing activities with U.S. persons as of the effective date of the Final Order or (ii) registered as an SD.[76]

Where at least one of the entities in the affiliated group registers as an SD, the Commission believes that during the transition period covered by the Final Order, it is not necessary to aggregate the swap dealing transactions of the various affiliates, even if the aggregate amount of such swap dealing transactions among all the unregistered non-U.S. affiliates is above the de minimis threshold. Thus, where at least one of the entities in the affiliated group registers as an SD, another entity in the affiliated group would have to register as an SD only if its own swap dealing transactions with U.S. persons, considered individually, were above the de minimis threshold.[77]

As noted above, however, this limited transitional relief is not applicable if a non-U.S. affiliate begins to engage in swap dealing transactions with U.S. persons after the effective date of the Final Order. The Commission believes that this limitation is appropriate for the relatively short time period that the Final Order will be in effect, in order to prevent evasion and abuse of this relief. Without this limitation, new non-U.S. affiliates could be created simply in order to engage in further swap dealing activity with U.S. persons. Moreover, most commenters were clear that limited transitional relief from the aggregation requirement is necessary with respect to their existing swap dealing activities, but is not necessary in order to expand their swap dealing activities in the short term.[78]

Central Booking Entity. In the event an entity operates a ''central booking system'' where swaps are booked into a single legal entity, whether or not such entity is a counterparty to the swap, the Proposed Guidance stated that the entity that books the swaps would be subject to any applicable SD registration requirement, as if it had entered into such swaps directly, regardless of whether such entity is a U.S. person or whether the booking entity is a counterparty to a swap (has booked the swap directly) or has booked a swap indirectly by way of a back-to-back swap or other arrangement with an affiliate. The Commission noted that a non-U.S. affiliate or subsidiary may also be required to register as an SD if it independently meets the definition of an SD.[79] A number of commenters sought clarification of the Commission's interpretation with respect to the central booking model.[80]

In this situation, the Commission clarifies that a non-U.S. person should not be required to include in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), any swap to which it is not a party because the swap is entered into by an affiliated central booking entity.

Summary. For purposes of the transitional relief under this Final Order, in determining whether a non-U.S. person is engaged in more than a de minimis level of swap dealing[81] or

[75] For this purpose, the Commission construes ''affiliates'' to include persons under common control as stated in the Final Entities Rules with respect to the term ''swap dealer,'' which defines control as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.'' *See* Final Entities Rules, 77 FR at 30631, fn. 437.

[76] The Commission notes that, in any case, the swap dealing transactions of a non-U.S. person's non-U.S. affiliates that may have to be included in the de minimis determination are the transactions between the non-U.S. affiliates and U.S. person counterparties. In no case would swap dealing transactions between the non-U.S. person's non-U.S. affiliates and other non-U.S. person counterparties need to be included in the determination.

[77] The Commission wishes to make clear that relief from the registration requirement is not available to any person or entity that engages in swap dealing transactions with U.S. persons above the de minimis threshold. The discussion in this section relates only to whether and when non-U.S. persons must aggregate their own swap dealing transactions with the swap dealing of their non-U.S. affiliates.

[78] *See, e.g.,* Cleary (Aug 16, 2012) at 5–6; SIFMA (Aug 13, 2012) at 4–5.

[79] Section 1.3 (ggg)(3) of the Commission's regulations permits a person to apply for a limited purpose designation based on a particular type, class, or category of a swap, or to a particular business unit within an entity. *See* Commission regulation 1.3(ggg)(3); Final Entities Rules, 77 FR at 30645–46. Cleary urged the Commission to recognize limited designation for non-agricultural firms. Specifically, it argued that limited designation should be available to an entity that registers as a firm, and not merely a branch, division, or office. *See* Cleary (Aug. 16, 2012) at 14. Regarding the two points raised by Cleary, the Commission clarifies that a limited designation is available to any registrant that can demonstrate its ability to comply with applicable requirements; it is not limited to only agricultural firms, and it could be available to an entity that registers as a firm. The Commission believes that further relief at this time regarding limited designations is not justified under the criteria of CEA section 4(c). As noted in the Final Entities Rules, the Commission believes that limited designation is appropriately addressed on a case-by case basis in the context of individual applications for registration. *See* Final Entities Rules, 77 FR at 30646 (''Any particular limited purpose application will be analyzed in light of the unique circumstances presented by the applicant.'').

[80] *See e.g.,* Goldman (Aug. 27, 2012) at 6–7; Credit Suisse (Aug. 27, 2012) at 9; IIB (Aug. 27, 2012) at 26 (stating that, although it is not entirely clear, in a central booking arrangement under which a non-U.S. person dealing in swaps with other non-U.S. persons ''books'' those swaps to a U.S. affiliate (which either directly becomes a party to the swap or indirectly enters a back-to-back arrangement), the Proposed Guidance could be interpreted as requiring the non-U.S. affiliate to separately register as an SD if its activities with non-U.S. persons meet the definition of an SD); and Lloyd's (Aug. 24, 2012) at 2–3 (requesting clarification as to whether or not non-U.S. institutions (not acting as principal to swaps with U.S. persons) employing central booking models, would be required to register as SDs when they centrally manage market risk for swaps with an affiliated non-U.S. SD and other non-U.S. related swaps activities).

[81] Cleary and SIFMA have asked the Commission to confirm that swap activities that are limited to unwinding ''legacy'' swap portfolios do not constitute swap dealing. *See* Cleary (Aug. 16, 2012) at 11–12; SIFMA (Aug. 27, 2012) at A–31. *See also* The Clearing House (Aug. 13, 2012) at 11. In a related vein, IIB requested that the Proposed Order be modified to allow certain less active ''Transition Affiliates'' additional time to transfer swap positions to their principal swap dealing affiliate, *see* IIB (Aug. 9, 2012) at 7, and Cleary separately asked the Commission to consider whether the aggregation rule should apply to non-U.S. affiliates whose swap dealing activity is already subject to local regulation by a G–20 supervisor, *see* Cleary (Aug. 16, 2012) at 9–10. In general, the Commission previously concluded that bright-line tests and

holds swap positions above any of the MSP thresholds, the non-U.S. person—whether guaranteed or not by a U.S. person—may exclude and not consider the aggregate notional value of:

- Any swap where the counterparty is a non-U.S. person; and
- Any swap where the counterparty is a foreign branch of a U.S. person that is registered as an SD or that represents that it intends to register with the Commission as an SD by March 31, 2013; and
- For purposes of SD registration only, any swap to which it is not a party because the swap is entered into by an affiliated central booking entity.

Further, for purposes of the transitional relief under this Final Order, in determining whether a non-U.S. person is engaged in more than a de minimis level of swap dealing, the non-U.S. person may exclude and not consider the aggregate notional value of: [82]

- Any swap dealing transaction of its U.S. affiliates under common control; and
- If any of its affiliates under common control is registered as an SD, any swap dealing transaction of any of its non-U.S. affiliates that (i) is engaged in swap dealing activities with U.S. persons as of the effective date of the Final Order or (ii) is registered as an SD.[83]

D. Entity-Level and Transaction-Level Requirements

1. Categorization of Entity- and Transaction-Level Requirements

Title VII of the Dodd-Frank Act establishes a comprehensive new regulatory framework for SDs and MSPs. This framework is an important element of the ''improve[d] financial architecture'' that Congress established in the Dodd-Frank Act to reduce systemic risk and enhance market transparency.[84] Among other things, a registered SD or MSP must comport with certain statutory requirements (and regulations the Commission may promulgate thereunder) governing risk management, internal and external business conduct standards, and reporting. Further, U.S. SDs and MSPs, once registered, are required to comply with all of the requirements applicable to SDs and MSPs for all their swaps, not just the swaps that make them an SD or MSP.

For purposes of the Proposed Order, the Dodd-Frank swap provisions were divided into two categories: (1) Entity-Level Requirements, which apply to all the firm's activities or transactions; and (2) Transactional-Level Requirements, which apply on a transaction-by-transaction basis. For purposes of the Final Order, the Commission will apply the Entity-Level and Transaction-Level Requirements as proposed.[85]

The Entity-Level Requirements consist of: (1) Capital adequacy; (2) chief compliance officer; (3) risk management; (4) swap data recordkeeping; (5) SDR reporting; and (6) LTR.[86] The Entity-Level Requirements apply to registered SDs and MSPs across all their swaps without distinctions as to the counterparty or the location of the swap.[87]

The Transaction-Level Requirements consist of: (1) Clearing and swap processing; (2) margining and segregation for uncleared swaps; (3) trade execution; (4) swap trading relationship documentation; (5) portfolio reconciliation and compression; (6) real-time public reporting; (7) trade confirmation; (8) daily trading records; and (9) external business conduct standards.[88]

The Commission intends to consider any reclassification of Entity-Level and Transaction-Level requirements, including for the reasons raised by various commenters, in connection with further guidance on cross-border issues. As described below, however, the Commission has considered issues raised by commenters regarding the scope of the proposed exemptive relief from such Requirements—apart from their ultimate classification.

2. General Comments on the Proposed Order

In response to the Proposed Order, a number of commenters addressed the proposed exemptive relief from the Entity-Level and Transaction-Level Requirements. The Clearing House stated that appropriate phase-in relief requires the Commission to ''provide greater flexibility'' with respect to the application of the Dodd-Frank requirements to overseas operations and non-U.S. counterparties.[89] Several other commenters—including IIB, Citigroup and Cleary—recommended that the Commission either delay the compliance date for certain requirements or expand the scope of relief (particularly as to transactions with non-U.S. counterparties) to address certain compliance and operational burdens associated with applying the Dodd-Frank requirements to

categorical exclusions from the term ''swap dealer'' based on the general nature of a person's business are unwarranted. *See* Final Entities Rules, 77 FR at 30615. The Commission believes that this approach is equally appropriate here, with regard to the exemptive relief requested in the cross-border context. As noted above, the Commission believes that registration of non-U.S. persons that are within the definition of the term ''swap dealer'' is a key element of the Dodd-Frank swaps reforms. Therefore the Commission believes, at this time, that blanket relief in this area along the lines suggested by commenters is not in the public interest, and that the determination of whether particular activities constitute swap dealing or otherwise bring a person within the definition of the term ''swap dealer,'' should proceed along the lines that the Commission adopted in the Final Entities Rules. Under these circumstances, the Commission has determined that it would be inappropriate to provide further relief in this regard under CEA section 4(c). However, the Commission does not intend to preclude its staff from considering appropriate relief in this regard on a case-by-case basis.

[82] As noted above, this further relief is available only where the non-U.S. person is engaged in swap dealing activities with U.S. persons as of the effective date of the Final Order.

[83] The foregoing summary is based on the term ''U.S. person'' as it is defined above.

[84] S. Rep. No. 111–176, at 228 (2010).

[85] To date, the Commission has not adopted final rules relating to the Entity-Level Requirement of capital adequacy, nor the Transaction-Level Requirements of margining (and segregation) for uncleared swaps, and trade execution. *See* sections 2(h)(8), 4s(e) and 4s(l) of the CEA, 7 U.S.C. 2(h)(8), 6s(e) and 6s(l). No exemptive relief is necessary with respect to Requirements that are not yet in effect and, therefore, the Final Order does not apply to these Requirements. In the event that final rules with respect to any of these Requirements that are issued by the Commission come into effect prior to the expiration of this Final Order, the Commission will consider extending the Final Order to such Requirements at that time. For further details regarding the Entity-Level Requirements and the Transaction-Level Requirements, *see* the appendices to the Proposed Order.

[86] Specifically, the Entity-Level Requirements are those set forth in Commission regulations 1.31, 3.3, 23.201, 23.203, 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, 23.607, 23.608 and 23.609 and parts 20, 45 and 46.

[87] IIB and The Clearing House noted that the Proposed Order did not address Commission regulation 1.31, which sets forth certain recordkeeping obligations that apply to all books and records required to be kept under the Commission's regulations. *See* IIB (Aug. 9, 2012) at 10; and The Clearing House (Aug. 16, 2012) at 14. In the Proposed Order, the Commission proposed generally that recordkeeping requirements would be Entity-Level Requirements but did not explicitly list Commission regulation 1.31 as an Entity-Level Requirement. The Commission clarifies that for purposes of the Final Order, Commission regulation 1.31 is an Entity-Level Requirement and, therefore, subject to the exemptive relief under the Final Order

[88] Specifically, the Transaction-Level Requirements are those set forth in CEA section 2(h)(8) and Commission regulations 23.202, 23.400 to 23.451, 23.501, 23.502, 23.503, 23.504(a), 23.504(b)(1), (b)(2), (b)(3) and (b)(4), 23.506 and 23.610 and part 43. The Proposed Guidance placed one of the Transaction-Level Requirements—external business conduct standards—into a ''Subcategory B,'' as distinguished from the remaining Transaction-Level Requirements in ''Subcategory A.'' This distinction is not relevant for purposes of the Final Order, in which all Transaction-Level Requirements are provided the same exemptive relief.

[89] *See* The Clearing House (Aug. 13, 2012) at 13–14. To that end, The Clearing House recommended that certain rules currently categorized as entity-level be changed to transaction-level.

transactions outside the United States.[90] These comments and the Commission determinations in response thereto are discussed below.

3. SDR Reporting (Part 45 and Part 46) and LTR Requirements

i. Comments

As discussed above, in the Proposed Order, the Commission proposed to allow non-U.S. SDs and MSPs to delay compliance with Entity-Level Requirements subject to specified conditions—except for the Entity-Level Requirements of SDR reporting and LTR requirements. Under the Proposed Order, non-U.S. SDs and MSPs would be required to comply with SDR reporting and LTR requirements for all swaps with U.S. counterparties upon their compliance date. And, with respect to swaps with non-U.S. counterparties, the Commission proposed that only those non-U.S. SDs and MSPs that are not affiliates or subsidiaries of a U.S.-based SD would be permitted to delay compliance with the SDR reporting and LTR requirements. The Commission is adopting this temporary exemptive relief generally as proposed, with certain modifications in response to comments received.

Some commenters requested an extension of the compliance date for SDR reporting and LTR requirements. IIB stated that due to the ''expansive'' proposed aggregation rule and ambiguities in the proposed U.S. person definition, non-U.S. registrants may not have their systems ready to report their U.S.-facing swaps, which they expect to be relatively few in number.[91] As an initial step, IIB requested that the Commission further extend the compliance date for SDR reporting and LTR requirements with respect to swaps between non-U.S. registrants and other non-U.S. counterparties (including foreign branches of U.S. persons) under the exemptive relief, pending final interpretive guidance and for a ''reasonable'' time thereafter.[92] Similarly, cleary stated that compliance with part 45 swap data reporting requirements would require U.S. operations overseas (*i.e.,* affiliates and foreign branches) to develop new reporting infrastructures, which requires additional time for implementation. It requested that registrants be permitted to comply with SDR reporting with non-U.S. counterparties by reporting to the Global Trade Repository (''GTR'').[93]

Other commenters requested broader relief from the reporting requirements. SIFMA argued that non-U.S. registrants should be relieved from complying with SDR reporting for all of their swaps.[94] SIFMA explained that because the proposed reporting relief is not available for swaps with U.S. counterparties, non-U.S. registrants are effectively required to comply with the full extent of SDR reporting and LTR requirements upon the effectiveness of the rules, nullifying the benefit of any transition period. Therefore, SIFMA urged that the proposed relief for non-U.S. registrants should apply to swaps with all counterparties.

The Clearing House stated that potential registrants—whether U.S. or non-U.S. and irrespective of affiliation or branch status—should not be required to apply SDR reporting rules or LTR requirements to transactions with non-U.S. counterparties.[95] It explained that for swaps with non-U.S. counterparties, these rules are transaction-specific and further, the cost of developing the necessary reporting infrastructure during the exemptive period would create disadvantages vis-à-vis those potential registrants for which delayed implementation of these requirements would be granted under the Final Order. The Clearing House, like IIB, also cited the fact that under the Proposed Guidance, many non-U.S. entities may be unexpectedly required to register as SDs but lack the operational infrastructure to comply with the reporting requirements.

Several commenters also requested additional time for compliance with part 46 reporting of historical and transition swaps. For example, Citi stated that data for many historical swaps is not available in the format necessary, and that many of the relevant swaps have expired or were terminated.[96] SIFMA said that allowing additional time for compliance would not materially hinder the Commission's ability to assess systemic risk.[97] SIFMA requested that the Commission delay for all market participants part 46 historical swap reporting for a particular counterparty and asset class until 120 days after SDR reporting under part 45 is effective for that reporting counterparty and asset class in order to alleviate the difficulties associated with compliance with both reporting requirements.

Finally, as noted above, the Proposed Order stated that the exemptive relief for SDR reporting and LTR requirements for non-U.S. registrants in their swaps with non-U.S. counterparties would not extend to non-U.S. registrants that are affiliates or subsidiaries of U.S. registrants. A number of commenters, including Deutsche Bank, recommended that the Commission eliminate the term ''affiliate'' and exempt non-U.S. registrants from reporting swaps with non-U.S. counterparties, except where the non-U.S. registrant is a direct subsidiary of a U.S. registrant.[98] Commenters expressed the concern that this proposed exemptive relief from SDR reporting and LTR requirements was too narrow in that it would not extend to a non-U.S. registrant by virtue of its affiliation with a U.S. SD under the common ownership of a non-U.S. person that is neither an SD nor an MSP.[99]

ii. Commission Determination on SDR Reporting and LTR Requirements

SDR reporting is a fundamental component of Dodd-Frank's objective to reduce risk, increase transparency, and promote market integrity within the financial system generally, and the swaps market in particular.[100] SDR reporting achieves the statutory objectives of transparency and enhanced price discovery by, among other things, requiring that market participants report swap transaction and pricing data to an SDR. SDR reporting also serves as a valuable regulatory tool. In particular, timely reporting of comprehensive swap transaction data to SDRs will be important to the Commission's ability to effectively monitor and address the risk exposures of individual market participants (including SDs and MSPs) and the concentration of risk within the swaps market more generally. Similarly, LTR enables the Commission to promptly and efficiently identify significant traders and collect data on their trading activity so that the Commission can reconstruct market events, conduct investigations, and bring enforcement actions as

[90] *See e.g.,* IIB (Aug. 13, 2012) at 9–10, Cleary (Aug. 16, 2012) at 14–16; and Citigroup (Aug. 13, 2012) at 4.

[91] *See* IIB (Aug. 13, 2012) at 10.

[92] *Id.* IIB also said that there may be jurisdictions that restrict the disclosure of even swaps with U.S. persons, and additional relief may be necessary for those jurisdictions.

[93] *See* Cleary (Aug. 16, 2012) at 15–16.

[94] *See* SIFMA (Aug. 13, 2012) at 8–9.

[95] *See* The Clearing House (Aug. 13, 2012) at 13–14. This commenter also stated that where the foreign jurisdiction lacks any parallel transaction-level rules, the registrant should not be required to apply any Dodd-Frank Transaction-Level Requirements with respect to any swap with a non-U.S. counterparty. For jurisdictions with transaction-level requirements, all registrants should be allowed to comply with the local requirements during the exemptive period.

[96] *See* Citi (Aug. 13, 2012) at 9.

[97] *See* SIFMA (Aug. 13, 2012) at 11.

[98] *See* Deutsche Bank (Aug. 13, 2012) at 3; *see also* Cleary (Aug. 16, 2012) at 14–15.

[99] *See id.*

[100] *See* 7 U.S.C. 2(a)(13)(G).

appropriate. In short, SDR reporting and LTR requirements are vital to ensuring that the Commission has a comprehensive and accurate picture of market activities in order to fulfill its regulatory mandate, including systemic risk mitigation, market monitoring, and market abuse prevention.

The Commission notes that Commission staff has recently granted no-action relief with respect to certain of these reporting requirements. In CFTC Letter No. 12–32, Commission staff provided time-limited no-action relief to SDs ''from certain requirements of the Commission's swap data reporting rules, in order to allow for a common monthly compliance date for swap dealers newly falling within the scope of these rules, and to extend the compliance date for reporting historical swap transaction data pursuant to Part 46 of the Commission's regulations.'' [101] In CFTC Letter No. 12–39, Commission staff granted time-limited no-action relief to reporting parties from certain reporting requirements in part 43 and part 45 with respect to bespoke or complex products.[102] The no-action relief granted in these letters is available to both U.S. and non-U.S. persons who may be subject to these reporting obligations.

The Commission believes that it is necessary to implement these reporting requirements as expeditiously as possible, and in a manner intended to achieve their underlying statutory objectives. Therefore, in light of the relief provided by the Commission staff, the Commission has determined that it would not further the public interest or the purposes of the CEA to further delay compliance with the SDR reporting or LTR requirements for non-U.S. registrants. For similar reasons, the Commission has determined to not extend exemptive relief from the SDR reporting or LTR requirements to U.S. registrants for their transactions with non-U.S. counterparties. Thus, the Commission has determined not to provide relief under CEA section 4(c) in this regard.

Finally, the Commission is clarifying its proposal that only those non-U.S. SDs and MSPs that are not affiliates or subsidiaries of a U.S.-based SD would be permitted to delay compliance with the SDR reporting and LTR requirements with respect to swaps with non-U.S. counterparties. As explained in the preamble of the Proposed Order, this condition was intended to limit the relief to non-U.S. registrants that are not ''part of a U.S-based affiliated group.'' [103] Accordingly, in response to comments received, the Commission is clarifying that the relief from the SDR reporting and LTR requirements is reserved for swaps with non-U.S. counterparties that are entered into by non-U.S. registrants that are not part of an affiliated group in which the ultimate parent entity is a U.S. registrant, bank, financial holding company, or bank holding company.[104] The Commission believes that this modification strikes the appropriate balance between facilitating such non-U.S. registrants' phasing in of their reporting obligations and achieving the critical statutory and regulatory objectives of the SDR reporting and LTR requirements as discussed above. Therefore, the Commission has determined that this provision of the Final Order, as modified, is consistent with the public interest and the purposes of the CEA and, therefore, is appropriate for temporary exemptive relief pursuant to CEA section 4(c).

4. Privacy and Confidentiality Laws

i. Comments

A number of commenters, both market participants and foreign regulators, stated that certain Dodd-Frank requirements—namely, SDR reporting and LTR requirements, and U.S. regulators' access to books and records—may conflict with local privacy and data protection laws.[105] They further noted that potential solutions to such blocking statutes, such as mutual assistance agreements and/or client consents, may be available but will require time to implement. Certain commenters, including UBS, Citi, and Societe Generale, specifically requested that compliance with the reporting requirements for non-U.S. persons with non-U.S. counterparties, including foreign branches of U.S. persons, be delayed pending final interpretive guidance (and for a reasonable time thereafter). As an alternative, SIFMA suggested that at least during the term of the exemptive relief, all market participants (including futures commission merchants) should be permitted to mask client information from any reporting requirements, including SDR reporting and LTR, where the failure to do so would violate applicable foreign laws and regulations.

ii. Commission Determination on Privacy and Confidentiality Laws

The Commission believes that, given the importance of the subject reporting requirements to market transparency and integrity, it is critical to apply these requirements to all registered SDs and MSPs.[106] However, the Commission recognizes the potential challenges that non-U.S. firms may face in jurisdictions with conflicting privacy and confidentiality laws. As a result of these challenges, the Commission staff recently granted time-limited no-action relief from provisions of parts 20, 45, and 46 of the Commission's regulations that require the reporting of certain information revealing the identity of a counterparty or affiliated group where reporting such information would violate the privacy laws of a non-U.S. jurisdiction.[107] In light of the

[101] CFTC Division of Swap Dealer and Intermediary Oversight and Division of Market Oversight, Time-Limited No-Action Relief for Swap Dealers from Certain Swap Data Reporting Requirements of Part 43, Part 45, and Part 46 of the Commission's Regulations, No-Action Letter No. 12–32, dated Nov. 19, 2012.

[102] CFTC Division of Market Oversight, Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations, No-Action Letter No. 12–39, dated Nov. 19, 2012.

[103] 77 FR at 41112.

[104] Accordingly, swaps with non-U.S. counterparties that are entered into by non-U.S. registrants that are part of an affiliated group in which the ultimate parent entity is a U.S. registrant, bank, financial holding company, or bank holding company, are subject to the SDR reporting and LTR requirements.

[105] *See e.g.,* SIFMA (Aug. 13, 2012) at 14; Citi (Aug. 13, 2012) at 7; UBS AG (''UBS'') (June 13, 2012) at 1; IIB (Aug. 9, 2012) at 10; Societe Generale (Aug. 9, 2012) at 8; ISDA (Aug. 10, 2012) at 7; Swiss Financial Market Supervisory Authority (''FINMA'') (July 16, 2012) at 2; Hong Kong Banks (Aug. 27, 2012) at 2–3.

[106] *See also* the discussion of the importance of SDR reporting in section III.D.3.ii., above

[107] *See* CFTC Division of Market Oversight, Re: Time-Limited No-Action Relief for Part 20 Reporting Entities Regarding Identifying Information and Time-Limited No-Action Relief for Part 45 and Part 46 Reporting Counterparties Regarding Legal Entity Identifiers, Other Enumerated Identifiers, or Other Identifying Terms, No-Action Letter No.12–46, Dec. 7, 2012. Further, in response to comments, the Commission is revising Form 7–R. This is the Commission form that a firm uses to apply for registration with the Commission. By signing Form 7–R, the firm makes a set of certifications, acknowledgments and undertakings. In addition, if the applicant is a foreign firm, the firm agrees to provide its books and records for inspection by the Commission, NFA, or the U.S. Department of Justice (''DOJ'') upon request and in a specified manner. Included is a statement that the foreign firm is not subject to any blocking, privacy or secrecy laws, and that failure to provide the books and records in the manner specified could result in enforcement action, denial or revocation of registration, or other consequences.

Certain foreign firms that will be required to register with the Commission as SDs by a date certain may be subject to blocking, privacy, or secrecy laws in their home jurisdictions that could limit or prevent production by those firms of their books and records in accordance with the procedures they would be agreeing to by signing Form 7–R. In order to permit these firms to register as required by U.S. law, without violating their home country laws, the Commission is making the terms of the agreement in Form 7–R that a firm

Continued

Commission staff's decision to provide no-action relief with respect to this issue, the Commission has determined that it would not further the public interest or the purposes of the CEA to grant further relief with respect to the reporting requirements solely on the basis of potentially conflicting privacy and data protection laws. Therefore, the Commission declines to provide relief under CEA section 4(c) in this regard.

Similarly, the Commission views its access to a registrant's books and records as a fundamental regulatory tool necessary to properly monitor and examine the registrant's compliance with the CEA. Consistent with existing practice, the Commission intends to exercise its right to access a registrant's books and records and maintain its right to examine a registrant, regardless of the registrant's location.[108] In this regard, the Commission believes that mutual cooperation with other regulators is equally important to achieve the effective and efficient supervision of cross-border activities. In recognition of the importance of such mutual cooperation, the Commission will endeavor to achieve an understanding with each relevant regulator and memorialize such understanding in a supervisory arrangement. In the Commission's view, this is a balanced and flexible approach that will ensure that the agency has access to information critical to fulfilling its statutory responsibilities, but achieved in a manner designed to ensure continuing cooperative relationships with its counterparts overseas.

5. Exemptive Relief for U.S. Swap Dealers

i. Comments

The Proposed Order would permit non-U.S. registrants and foreign branches of U.S. registrants to delay compliance with Transaction-Level Requirements with respect to swaps with non-U.S. persons.[109] The relief would not be available to U.S. SDs (with the exception of foreign branches). SIFMA requested that the Commission extend the relief from compliance with the Entity-Level Requirements (including SDR reporting) to U.S. registrants transacting with non-U.S. persons since it will be difficult, if not impossible, to collect the counterparty information that is necessary to effect compliance with certain of these requirements.[110] SIFMA also supported granting U.S. SDs relief from swap data recordkeeping and internal conflicts requirements for swaps with non-U.S. persons.[111] ISDA similarly argued that the rationale for exemptive relief applies equally to a U.S. SD transacting directly with non-U.S. persons.[112] Cleary raised concerns about the disparate treatment extended to U.S. SDs and non-U.S.-SDs under the Proposed Order in respect to Transaction-Level Requirements as applied to transactions with non-U.S. persons.[113] Cleary requested that in the interim, for the duration of the exemptive relief, the Commission should exempt all SDs from Transaction-Level Requirements for transactions with non-U.S. persons.

ii. Commission Determination on Relief for U.S. Swap Dealers

The Commission believes that extension of this relief to U.S. SDs' activities would not only be contrary to the directive in CEA section 2(i), but also detrimental to the Commission's strong supervisory interests in swap activities occurring inside the United States. Nevertheless, the Commission has carefully considered the potential consequences of disparate treatment of U.S. and non-U.S. registrants and, where possible, has attempted to minimize the disparity between these registrants. A notable example of this is the relief from the Transactional-Level Requirements, which applies equally to both non-U.S. persons and the overseas operations of U.S. persons (*i.e.,* foreign branches or non-U.S. affiliates).

In the Commission's view, it would be contrary to the public interest and the purposes of the CEA to address commenters' concerns about regulatory disparity by diminishing the regulatory requirements that apply to swap activities inside the United States. Rather, the Commission believes that this issue is more appropriately addressed by working closely with its overseas counterparts, including continued participation in international groups to adopt and enforce robust and consistent standards across jurisdictions.[114]

6. Relief for Transactions Involving Non-Registrants

i. Comments

As noted above, the Proposed Order would not extend relief to swap counterparties that are neither SDs nor MSPs. Certain commenters, such as SIFMA and Deutsche Bank, asserted that this would lead to an anomalous result. By way of illustration, they noted that a swap between a non-U.S. person and a foreign branch of an SD would be exempt from applicable Transaction-Level Requirements, but a swap between the same non-U.S. person and a foreign branch of a U.S. bank that is not a registered SD would not be eligible for the relief.[115] They asked that the Commission extend exemptive relief to non-U.S. persons who enter into swaps with foreign branches of U.S. persons, regardless of whether the U.S. person is a registered SD or MSP.

produce its books and records upon request of the Commission, NFA, or DOJ, subject to the provisions of any applicable blocking, privacy or secrecy laws. *See* Form 7–R at page 42, which may be found on NFA's Web site at *http://www.nfa.futures.org/NFA-registration/templates-and-forms/Form7–R-entire.pdf.*

[108] Under Commission regulation 23.603(i), a registered SD or MSP must make all records required to be maintained in accordance with Commission regulation 1.31 available promptly upon request to representatives of the Commission. Under the Final Order, the Commission reserves this right to access records held by registered SDs and MSPs, regardless of the registrant's location.

[109] The Proposed Order provided that non-U.S. registrants may comply with Transaction-Level Requirements for transactions with non-U.S. counterparties only as required by the home jurisdiction (or in the case of foreign branches of a U.S. registrant, the foreign location of the branch). Cleary requested that compliance with the host jurisdiction also be permitted. *See* Cleary (Aug. 16, 2012) at 16. In response, the Commission is clarifying the Final Order to allow the non-U.S. registrant (or branch of a U.S. registrant) to comply with only the applicable requirements of the local jurisdiction.

[110] *See* SIFMA (Aug. 13, 2012) at 10 (arguing that, otherwise, U.S. SDs would be at a competitive disadvantage and that U.S. SDs face the same operational difficulties as non-U.S. SDs when transacting in the U.S. with non-U.S. counterparties).

[111] *Id.* at 9.

[112] *See* ISDA (Aug. 10, 2012) at 7 (''in the interest of competitive parity between U.S. and non-U.S. entities, ISDA recommends that the Commission align the domestic and extraterritorial compliance dates of all requirements'').

[113] *See* Cleary (Aug. 16, 2012) at 11 (''during the exemption's phase-in period * * * the CFTC should ensure competitive parity by exempting all [SDs] from transaction-level requirements in connection with transactions with non-U.S. counterparties'').

[114] Where appropriate, however, the Commission has provided relief to both U.S. and non-U.S. registrants. For example, the Commission recently approved interim final rules for SDs and MSPs that would otherwise be required to comply with certain business conduct and documentation requirements in provisions of subpart F, subpart H, and subpart I to part 23 of the Commission's Regulations. Specifically, the compliance date for Commission regulations 23.502 and 23.504 is deferred until July 1, 2013. Additionally, the compliance date for Commission regulations 23.201(b)(3)(ii); 23.402; 23.401(c); 23.430; 23.431(a)–(c); 23.432; 23.434(a)(2), (b), and (c); 23.440; 23.450; and 23.505 is deferred until May 1, 2013. The compliance dates for all other provisions of subpart F, subpart H, and subpart I of part 23 remain unchanged. *See* Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants, Interim Final Rules, Dec. 18, 2012, available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister121812.pdf.*

[115] *See* SIFMA (Aug. 13, 2012) at 12; Deutsche Bank (Aug. 13, 2012) at 3–4 (citing SDR reporting as an example of such disparities).

ii. Commission Determination on Transactions Involving Non-Registrants

The Commission believes that it would not be appropriate to extend temporary exemptive relief to swaps by a non-U.S. person with a foreign branch of a U.S. person that is not a registrant. As explained above, in crafting the scope of relief to be granted under CEA section 4(c), the Commission carefully balanced the need to implement the Dodd-Frank swap provisions as expeditiously as possible and the need to mitigate undue disruptions to market practices. Consistent with that objective, the Commission's determination to exclude swaps between non-U.S. persons and foreign branches of U.S. registrants from certain requirements was based on the fact that the U.S. registrant (of which the foreign branch is an integral part, not a separate entity) would be subject to various prudential requirements as part of the overall requirements applicable to registrants. In the Commission's view, these requirements provide a sufficient level of regulatory safeguards with respect to the U.S. registrants to allow for temporary relief from the Transactional-Level Requirements with respect to the foreign branches of those U.S. registrants.

In contrast, where the foreign branch is not part of a U.S. registrant, the Dodd-Frank requirements applicable to that foreign branch are greatly reduced and may, in some cases, be absent. Accordingly, the Commission believes that it would not further the public interest to grant relief from applicable Transaction-Level Requirements with respect to foreign branches of other classes of U.S. persons, and therefore declines to issue such exemptive relief under CEA section 4(c).

7. Expiration Date for the Relief

i. Comments

A number of commenters, including ISDA and SIFMA, stated that the expiration of the Final Order should be tied to the publication of the final guidance, and not simply one year after the publication of the Proposed Order.[116] According to SIFMA, any transition period is meaningful only if measured from the date that the full scope of the exemptive relief is disclosed, *i.e.,* the date of the publication of the final guidance.[117] Cleary recommended that the Commission align the duration of the exemptive relief with implementation in other G–20 jurisdictions.[118]

ii. Commission Determination on Expiration Date for the Relief

The Commission declines to adopt the commenters' suggestion. The Final Order maintains the expiration date in the Proposed Order. However, as noted in the Proposed Order, the Commission is committed to an orderly transition to the Dodd-Frank Act's regulatory regime.[119] Consistent with this commitment to an orderly phase-in of the cross-border application of Dodd-Frank requirements, ''[s]hould the Commission deem it appropriate to extend any exemptive relief, the Commission will be in a better position to tailor any exemption at that time.'' [120]

8. Foreign Branches of a U.S. Swap Dealer

i. Comments

SIFMA commented that the Commission should clarify that relief from the Transaction-Level Requirements is available to a foreign branch of a U.S. SD that enters into a swap with a non-U.S. SD.[121] Citi requested that the Commission extend relief to swaps between foreign branches of U.S. SDs.[122]

ii. Commission Determination on Foreign Branches of a U.S. Swap Dealer

The Commission clarifies that relief from the Transaction-Level Requirements is available to a swap between a foreign branch of a U.S. registrant and a non-U.S. SD. That is, for purposes of this relief, the non-U.S. SD may treat the foreign branch as a non-U.S. person.

On the other hand, as discussed above, the Commission believes that a swap between two foreign branches of U.S. registrants is a swap between two U.S. persons, and such transactions are fully subject to the Transaction-Level Requirements. Nevertheless, the Commission has determined that it would be appropriate to provide relief during the effectiveness of the Final Order so that foreign branches of U.S. registrants[123] may comply only with transaction-level requirements as may be required in the location of the foreign branch while the Commission further considers, and works with international regulators regarding, the treatment of foreign branches of U.S. registrants.

As part of its further consideration of this issue, the Commission is considering additional requirements to determine if a swap is with the foreign branch of a U.S. person. These requirements could include, for example, that the foreign branch is the location of employment of the employees negotiating the swap for the U.S. person or, if the swap is executed electronically, the employees managing the execution of the swap, that the U.S. person treats the swap as a swap of the foreign branch for tax purposes, that the foreign branch operates for valid business reasons and is not only a representative office if the U.S. person, and that the branch is engaged in the business of banking or financing and is subject to substantive regulation in the jurisdiction where it is located. The Commission seeks comment from

[116] *See* ISDA (Aug. 10, 2012) at 17; SIFMA (Aug. 13, 2012) at 14–15.

[117] *See* SIFMA (Aug. 13, 2012) at 14–15.

[118] *See* Cleary (Aug. 16, 2012) at 17. Cleary suggested, for example that the Commission consider a jurisdiction-by-jurisdiction approach under which the relief would expire for non-U.S. registrants as their home (or host) jurisdictions implement comparable requirements.

[119] *See* Proposed Order, 77 FR at 41112. The Commission's commitment in this regard also was recently reflected in the Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-border OTC Derivatives Market, included in CFTC Press Release 6439–12, Dec. 4, 2012, which is signed by CFTC Chairman Gensler and the leaders of 11 other regulatory authorities (''We will consider providing appropriate transitional implementation periods for entities in jurisdictions that are implementing comparable regulations, supervision, and comprehensive oversight. In order to facilitate an orderly transition with respect to new OTC derivatives regulatory requirements when promulgating regulations with cross-border applicability, we agree to a reasonable, limited transition period to facilitate the implementation of such cross-border regulatory requirements in appropriate circumstances and in consultation with other jurisdictions.'').

[120] ''Effective Date for Swap Regulation,'' 76 FR 42508, 42514, Jul. 19, 2011.

[121] *See* SIFMA (Aug., 13, 2012) at 10 (noting that the Proposed Order makes clear that a foreign branch of a U.S. SD is eligible for such relief with respect to swaps with a non-U.S. counterparty, but the definition of U.S. person (which includes branches) makes the treatment of swaps between a foreign branch of a U.S. SD and a non-U.S. SD unclear).

[122] *See* Citi (Aug. 13, 2012) at 2–3 (noting that, under the Proposed Order, relief from the Transaction-Level Requirements would not be available in this scenario because a branch is deemed a U.S. person, and arguing that this result would make it difficult for such branches to hedge risk in local markets, and reduce liquidity for non-U.S. SDs, because U.S. SDs would be limited in their ability to make markets abroad via their overseas branches).

[123] For purposes of this relief from Transactional-Level Requirements for a swap between foreign branches of U.S. registrants, a swap is with the foreign branch of a U.S. person when (i) the personnel negotiating and agreeing to the terms of the swap are located in the jurisdiction of such foreign branch; (ii) the documentation of the swap specifies that the counterparty or ''office'' for the U.S. person is such foreign branch and (iii) the swap is entered into by such foreign branch in its normal course of business. If the swap does not meet these three criteria, it will be treated as a swap of the U.S. person and not as a swap of the foreign branch of the U.S. person, and the swap will not be eligible for this relief from Transaction-Level Requirements.

market participants and other interested parties regarding whether it is appropriate to include these or other requirements in the determination of when a swap is with the foreign branch of a U.S. person.

9. Compliance Plans and Good-Faith Compliance

The Proposed Order required that a person seeking relief under the order would submit to the NFA a compliance plan addressing how it plans to comply with applicable requirements under the CEA and related regulations. Commenters on this aspect of the Proposed Order questioned the value of the compliance plan and requested clarifications of the Commission's expectations concerning compliance plans.[124] Upon further consideration of the regulatory implementation process, the Commission has determined that the submission of a compliance plan should not be necessary in connection with phasing in compliance with the Dodd-Frank requirements in the cross-border context during the limited time frame in which the Final Order will be in effect. Therefore, the Final Order does not require submission of a compliance plan.

Market participants have raised the concern that, despite their best efforts at compliance, there could be ''practical or technical limitation or interpretive uncertainty'' that might need to be resolved before an SD's or MSP's full compliance with the Dodd-Frank requirements is practically feasible.[125] In light of these concerns, the Commission believes it is appropriate to provide market participants guidance regarding its intentions concerning its enforcement authority when an SD or MSP is making diligent, good faith implementation efforts in this period of transition. The Commission does not intend to bring an enforcement action against an SD or MSP for failing to fully comply with applicable Dodd-Frank requirements prior to July 12, 2013, provided that there is a practical or technical impediment to compliance that results in an inability to comply with relevant compliance deadlines, or uncertainty in interpreting, particular Dodd-Frank requirement(s) and the SD or MSP is acting reasonably and in good faith to fully comply with the applicable Dodd-Frank requirements, which would include, at a minimum, (i) material progress toward timely implementation and compliance; (ii) identification of any implementation or interpretive issue as soon as reasonably possible; (iii) timely elevation of such issue(s) to the SD's or MSP's senior management for consideration and resolution; and (iv) timely consultation with other industry participants and the Commission as necessary to seek resolution of any such issue(s).[126]

10. Relief for Principals/Associated Persons

i. Comments

Under Commission regulation 3.10(a)(2), each applicant for SD or MSP registration must file, together with Form 7–R, a Form 8–R executed by each natural person that qualifies as a ''principal'' of the applicant. As part of this process, each principal is required to submit a fingerprint card, as well as submit to a detailed background check. Commission regulation 23.22 prohibits an SD or MSP from permitting an associated person subject to statutory disqualification (as defined by the CEA) from being involved in effecting swaps on behalf of such registrant. Citing difficulties associated with differences in the standards for statutory disqualification among jurisdictions and privacy issues associated with collecting information about individuals, commenters requested that only those individuals directly involved in the solicitation or acceptance of swaps (or supervising such individuals) be regarded as ''associated persons.''[127]

Commenters, such as IIB and Societe Generale, urged the Commission to exclude directors and senior officers (but not those in charge of the business unit subject to regulation by the Commission) from principal status.[128] Cleary contended that globally active banks operate under a paradigm that differs from traditional Commission registrants and noted the differences in governance structures and the roles of boards of directors in foreign jurisdictions.[129] Under these circumstances, Cleary requested that the Commission grant relief, on an interim basis, from registration for associated persons, and from requirements applicable to principals, of non-U.S. registrants. Specifically, Cleary said, the Commission should treat as principals only those individuals directly engaged in the activities giving rise to registration.[130]

ii. Commission Determination on Relief for Principals/Associated Persons

The Commission does not believe, at this time, that blanket relief from requirements applicable to principals or from associated person registration to address these concerns is appropriate pursuant to the standards required for exemptive relief under CEA section 4(c). Rather, the Commission believes that any relief from these requirements is appropriately addressed through staff action.[131] The Commission views the registration of individuals to be an important facet of ensuring the integrity of the firm itself, and a staff process will permit Commission staff to tailor relief as appropriate and necessary.

IV. Section 4(c) of the CEA

After considering the complete record in this matter, the Commission has determined that the requirements of CEA section 4(c) have been met with respect to the exemptive relief described above. First, in enacting section 4(c), Congress noted that the purpose of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.''[132] As noted in the Proposed Order, the Commission is issuing this relief in order to ensure an orderly transition to the Dodd-Frank regulatory regime and to provide greater legal certainty to market participants regarding their obligations under the CEA with respect to their cross-border swap activities.

This exemptive relief also will advance the congressional mandate concerning harmonization of international standards with respect to swaps, consistent with section 752(a) of the Dodd-Frank Act. In that section, Congress directed that, in order to ''promote effective and consistent global regulation of swaps and security-based swaps,'' the Commission, ''as appropriate, shall consult and coordinate with foreign regulatory

[124] *See, e.g.,* SIFMA (Aug. 27, 2012), at A–52—A–53; IIB (Aug. 9, 2012) at 9.

[125] *See* joint letter from FIA, IIB and SIFMA (Nov. 30, 2012) at 11; *see also* SIFMA (Aug. 27, 2012) at A–25, A–44; Cleary (Aug. 16, 2012) at 4.

[126] This expression of intent does not confer upon any party any rights or defenses in any investigation or in any action that may be brought by the Commission. As always, the Commission will weigh all facts and circumstances in determining whether to commence an enforcement action.

[127] *See e.g.,* Cleary (Aug. 16, 2012) at 13.

[128] *See* IIB (Aug. 9, 2012) at 7–8; and Societe Generale (Aug. 9, 2012) at 11.

[129] *See* Cleary (Aug. 16, 2012) at 13. Cleary stated that, in this connection, the Commission may wish to consider recognizing comparable foreign requirements for principal and associated person registration and obligations.

[130] *See id.*

[131] *See* CFTC Division of Swap Dealer and Intermediary Oversight, Re: Relief for Swap Dealers and Major Swap Participants from Compliance with Regulation 23.22(b) with Respect to: (1) Non-Domestic Associated Persons who Deal only with Non-Domestic Swap Counterparties; and (2) Persons Employed in a Clerical or Ministerial Capacity, No-Action Letter No. 12–43, Dec. 7, 2012.

[132] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

authorities on the establishment of consistent international standards with respect to the regulation'' of swaps and security-based swaps.[133] This relief, by providing non-U.S. registrants the latitude necessary to develop and modify their compliance plans as the regulatory structure in their respective home jurisdiction changes, will promote the adoption and enforcement of robust and consistent standards across jurisdictions.

The Commission emphasizes that the Final Order is temporary in duration and reserves the Commission's enforcement authority, including its anti-fraud and anti-manipulation authority. As such, the Commission has determined that the Final Order is consistent with the public interest and purposes of the CEA. For similar reasons, the Commission has determined that the Final Order will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA. Finally, the Commission has determined that the Final Order is limited to appropriate persons within the meaning of CEA section 4c(3), since the SDs and MSPs eligible for the relief are likely to be the types of entities enumerated in that section and active in the swaps market. Therefore, upon due consideration, pursuant to its authority under section 4(c) of the CEA, the Commission hereby issues the Final Order.

V. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'')[134] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. 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 control number.

In connection with the Proposed Order, the Commission requested review and approval by OMB of a new collection of information titled ''Exemptive Order Regarding Compliance with Certain Swap Regulations.''[135] This collection of information would have related to the compliance plans to be submitted to the NFA by persons seeking relief under the exemptive order. No comments were received on the paperwork burden associated with this information collection request. Because the Final Order does not require the submission of a compliance plan, it does not require a collection of information from any persons or entities.[136]

VI. Cost-Benefit Considerations Relating to the Final Order

Section 15(a) of the CEA[137] 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 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.

A. Background

Throughout the Dodd-Frank rulemaking process, the Commission has strived to ensure that new regulations designed to achieve Dodd-Frank's protections be implemented in a manner that is both timely and also minimizes unnecessary market disruption. In its effort to implement the Dodd-Frank regulations on a cross-border basis, the Commission's approach has not been different. In this respect, the Commission has attempted to be responsive to industry's concerns regarding implementation and the timing of new compliance obligations, and thereby ensure that market practices would not be unnecessarily disrupted during the transition to the new swap regulatory regime. At the same time, however, the Commission has endeavored to comply with the Congressional mandate to implement the new SD and MSP regulatory scheme in a timely manner. The Commission, therefore, also seeks to ensure that the implementation of these requirements is not subject to undue delay. The Commission believes that the Final Order strikes the proper balance between promoting an orderly transition to the new regulatory regime under the Dodd-Frank Act, while appropriately tailoring relief to ensure that market practices are not unnecessarily disrupted during such transition.

The Final Order also reflects the Commission's recognition that international coordination is essential in this highly interconnected global market, where risks are transmitted across national borders and market participants operate in multiple jurisdictions.[138] The Final Order would allow market participants to implement the calculations related to SD and MSP registration on a uniform basis and to delay compliance with certain Dodd-Frank requirements while the Commission continues to work closely with other domestic financial regulatory agencies and its foreign counterparts in an effort to further harmonize the cross-border regulatory framework.

B. Summary of Proposed Consideration of the Costs and Benefits of the Exemptive Order

In terms of costs, in the Proposed Order the Commission considered the potential costs incurred by swap entities to submit a compliance plan in order to obtain exemptive relief. As noted above, the Final Order does not require submission of a compliance plan and therefore these potential costs are no longer relevant to the Final Order.

Apart from the direct costs of submitting a compliance plan, the Commission noted in the Proposed Order that it may result in indirect costs to the public, including the costs of continuing systemic risk to U.S. taxpayers due to delayed compliance with the Entity-Level Requirements and, to a more limited extent, Transaction-Level Requirements of the Dodd-Frank Act. The Commission proposed that these costs are not, however, susceptible to meaningful quantification due to a lack of data regarding several key variables.

In terms of benefits, the proposal stated that the exemptive order would provide a benefit in that it would allow affected entities additional time to transition into the new regulatory regime in a more orderly manner, which promotes stability in the markets as that transition occurs. Another benefit proposed was the increase in international harmonization because the

[133] *See* section 752(a) of the Dodd-Frank Act.

[134] 44 U.S.C. 3501 *et seq.*

[135] The Commission's notice was published in the **Federal Register**. *See* 77 FR 43271, Jul. 24, 2012. On August 13, 2012, OMB approved the Commission's initial information collection request until February 28, 2013, and assigned OMB control number 3038–0098.

[136] On November 7, 2012, the Commission, by separate notice in the **Federal Register**, announced an opportunity for public comment on the proposed extension of OMB approval of the prior information collection request, with a 60-day comment period that expires on January 7, 2013. *See* 77 FR 66819 Nov. 7, 2012. Because the Final Order does not require submission of a compliance plan, this extension is no longer relevant.

[137] 7 U.S.C. 19(a).

[138] *See generally* CFTC-SEC Joint Report on International Swap Regulation Required by Section 719(c) of the Dodd Frank Act (Jan. 31, 2012) at 105–09.

proposed relief provided U.S. and non-U.S. registrants the latitude necessary to develop and modify their compliance plans as the regulatory structure in their home jurisdiction changes, which would promote greater regulatory consistency and coordination with international regulators.

The Commission explained that one of the key benefits of the proposed compliance plan condition is that it would ensure that non-U.S. persons claiming the exemption would be actively and demonstrably considering and planning for compliance with the Entity-Level and Transaction-Level Requirements under the CEA, as may be applicable. In addition, the Commission stated that relief as proposed would allow foreign branches of U.S. SDs and MSPs to comply only with those requirements as may be required in the jurisdiction where the foreign branch is located for swaps with non-U.S. counterparties, effective concurrently with the date upon which such SDs and MSPs must first apply for registration until 6 months following the publication of the proposed order in the **Federal Register**.

C. Comments

The Commission requested comments on all aspects of its proposed consideration of costs and benefits and any alternatives to the same. As discussed and considered throughout this release, the Commission received 26 comments on the Proposed Order, many addressing the potential economic and competitive effects of the proposed exemption in qualitative terms. None, however, provided additional data or information from which the Commission could modify and/or expand upon its dollar cost estimates of the conditions to the exemption.

In the paragraphs that follow, the Commission summarizes and responds to the comments received that relate to the enumerated cost and benefit considerations set forth in CEA section 15(a), most notably considerations of protection of the market participants and the public, and considerations of competitiveness. The Commission believes that, while it is possible that the estimated dollar costs will increase or decrease as a result of the modifications to the proposal in this final order, the Commission does not expect any such changes to be significant.

While most commenters expressed support for the Commission's objective in the Proposed Order—that is, ensuring an orderly transition to Dodd-Frank's regulatory framework and providing greater legal certainty for market participants by providing a phase-in of certain requirements, other commenters expressed caution that delayed implementation could leave the public unprotected from the types of risk the Dodd-Frank Act and the Commission's implementing regulations are intended to address.

Public interest groups including Americans for Financial Reform, Public Citizen's Congress Watch, and Better Markets stated that the proposed delayed implementation of the Dodd-Frank derivatives regime, where there is a clear and direct U.S. taxpayer exposure, would deprive taxpayers of the protections required by the statute, such as clearing and margin, which these commenters believe should go into effect as rapidly as possible. AFR further states that although the risk to U.S. taxpayers related to European banks is somewhat less direct, it is real and has been significant, as shown by the U.S. taxpayer bailouts that benefitted foreign counterparties to AIG Financial Products during the 2008 crisis.[139]

Industry commenters urged the Commission to avoid potential undue disruption and market dislocation by carefully phasing in implementation in a manner that ''appropriately balances the competing objectives and obstacles facing the Commission and the private sector and that avoids adverse market and economic impacts.'' [140] IIB, for example, said that requiring non-U.S. SDs and MSPs to comply with all applicable Dodd Frank requirements at the time of registration or shortly thereafter would ''create unrealistic and unwarranted compliance burdens'' and therefore the Commission should provide additional time for compliance.[141] Commenters also said that if the Commission adopts interim requirements that would apply for only a short time, it should take care that market participants would not be unnecessarily required to incur costs to comply with requirements that are subject to change.[142]

Commenters also addressed the perceived competitive effects of the Proposed Order. Better Markets stated that, as a general matter, it would be inappropriate and contrary to law for the Commission to delay implementation of the Dodd-Frank Act to allow ''the rest of the world to catch up'' to the U.S.[143] In contrast, ISDA believes that the Commission should align the compliance dates for U.S. and non-U.S. SDs and MSPs in order to avoid the ''profound effect[s] on transactional relationships'' that may result from ''a framework under which the Commission imposes on [U.S. SDs and MSPs] a substantially earlier rollout of Entity-level requirements and Transaction level requirements with non-U.S. persons in certain cases.'' [144] This view was shared by other industry commenters, which recommended that ''during the exemption's phase-in period, while transaction-level requirements have not yet come into effect outside the U.S., the Commission should ensure competitive parity by exempting all SDs from transaction level requirements in connection with transactions with non-U.S. counterparties.'' [145]

Regarding the Proposed Order's treatment of SDR Reporting and LTR requirements, The Clearing House stated that differential treatment between foreign SDs and non-U.S. affiliates or subsidiaries of U.S. SDs would create a competitive disadvantage for overseas branches and affiliates of U.S. entities and would not serve the Commission's purpose of mitigating risk to the U.S.[146] Deutsche Bank pointed out that because the Proposed Order would not provide relief to non-U.S. SDs and MSPs that are affiliates of U.S. SDs, members of an affiliated group that is based outside the U.S. but in which one of the members is a U.S. SD (such as, potentially, the Deutsche Bank group) would not benefit from the Proposed Order.[147] In this context, Deutsche Bank stated that affiliates, particularly in different countries, frequently use different and unrelated technology systems, and therefore a non-U.S. SD or MSP with a U.S. SD affiliate may not be able to easily use the reporting systems of its U.S. SD affiliate.[148]

D. Consideration of Costs and Benefits of the Final Order

The Final Order permits, subject to the conditions specified therein, market participants outside the United States (i) to apply a limited, interim definition of the term ''U.S. person'' for a period of six months, (ii) to determine SD and

[139] *See* AFR (Aug. 13, 2012) at 2. *See also* Better Markets (Aug. 16, 2012) at 1.

[140] Cleary (Aug.16, 2012) at 3.

[141] IIB (Aug. 9, 2012) at 2.

[142] See SIFMA (Aug. 13, 2012) at 5. *See also* letter to Chairman Gensler from Reps. Scott Garrett and Randy Neugebauer (June 20, 2012) at 2 (requesting that the Commission formalize any cross border guidance through a rule making that includes the appropriate cost-benefit analysis that the law requires).

[143] Better Markets (Aug. 16, 2012) at 2.

[144] ISDA (Aug. 10, 2012) at 7.

[145] Cleary (Aug 16, 2012) at 11.

[146] *See* The Clearing House (Aug. 13, 2012) at 16.

[147] *See* Deutsche Bank (Aug. 13, 2012) at 3.

[148] *Id.*

MSP registration requirements in a uniform manner, (iii) to apply the SD de minimis aggregation requirements in a limited manner, an (iv) to delay compliance with certain Dodd Frank requirements specified in the Final Order until July 12, 2013. The Final Order reflects the Commission's determination to protect U.S. persons and markets through the cross-border application of the provisions of the Dodd-Frank Act and the Commission's regulations in a manner consistent with section 2(i) of the CEA and longstanding principles of international comity. By carefully tailoring the scope and extent of the phasing-in provided by the Final Order, the Commission believes that it achieves an appropriately balanced approach to implementation that mitigates the costs of compliance while avoiding open-ended delay in protecting the American public from swaps activities overseas. To be sure, the conditions attached to the Final Order are not without cost, but the Commission believes that phasing-in of certain Dodd-Frank requirements as permitted by the Final Order will reduce overall costs to market participants.

In the absence of the Final Order, non-U.S. SDs or MSPs would be required to be fully compliant with the Dodd-Frank regulatory regime without further delay. The Final Order delays compliance with a number of these requirements until July 12, 2013. With respect to these entities, therefore, the benefits include not only the avoided costs of compliance with certain requirements during the time that the Final Order is in effect, but also increased efficiency because the additional time allowed to phase in compliance will allow market participants more flexibility to implement compliance in a way that is compatible with their systems and practices. The additional time provided by the Final Order will also give foreign regulators more time to adopt regulations covering similar topics, which could increase the likelihood that substituted compliance will be an option for market participants. Thus, the Final Order is expected to help reduce the costs to market participants of implementing compliance with certain Dodd Frank requirements. These and other costs and benefits are considered below.

1. Costs

A potential cost of the Final Order, albeit one that is difficult to quantify, is the potential that the relief from certain SD de minimis aggregation requirements and the delay in compliance permitted by the Final Order will leave market participants without certain protections flowing from the Dodd Frank Act for the period during which the Final Order applies. The Final Order may also, as discussed above, leave U.S. taxpayers exposed to systemic risks during that time period.[149] The Commission believes that these costs are mitigated, however, by the relatively short time period of the Final Order's application, by the fact that certain key Dodd Frank requirements will apply during this time, and by the limitation of the Final Order's scope to non-U.S. persons. The Commission notes, however, that concerns about these costs are one of the bases for the limited nature of the Final Order, and that adoption of many of the modifications suggested by commenters to expand the order would potentially increase such costs.

The Commission has also considered the possibility, raised by commenters, that competitive disparities will result from the delay in compliance permitted to non-U.S. market participants during the effectiveness of the Final Order. In general, the effect of the Final Order is that while U.S. SDs and MSPs will begin to comply with certain Dodd Frank requirements when they apply to be registered (which will begin at the end of 2012 and continue through the first part of 2013),[150] non-U.S. market participants will not have to comply with such requirements, to the extent provided under the Final Order, until July 12, 2013. This delay raises the potential that the earlier imposition of certain requirements on U.S. SDs and MSPs could also impose a competitive disadvantage on them. The Commission believes, however, that any potential competitive disadvantage from the Final Order is uncertain, and there are factors indicating it is unlikely to be significant. Moreover, the Commission's staff is minimizing, through a variety of no-action letters and staff guidance, the potential for competitive disparities by affording U.S. and non-U.S. market participants time-limited relief to achieve compliance with certain regulatory requirements before staff would recommend enforcement action by the Commission.[151] For example, CFTC Letter No. 12–32 provides relief regarding compliance with certain requirements of the Commission's swap data reporting rules. In so doing, Commission staff allows for a common monthly compliance date for SDs newly within the scope of those rules, and to extend the compliance date for reporting historical swap transaction data pursuant to Part 46 of the Commission's regulations.[152]

The potential disadvantage is uncertain because it is unknown whether the Dodd Frank requirements imposed on U.S. SDs and MSPs in the first half of 2013 will discourage potential counterparties from engaging in swaps with them.[153] Specifically, it is unknown whether the compliance expenses incurred during that time will directly affect swap terms in a manner that would impose a significant disadvantage.[154] Also, the Commission cannot estimate with certainty the likelihood that potential competitive disadvantages arising from the Final Order will be significant for U.S. SDs and MSPs. A variety of factors influence a person's choice of potential swap counterparties, and therefore whether the earlier imposition of certain Dodd Frank requirements on U.S. SDs and MSPs will cause a significant shift of swap business away from them is uncertain. It may be that a person seeking to enter into relatively few swaps would perceive a transitory advantage in dealing with a more lightly regulated non-U.S. person while the exemptive order is in effect. The Commission also considered that if a person has in place relationships with multiple counterparties (both U.S. and non-U.S.), the person may be more likely to enter into swaps with the non-U.S. counterparties while the Final Order is in effect, and the higher level of swap activity with non-U.S. counterparties may continue after the order expires. Also, U.S. SDs and MSPs

[149] In this context, the Commission considered whether additional costs could result from the provisions of the exemptive order that provide additional time for historical swap reporting. The Commission does not believe that providing additional time for historical swap reporting will result in any significant costs because the required data will still be provided within a relatively short period of time.

[150] *See* CFTC Staff Responds to Questions on Timing of Swap Dealer Registration Rules, CFTC Press Release 6348–12, September 10, 2012.

[151] For a listing of all relevant no-action letters and staff guidance, see: *http://www.cftc.gov/LawRegulation/DoddFrankAct/GuidanceQandA/index.htm.*

[152] *See* CFTC Letter No. 12–32.

[153] The Commission notes, for example, that certain Dodd Frank requirements, such as margin and capital rules, have not been finalized and are unlikely to apply to U.S. SDs and MSPs in the first half of 2013. Also, other requirements, such as the clearing requirement, will be phased in during that time.

[154] For example, while the Commission acknowledges that the requirement to have a chief compliance officer in place does impose costs, it is unknown whether shifting the time that this requirement will go into effect by approximately six months will significantly alter the financial terms at which SDs and MSPs subject to that requirement would enter into swaps.

may be driven to accept lower profit margins on swaps in order to prevent such shifts to non-U.S. counterparties.

These negative competitive effects on U.S. SDs and MSPs would be more likely if compliance expenses incurred by U.S. SDs and MSPs in the first half of 2013 negatively affect the swap terms they offer, and if swap users are more sensitive to such changes in swap terms. On the other hand, many relationships between SDs and their counterparties are connected with other financial arrangements that are reflected in complex documentation and are difficult to modify quickly.[155] This difficulty would attenuate the likelihood of a significant shift of swap counterparties away from U.S. SDs and MSPs during the relatively short period that the Final Order is in effect.

The Commission has considered the potential negative competitive effects of the Final Order on U.S. SDs and MSPs. However, since it is difficult to isolate the effects of the Final Order from all other factors that may affect how swap users choose counterparties and the terms at which they enter into swaps, it is difficult to estimate on a quantitative basis the potential costs that could result for U.S. SDs and MSPs from the potential negative competitive effects of the Final Order. Thus, the Commission cannot reach a definitive conclusion about the effect of the Final Order on competition. In any event, commenters who raised the potential competitive effect of the Proposed Order did not provide any specific facts, examples or analysis to facilitate a detailed consideration of these concerns.

Regarding the comments on the Proposed Order's treatment of the SDR reporting and LTR requirements, the Commission believes that allowing non-U.S. SDs and MSPs that are not part of an affiliated group in which the ultimate parent entity is a U.S. registrant, bank, or financial or bank holding company to forego reporting of swaps with non-U.S. counterparties during the effectiveness of the Final Order is not likely to impose a significant competitive disadvantage on those SDs and MSPs that are required to report such swaps with non-U.S. counterparties. Although it is possible that some non-U.S. counterparties may have concerns about reporting of their swap activities and may therefore prefer to enter into swaps with SDs and MSPs that are not subject to these requirements, any resulting advantage to those SDs and MSPs will last only until the Final Order expires on July 12, 2013, and as noted above the likelihood of significant customer shifts during that time is uncertain. As for the point that the relief in the Final Order should be available to members of an affiliated group that is based outside the U.S. but in which one of the members is a U.S. SD, the Final Order has been modified to provide this availability. Last, the commenter's point that affiliates in different countries may use different and unrelated technology systems illustrates one of the reasons that the Commission is providing the relief in the Final Order—*i.e.,* to give affiliates in different countries time to mitigate any incompatibilities in their systems.

In connection with the interim definition of the term ''U.S. person'' which may be applied by non-U.S. market participants covered by the Final Order, the Commission has considered the potential that costs could arise from applying this interim definition and then transitioning to a different definition at expiration of the Final Order. To mitigate transition costs, the Commission intends that during the transitional period during which the Final Order is in effect, market participants will make the system and operational changes necessary to implement any final definition of U.S. person.

2. Benefits

The primary benefit of this Final Order is that it affords entities additional time to come into compliance with certain of the Commission's regulations. The Commission has considered the comments regarding the complex issues faced by non-U.S. SDs and MSPs in complying with the applicable Dodd-Frank requirements, and it believes that this additional time will be of benefit to market participants beyond simply delaying the time at which they will have to incur the costs of complying with the regulations. More importantly, this additional time will permit market participants to implement the Commission's regulations more flexibly, so that each market participant's implementation activities can be more closely coordinated with its particular situation, including factors such as the type of swaps it uses, the characteristics of its counterparties, and the nature of its internal swap processes and systems. Reduced costs may occur as the result of phasing in new systems, operational patterns, legal agreements, or other business arrangements over a longer period of time, particularly for SDs and MSPs outside the U.S. For example, different jurisdictions may have varying documentation requirements or business practices that would lengthen the time needed to come into compliance. The Final Order provides time for this.

The Commission understands that if all market participants world-wide were required to comply with all applicable requirements upon applying to register as SDs and MSPs (which will begin at the end of 2012), some market participants would have to rush to implement compliance. The Commission is cognizant that compliance costs may be increased simply by the need to implement compliance quickly, which could entail, for example, retaining outside consultants rather than having in-house employees effect the necessary implementation steps. Thus, the Commission believes that by giving non-U.S. market participants additional time to come into compliance with certain of its regulations, the overall cost of compliance implementation will be reduced, not just delayed.

The Final Order also benefits entities by providing categories of entities the same relief, which eliminates the need for entities to seek individualized determinations by the Commission's staff regarding their particular transactions or operations. Providing additional time to all the non-U.S. market participants covered by the Final Order may facilitate action by industry groups to assist in compliance efforts and encourage cooperation among market participants.

In addition, the Commission believes that the delay provided by the Final Order may permit some non-U.S. jurisdictions to adopt regulatory requirements that are similar to certain of the Commission regulations and therefore may potentially be the basis for substituted compliance by market participants in those jurisdictions. Based on discussions with market participants, the Commission expects that substituted compliance would in some circumstances be less costly than compliance with Commission regulations, and therefore the Final Order has the potential to reduce costs by providing a greater opportunity for substituted compliance.

E. Section 15(a) Factors

1. Protection of Market Participants and the Public

The exemptive relief provided in this Final Order will protect market participants and the public by facilitating a more orderly transition to the new regulatory regime than might

[155] In fact, the complexity of these arrangements and documentation is one of the reasons that foreign potential registrants have requested more time to come into compliance with the Dodd Frank requirements.

otherwise occur in the absence of this order. In particular, non-U.S. persons are afforded additional time to come into compliance than would otherwise be the case, which contributes to greater stability and reliability of the swap markets during the transition process.

2. Efficiency, Competitiveness, and Financial Integrity of the Markets

The Commission believes that the efficiency and integrity of the markets will be furthered by the additional compliance time provided in this order and the condition that entities submit a compliance plan. As discussed above, the Commission is mindful of the claims that the final order could potentially cause competitive disparities, and has taken steps to mitigate those potential costs where doing so would be consistent with the Dodd-Frank Act and the Commission's policy objectives.

3. Price Discovery

The Commission has not identified any costs or benefits of the proposed order with respect to price discovery.

4. Risk Management

Entity level risk-management and capital requirements could be delayed by operation of the Final Order, which could weaken risk management. However, such potential risk is limited by the fact that the exemptive order is applicable for a finite time.

5. Other Public Interest Considerations

The Commission has not identified any other public interest costs or benefits of the proposed order.

VII. Final Order

The Commission, in order to provide for an orderly implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), and consistent with the determinations set forth above, which are incorporated in this Final Order by reference, hereby grants, pursuant to section 4(c) of the Commodity Exchange Act (''CEA''), time-limited relief to non-U.S. swap dealers (''SDs'') and major swaps participants (''MSPs'') and to foreign branches of U.S. SDs and MSPs, from certain swap provisions of the CEA, subject to the terms and conditions below.[156]

(1) *Phase-in of ''U.S. Person'' Definition:* All market participants, including a prospective or registered SD or MSP, must apply for purposes of this Final Order a ''U.S. person'' definition which would define the term as:

(i) A natural person who is a resident of the United States;

(ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or (B) effective as of April 1, 2013 for all such entities other than funds or collective investment vehicles, having its principal place of business in the United States;

(iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is primarily for foreign employees of such entity;

(iv) An estate of a decedent who was a resident of the United States at the time of death, or a trust governed by the laws of a state or other jurisdiction in the United States if a court within the United States is able to exercise primary supervision over the administration of the trust; or

(v) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (iv) above.

Any person not listed in (i) to (v) above is a ''non-U.S. person'' for purposes of this Final Order.

(2) *De Minimis and MSP Threshold Calculations.* A non-U.S. person is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), or in its calculation of whether it is an MSP for purposes of Commission regulation 1.3(hhh), (i) any swap where the counterparty is not a U.S. person, or (ii) any swap where the counterparty is a foreign branch of a U.S. person that is registered as an SD or that represents that it intends to register with the Commission as an SD by March 31, 2013. A non-U.S. person is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), any swap to which it is not a party because the swap is entered into by an affiliated central booking entity.

(3) *Aggregation for Purposes of the De Minimis Calculation.* A non-U.S. person that is engaged in swap dealing activities with U.S. persons as of the effective date of this Order is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of its U.S. affiliates under common control.[157] Further, a non-U.S. person that is engaged in swap dealing activities with U.S. persons as of the effective date of this Order and is an affiliate under common control with a person that is registered as an SD is also not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of any non-U.S. affiliate under common control that is either (i) engaged in swap dealing activities with U.S. persons as of the effective date of this Order or (ii) registered as an SD. Also, a non-U.S. person is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of its non-U.S. affiliates under common control with other non-U.S. persons as counterparties.

(4) *Non-U.S. SDs and MSPs:* A non-U.S. SD or non-U.S. MSP may delay compliance with respect to Entity-Level Requirements that are in effect as of the effective date of this Order (subject to the condition in paragraph (5) below).

(5) Notwithstanding paragraph (4), (i) non-U.S. SDs and non-U.S. MSPs shall be required to comply with the swap data repository (''SDR'') reporting and LTR requirements for all swaps with

[156] As used in this Order, the terms ''Entity-Level Requirements'' refer to the requirements set forth in Commission regulations 1.31, 3.3, 23.201, 23.203, 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, 23.607, 23.608 and 23.609 and parts 20, 45 and 46 and ''Transaction-Level Requirements'' refer to the requirements set forth in CEA section 2(h)(8) and Commission regulations 23.202, 23.400 to 23.451, 23.501, 23.502, 23.503, 23.504(a), 23.504(b)(1), (b)(2), (b)(3) and (b)(4), 23.506 and 23.610 and part 43. To date, the Commission has not adopted final rules relating to the Entity-Level Requirements of capital adequacy, nor the Transaction-Level Requirements of margining (and segregation) for uncleared swaps. *See* sections 4s(e) and 4s(l) of the CEA, 7 U.S.C. 6s(e), 6s(l).

[157] For this purpose, the Commission construes ''affiliates'' to include persons under common control as stated in the Commission's final rule further defining the term ''swap dealer,'' which defines control as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.'' *See* Final Entities Rules, 77 FR at 30631, fn. 437.

U.S. counterparties, upon their respective compliance dates; and (ii) non-U.S. SDs and Non-U.S. MSPs that *are* part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company shall be required to comply with the SDR reporting and Large Trader Reporting requirements for swaps with non-U.S. counterparties, upon their respective compliance dates. However, during the pendency of this Final Order, non-U.S. SDs and non-U.S. MSPs that *are not* part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company or U.S. bank holding company may delay compliance with the SDR reporting and LTR requirements for swaps with non-U.S. counterparties in accordance with paragraph (4).

(6) With respect to Transaction-Level Requirements as applied to transactions with a non-U.S. counterparty, non-U.S. SDs and non-U.S. MSPs may comply with such Requirements only as may be required by the local jurisdiction of such registrants; provided, however, that such registrants shall comply with such requirements that are in effect for all swaps with U.S. counterparties.

(7) *U.S Registrant:* A U.S. person shall apply to register as an SD or MSP by the date such registration is required and shall comply with all applicable Entity-Level and Transaction-Level Requirements that are in effect, except that: (A) with respect to Transaction-Level Requirements as applied to swaps with a non-U.S. counterparty (including a non-U.S. SD or non-U.S. MSP), a foreign branch of a U.S. SD or U.S. MSP may comply with those requirements only as may be required by the local jurisdiction of such branches and (B) with respect to Transaction-Level Requirements as applied to swaps between foreign branches of U.S. SDs or foreign branches of U.S. MSPs,[158] such foreign branches may comply with those requirements only as may be required by the local jurisdiction of such foreign branches.

(8) *Expiration of Relief:* The relief provided to non-U.S. SDs and non-U.S. MSPs (and foreign branches of a U.S. SD or MSP) in this order shall be effective upon approval by the Commission and expire on July 12, 2013.

(9) *Scope of Relief:* The time-limited relief provided in this Order: (A) Shall not affect, with respect to any swap within the scope of this Order, the applicability of any other CEA provision or Commission regulation (*i.e.,* those outside the Entity-Level and Transaction-Level Requirements); (B) shall not limit the applicability of any CEA provision or Commission regulation to any person, entity or transaction except as provided in this Order; (C) shall not affect the applicability of any provision of the CEA or Commission regulations to futures contracts, or options on future contracts; and (D) shall not affect any effective or compliance date set forth in any Dodd-Frank Act rulemaking by the Commission.

Finally, the Commission may, in its discretion, condition, suspend, terminate, or otherwise modify this Final Order, as appropriate, on its own motion.

Issued in Washington, DC on December 21, 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Appendices to Final Exemptive Order Regarding Compliance With Certain Swap Regulations—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia and Wetjen voted in the affirmative; Commissioner Sommers voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the Final Exemptive Order Regarding Compliance with Certain Swap Regulations (Final Order). With this Commission action another important step has been taken to make swaps market reform a reality.

Starting at the end of this month, domestic and foreign swap dealers will register. Once registered, swap dealers will report their trades to both regulators and the public. Foreign swap dealers will report their trades with U.S. persons. With these steps, the bright lights of transparency will, for the first time, shine on the swaps market. Swap dealers also will be required to implement sales practice standards that prohibit fraud, treat customers fairly and improve transparency. The public and our economy will benefit.

The Final Order provides phased compliance for foreign swap dealers (including overseas affiliates of U.S. persons) and overseas branches of U.S. swap dealers with respect to certain requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Since the enactment of the Dodd-Frank Act, the Commission has worked steadfastly toward a transition from an opaque unregulated marketplace to a transparent, regulated swaps marketplace and has phased in the timing for compliance to give market participants time to adjust to the new regulatory regime and smooth the transition.

Today's Order is a continuation of the Commission's commitment to this phasing of compliance—in this case for foreign market participants—and is consistent with the phase-in order proposed in July 2012.

The Order will remain in effect until July, 2013, as proposed in the July 12 order, and is intended to complement other Commission and staff actions that facilitate an orderly transition.

During this transition period, a foreign swap dealer may phase in compliance with certain entity-level requirements. In addition, those entities (as well as foreign branches of U.S. swap dealers) are provided time-limited relief from specified transaction-level requirements when transacting with overseas affiliates guaranteed by U.S. entities (as well as with foreign branches of U.S. swap dealers).

The relief period provides time for the Commission to work with foreign regulators as they implement comparable requirements and as the Commission develops a substituted compliance program. Substituted compliance, where appropriate, would allow for foreign swap dealers to meet the reform requirements of the Dodd Frank Act by complying with comparable and comprehensive foreign regulatory requirements.

With respect to any transaction with a U.S. person, though, compliance will be required in accordance with previously issued rules and staff guidance.

The Order incorporates a definition of ''U.S. person,'' that benefits from helpful comments of market participants to our initial proposal and continuing discussions with the international regulatory community.

Under the Order, a foreign person will not be required to include in its calculation of swap dealing activities any swap with a non-U.S. person, as well as with foreign branches of U.S. swap dealers.

In addition, based upon comments received on the cross-border interpretive guidance proposed last July, the Final Order also provides time-limited relief from aggregation requirements with respect to the de-minimis calculation for swap dealer registration. Specifically, the Final Order provides time-limited relief from the requirement that a non-U.S. person include the swap dealing transactions of its U.S. affiliates under common control (or any of its foreign affiliates that are currently dealing) in its calculation for determining whether or not it has exceeded the de minimis threshold.

The Commission is separately seeking additional public comment on cross-border issues related to the term ''U.S. person,'' the aggregation requirements for foreign persons,

[158] For purposes of this relief from Transactional-Level Requirements with respect to a swap between foreign branches of U.S. registrants, a swap is with the foreign branch of a U.S. person when (i) the personnel negotiating and agreeing to the terms of the swap are located in the jurisdiction of such foreign branch; (ii) the documentation of the swap specifies that the counterparty or ''office'' for the U.S. person is such foreign branch and (iii) the swap is entered into by such foreign branch in its normal course of business.

as well as the definition of a ''foreign branch''.

Today's Commission action assists foreign swap dealers to comply with the Dodd-Frank Act in an orderly fashion.

Earlier this week in a separate action, the Commission issued an interim final rule allowing for more time to come into compliance on specific documentation requirements, providing swap dealers an additional four months with respect to sales practice documentation and six months with respect to relationship documentation.

The Commission recognizes the importance of international cooperation and coordination in the regulation of this highly interconnected global market. To this end, the Commission staff has actively engaged in substantive discussions with foreign counterparts in an effort to better understand and develop a more harmonized cross-border regulatory framework.

The Final Order also reflects comments from foreign market participants. For example, foreign banks requested a phase-in for the application of entity-level requirements. At the same time, foreign banks stated that the transaction-level requirements would apply to their transactions with U.S. persons.

This Final Order reflects this on-going consultation with foreign regulatory counterparts who provided comments on the proposed exemptive order issued in July 2012. During this period of phased compliance, the Commission will continue to engage with foreign counterparts. As set forth in a December 4 joint press statement of market regulators, the Commission will meet regularly with foreign regulators to consult on, among other topics, the basis for substituted compliance, timing and sequencing of rules, clearing determinations, and options to address potential conflicting, inconsistent, and duplicative rules.

As the Commission and the international regulatory community move forward, we all recognize that risk has no geographic boundary and money can move in and out of markets and jurisdictions in milliseconds. For the public to be protected, swaps market reform must cover transactions of overseas branches and overseas affiliates guaranteed by U.S. entities.

The 2008 financial crisis demonstrated this when financial aftershocks spread throughout the globe and swaps executed offshore by U.S. financial institutions sent risk straight back to our shores. As a result of the crisis, eight million Americans lost their jobs, millions of families lost their homes, and small businesses across the country folded.

Congress and the President responded with the Dodd-Frank Act, including the cross-border provisions of the law. Section 722(d) of the Dodd-Frank Act states that swaps reforms shall not apply to activities outside the United States unless those activities have ''a direct and significant connection with activities in, or effect on, commerce of the United States.'' Congress provided that reforms should account for risks that may come from abroad.

Failing to bring swaps market reform to transactions with overseas branches and overseas affiliates guaranteed by U.S. entities would mean American jobs and markets would likely move offshore, but, particularly in times of crisis, risk would come crashing back to our economy.

The nature of modern finance is that large financial institutions set up hundreds, if not thousands of ''legal entities'' around the globe.

They do so in an effort to respond to customer needs, funding opportunities, risk management and compliance with local laws. They do so as well, though, to lower their taxes, manage their reported accounting, and to minimize regulatory, capital and other requirements, so-called ''regulatory arbitrage.'' Many of these far-flung legal entities, however, are still directly connected back to their U.S. affiliates.

During a default or crisis, the risk that builds up offshore inevitably comes crashing back onto U.S. shores. When an affiliate of a large, international financial group has problems, the markets accept this will infect the rest of the group.

This was true with AIG. Its subsidiary, AIG Financial Products, brought down the company and nearly toppled the U.S. economy. It was run out of London as a branch of a French-registered bank, though technically was organized in the United States.

Lehman Brothers was another example. Among its complex web of affiliates was Lehman Brothers International (Europe) in London. When Lehman failed, the London affiliate had more than 130,000 outstanding swaps contracts, many of them guaranteed by Lehman Brothers Holdings back in the United States.

Yet another example was Citigroup, which set up numerous structured investment vehicles (SIVs) to move positions off its balance sheet for accounting purposes, as well as to lower its regulatory capital requirements. Yet, Citigroup had guaranteed the funding of these SIVs through a mechanism called a liquidity put. When the SIVs were about to fail, Citigroup in the United States assumed the huge debt, and taxpayers later bore the brunt with two multi-billion dollar infusions. The SIVs were launched out of London and incorporated in the Cayman Islands.

Bear Stearns is another case. Bear Stearns' two sinking hedge funds it bailed out in 2007 were incorporated in the Cayman Islands. Yet again, the public assumed part of the burden when Bear Stearns itself collapsed nine months later.

A decade earlier, the same was true for Long-Term Capital Management. When the hedge fund failed in 1998, its swaps book totaled in excess of $1.2 trillion notional. The vast majority were booked in its affiliated partnership in the Cayman Islands.

This year's events of JPMorgan Chase, where it executed swaps through its London branch, are a stark reminder of this reality of modern finance.

As there have been these and other financial institution failures in the past, in our free markets, we must be prepared for when other firms fail in the future. Dodd-Frank reform is about protecting the public from such failures in the future.

It's my firm belief that if reforms were not to cover the branches and overseas affiliates of U.S. entities, either directly or through substituted compliance, the public will be left without the benefits and protections that Congress intended with Dodd-Frank.

Foreign governments and their taxpayers also will be concerned about the risks engendered by the cross-border activities of financial institutions.

The Final Order approved today benefitted from consultation with foreign regulatory counterparts. The Commission also received constructive comment from the public and Members of Congress.

I am grateful to the staff of the Commission for their tireless work on this Order and the Commission's broader effort to implement swaps market reform. In accordance the directives of Congress and the Commission's final rules, swaps market reform is taking shape. I look forward to working with my colleagues to complete this important task.

Appendix 3—Statement of Commissioner Jill E. Sommers

Although I am very supportive of granting temporary relief from certain provisions of the Dodd-Frank Act, I disagree with the approach and am concerned that the Commission continues to insert unnecessary complexities into the cross-border determinations. As I have said a number of times, the Commission has worked for decades to establish relationships with our foreign counterparts based on respect, trust and information sharing, which has resulted in a long and successful history of mutual recognition. All G20 nations have agreed to a comprehensive set of principles for regulating the over-the-counter derivatives markets. Instead of recognizing these commitments and resolving to work towards mutual recognition of comparable regulatory regimes, keeping in mind the core policy objectives of the G20 commitments, the Commission has embarked on a cross-border analysis that I fear is taking us down a path of regulatory detail that is overly burdensome, complicated, and unnecessary.

Moreover, it is a mistake to require registration and compliance with certain regulations before our final guidance has been issued. Foreign entities will not have the basic information they need to make informed decisions regarding the ultimate obligations of engaging in swaps activities with U.S. persons (the definition of which continues to shift) prior to having to make the decision to register. There is no reason why the Commission could not have issued broader relief until these issues are settled. We have simply chosen not to.

I have consistently supported harmonization with both foreign and domestic regulators. Over the past few months we have received invaluable input from many global regulators, who have agreed to meet in early 2013 to inform each other on the progress made in finalizing reforms in their respective jurisdictions and to consult on possible transition periods. Future meetings will explore options for addressing conflicts, inconsistencies, and duplicative rules and examine ways in which comparability assessments and appropriate

cross-border supervisory and enforcement arrangements may be made. It is my hope that these meetings will lead the Commission to listen to the concerns being raised by regulators around the world and to adopt a more reasonable approach when it finalizes the cross-border guidance.

Appendix 4—Statement of Commissioner Bart Chilton

As we have set out to do from the beginning of the Dodd-Frank rulemaking process, we are cognizant of the need for regulators around the globe to harmonize rules to the extent possible in order to avoid market disruption and regulatory arbitrage.

In responding to a letter from Members of the House Agriculture Committee's Subcommittee on General Farm Commodities and Risk Management, I pointed out that I expect the Commission will act imminently to ensure the following three broad objectives:

- Narrow the definition of U.S. person so that our extraterritorial reach is not too broad;
- Provide sensible aggregation requirements so that foreign banks won't automatically have to become U.S. swaps dealers just because they do business with foreign affiliates of U.S. banks;
- Provide for a phased-in compliance to July 2013 to allow time for other jurisdictions to implement derivative market reforms.

In addition, we must ensure that, in this interim period, U.S. swap dealers and major swap participants can avoid a Dodd-Frank compliance-related enforcement action by working to comply reasonably and in good faith.

Derivatives reform in the U.S. isn't taking place in a vacuum. And, regulators on several continents are moving at different speeds. Like an orchestra playing holiday music, not all sections of instruments necessarily start a number at the same time. Yet, they wind up in harmony. So too it must be in global financial reform. Ending up in harmony is critical to achieving our overarching purpose: making global financial markets safer, more transparent, and more effective.

Appendix 5—Statement of Commissioner Scott D. O'Malia

I respectfully concur with the Commission's approval of this Order. The relief provided in the Order is timely and helps provide some level of clarity in the short term to market participants as they transition to the Commission's new swap regulatory regime. Crucially, it also provides time for the Commission to engage with foreign regulators in order to develop a coordinated, harmonized approach to regulating the global swap markets in the long term.

While I generally support the relief provided, the Order should have done much more to provide clarity and consistency and to ensure a level playing field for market participants. In particular, I would like to note that the definition of ''U.S. Person'' contained in this Order is the third different definition articulated by the Commission within the past six months: The expansive definition in the Commission's July proposed guidance,[159] the narrower ''territorial'' definition in an October staff no-action letter,[160] and now this modified territorial definition. The industry cannot get too used to this definition either, as there will be, remarkably, a fourth definition next year when the Commission finalizes its cross-border guidance. This is a regrettable lack of consistency for a concept that is so central to foreign swap market participants' ability to determine their compliance obligations.

This Order expires July 12, 2013. The Commission should use the time between now and then to do two things. First, as mentioned above, it should actively engage with other regulators. I was encouraged by the joint statement released earlier this month by a group of international derivatives regulators (including the Commission),[161] which emphasized the importance of coordination and committed the signatories to consult one another with regard to the timing and sequencing of regulation; comparability determinations; clearing determinations; and conflicting, inconsistent and duplicative rules. But these consultations over the next several months cannot merely be an exercise in going through the motions. Rather, they must be substantive, and they should ultimately lead to a final Commission cross-border guidance that addresses the strong concerns raised by fellow regulators about the Commission's July proposal. For their part, fellow regulators can make this engagement process more effective by providing detailed plans of their existing and upcoming regulations as well as concrete, specific blueprints for potential comparability and substituted compliance determinations.

Second, the Commission should use the next several months to revisit and revise the grossly overbroad conception of extraterritorial reach that it argued for in the July proposed guidance. Most important, the Commission needs to articulate a clear, logical interpretation of the ''direct and significant'' connection required by the statute as a prerequisite to applying our regulations to entities and activities abroad.[162] As I have noted before, the statutory language is a limitation on the Commission's authority, but the proposed guidance interpreted it as the opposite. If the Commission develops a sufficient rationale for the ''direct and significant'' standard, it will have gone a long way toward appropriately determining the scope of its extraterritorial reach.

[FR Doc. 2012–31736 Filed 1–4–13; 8:45 am]

BILLING CODE 6351–01–P

[159] Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 FR 41214 (July 12, 2012).

[160] CFTC Division of Swap Dealer and Intermediary Oversight, Re: Time-Limited No-Action Relief: Swaps Only With Certain Persons to be Included in Calculation of Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception and Calculation of Whether a Person is a Major Swap Participant, No-Action Letter No. 12–22, Oct. 12, 2012.

[161] Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-border OTC Derivatives Market, December 4, 2012.

[162] 7 U.S.C. 2(i).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0371; FRL–9765–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determination of Attainment of the 2006 24-Hour Fine Particulate Matter Standard for the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a determination of attainment regarding the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Philadelphia Area'' or ''the Area''). EPA has determined that the Philadelphia Area has attained the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS), based upon quality-assured, quality-controlled and certified ambient air monitoring data for the 2008–2010 and 2009–2011 periods. Preliminary data available for 2012 are consistent with continued attainment of the Philadelphia Area. This determination of attainment suspends the requirements for the respective state portions of the Philadelphia Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard for so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. This action is being taken under the Clean Air Act (CAA). This action does not constitute a redesignation to attainment, and the Philadelphia Area will remain designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the Philadelphia Area, or portion thereof, meets the CAA requirements for redesignation to attainment for the standard, including an approved maintenance plan.

DATES: This final rule is effective on January 7, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0371. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly

available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: For inquiries related to the State of Delaware or the Commonwealth of Pennsylvania, please contact Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.* For inquiries related to the State of New Jersey, please contact Gavin Lau, (212) 637–3708, or by email at *lau.gavin@epa.gov.*

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

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

I. Background

On September 21, 2006, EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) (hereby ''the 2006 annual $PM_{2.5}$ NAAQS'') based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour standard of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144, October 17, 2006). The revised 2006 24-hour $PM_{2.5}$ standard (hereafter ''the 2006 24-hour $PM_{2.5}$ NAAQS'') became effective on December 18, 2006. *See* 40 CFR 50.13.

Many petitioners challenged aspects of EPA's 2006 revisions to the $PM_{2.5}$ NAAQS. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit remanded the 2006 *annual* $PM_{2.5}$ NAAQS to EPA for further proceedings. The 2006 *24-hour* primary and secondary $PM_{2.5}$ NAAQS were not affected by the remand and remain in effect.

On November 13, 2009, EPA published designations for the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688), which included the Philadelphia Area as a nonattainment area. Designations became effective on December 14, 2009. The Philadelphia Area is composed of New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. *See* 40 CFR 81.339 (Pennsylvania), 40 CFR 81.331 (New Jersey), and 40 CFR 81.308 (Delaware).

On October 2, 2012 (77 FR 60089), EPA published a notice of proposed rulemaking (NPR) for the States of Delaware and New Jersey and the Commonwealth of Pennsylvania, proposing to determine that the Philadelphia Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, based on the quality-controlled, quality-assured, and certified data from 2008–2010 and 2009–2011 monitoring periods. Preliminary data available for 2012 are consistent with continued attainment of the Philadelphia Area.

EPA's determination is being made in accordance with its longstanding interpretation under the Clean Data Policy, and with previously issued rules and determinations of attainment. A brief description of the Clean Data Policy with respect to the 2006 24-hour $PM_{2.5}$ NAAQS is set forth below. In addition, the docket for this rulemaking includes documentation providing more detail regarding the application of EPA's Clean Data Policy to determinations of attainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

In April 2007, EPA issued its $PM_{2.5}$ Implementation Rule for the 1997 annual $PM_{2.5}$ NAAQS. 72 FR 20586 (April 25, 2007). In March 2012, EPA published implementation guidance for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, ''Implementation Guidance for the 2006 24-Hour Final Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (March 2, 2012). In that guidance, EPA stated its view ''that the overall framework and policy approach of the 2007 $PM_{2.5}$ Implementation Rule continues to provide effective and appropriate guidance on the EPA's interpretation of the general statutory requirements that states should address in their SIPs. In general, the EPA believes that the interpretations of the statute in the framework of the 2007 $PM_{2.5}$ Implementation Rule are relevant to the statutory requirements for the 2006 24-hour $PM_{2.5}$ NAAQS * * *.'' *Id.* at page 1.

In keeping with the principles set forth in the guidance, and with respect to the effect of a determination of attainment for the 2006 24-hour $PM_{2.5}$ NAAQS, EPA is applying the same interpretation with respect to the implications of clean data determinations that it set forth in the preamble to the 1997 annual $PM_{2.5}$ NAAQS and in the regulation that embodies this interpretation. 40 CFR 51.1004(c).[1] EPA has long applied this interpretation in regulations and individual rulemakings for the 1-hour ozone and 1997 8-hour ozone NAAQS, the coarse particulate matter (PM_{10}) NAAQS, and the lead NAAQS.

In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the $PM_{2.5}$ NAAQS. *See* Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (December 14, 2004).

The Clean Data Policy represents EPA's interpretation that certain requirements of subpart 1 of part D of the CAA are by their terms not applicable to areas that are currently attaining the NAAQS.[2] It is important to note that the obligation of a state with respect to an area which attains the 2006 24-hour $PM_{2.5}$ NAAQS based on three years of data, to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain the standard. If EPA subsequently determines, after notice-and-comment rulemaking, that the area has violated the NAAQS, the requirements for the state to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action. The docket

[1] While EPA recognizes that 40 CFR 51.1004(c) does not itself expressly apply to the 2006 24-hour $PM_{2.5}$ NAAQS, the statutory interpretation that it embodies is identical and is applicable to both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

[2] This discussion refers to subpart 1 of the CAA because subpart 1 contains the requirements relating to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS.

for this rulemaking action includes documentation providing additional information regarding the basis for use of EPA's Clean Data Policy for the 2006 24-hour $PM_{2.5}$ NAAQS.

II. Summary of Action

In this rulemaking action, EPA is finalizing the determination of attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the Philadelphia Area, based on the quality-controlled, quality-assured, and certified data from 2008–2010 and 2009–2011 monitoring periods and preliminary data for 2012. EPA previously determined that the $PM_{2.5}$ monitoring network for the Philadelphia Area is adequate. EPA found that the number of monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58, appendix D, section 4.7, and that the monitoring network in place is in accordance with the States' most recent annual monitoring network plans approved by EPA, as required by 40 CFR 58.10.

EPA's review of quality-assured, quality-controlled, certified ambient air monitoring data collected in the Philadelphia Area during 2008–2010 and 2009–2011 shows that the Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, preliminary $PM_{2.5}$ data available for 2012 is consistent with continued attainment of the 2006 24-hour $PM_{2.5}$ NAAQS in the Philadelphia Area.

No public comments were submitted in response to the NPR, published on October 2, 2012 (77 FR 60089). EPA's evaluation of air quality data and additional information regarding the monitoring network and air quality data used in this determination are available in the NPR and in the Technical Support Document for the NPR and thus are not restated here. Relevant support documents for this action are available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0371.

III. Final Action

EPA is making a determination that the Philadelphia Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, based upon quality-controlled, quality-assured and certified ambient air monitoring data for the 2008–2010 and 2009–2011 periods. Preliminary data available for 2012 are consistent with continued attainment. This final action, in accordance with the Clean Data Policy (which is reflected in 40 CFR 51.1004(c)), suspends the requirements for the Philadelphia Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to the attainment of the standard, for so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. This determination is not equivalent to the redesignation of the Philadelphia Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Philadelphia Area, and the Area would thereafter have to address the applicable requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.

Finalizing this determination does not constitute a redesignation of the Philadelphia Area to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA, nor does it involve approving a maintenance plan for the Philadelphia Area as required under section 175A of the CAA. This determination does not address other requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable emission reductions.[3] The designation status of the Philadelphia Area will remain nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Philadelphia Area, or portion thereof.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a determination of attainment, which suspends the obligation to submit certain attainment-related CAA planning requirements that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the affected states of the obligation to submit certain attainment-related planning requirements for this $PM_{2.5}$ nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action, which makes a determination of attainment for the Philadelphia Area based on air quality, results in the suspension of certain Federal requirements and does not impose any additional requirements beyond those imposed by state law. For that reason, this action:

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

[3] The monitoring data from the 2008–2010 and 2009–2011 monitoring periods that are relied on in this notice may be impacted by reductions associated with the Clean Air Interstate Rule (CAIR), which was remanded to EPA in 2008. *See North Carolina* v. *EPA,* 531 F.3d 896, *as modified on reh'g,* 550 F.3d 1176 (D.C. Cir. 2008). Nonetheless, because this determination addresses only whether the monitoring data shows attainment, at this time EPA need not address whether such attainment was due to the remanded CAIR.

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this determination of attainment of the Philadelphia Area with respect to the 2006 24-hour $PM_{2.5}$ NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, in which EPA has determined that the Philadelphia Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 10, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

Dated: December 13, 2012.

Judith A. Enck,

Regional Administrator, Region II.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. Section 52.427 is amended by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.427 Control strategy: Particulate matter.

* * * * *

(b) Determination of Attainment. EPA has also determined, as of January 7, 2013, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter ($PM_{2.5}$) nonattainment area has attained the 2006 24-hour $PM_{2.5}$ national ambient air quality standards (NAAQS). This determination suspends the requirements for the State of DE to submit, for the Philadelphia-Wilmington, PA-NJ-DE $PM_{2.5}$ nonattainment area, an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS.

Subpart FF—New Jersey

■ 3. Section 52.1602 is amended by adding paragraph (e) to read as follows:

§ 52.1602 Control strategy and regulations: $PM_{2.5}$.

* * * * *

(e) Determination of Attainment. EPA has determined, as of January 7, 2013, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter ($PM_{2.5}$) nonattainment area has attained the 2006 24-hour $PM_{2.5}$ national ambient air quality standards (NAAQS). This determination suspends the requirements for the Philadelphia-Wilmington, PA-NJ-DE $PM_{2.5}$ nonattainment area, to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS.

Subpart NN—Pennsylvania

■ 4. Section 52.2059 is amended by adding paragraph (h) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(h) Determination of Attainment. EPA has determined, as of January 7, 2013, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter ($PM_{2.5}$) nonattainment area has attained the 2006 24-hour $PM_{2.5}$ national ambient air quality standards (NAAQS). This determination suspends the requirements for the Commonwealth of Pennsylvania to submit, for the Philadelphia-Wilmington, PA-NJ-DE $PM_{2.5}$ area, an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS.

[FR Doc. 2012–31565 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0446; FRL– 9765–6]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Determination of Clean Data for the 1987 PM_{10} Standard for the Ogden Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a determination that the Ogden City nonattainment area in Utah is currently attaining the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) based on certified, quality-assured ambient air monitoring data for the years 2009 through 2011. The State of Utah submitted a letter dated March 30, 2000, requesting EPA to make a clean data determination for the nonattainment

area of Ogden City. Given our determination that the Ogden City nonattainment area is currently attaining the PM_{10} NAAQS, EPA is also determining that Utah's obligation to make submissions to meet certain Clean Air Act (CAA) requirements related to attainment of the NAAQS is not applicable for as long as the Ogden City nonattainment area continues to attain the NAAQS. This action is being taken under the CAA.

DATES: This final rule is effective on February 6, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2012–0446. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Crystal Freeman, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6602, *freeman.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

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

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

(ii) The initials *AQS* mean or refer to EPA's Air Quality System database.

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

(iv) The initials *NAAQS* mean or refer to National Ambient Air Quality Standard.

(v) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (coarse particulate matter).

(vi) The initials *RACM* mean or refer to reasonably available control measures.

(vii) The initials *RFP* mean or refer to reasonable further progress.

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

(ix) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

(x) The initials *UDEQ* mean or refer to Utah Department of Environmental Quality.

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I. EPA's Proposed Action

On July 30, 2012, EPA proposed to find that the Ogden City nonattainment area is currently attaining the 24-hour PM_{10} NAAQS based on certified and quality-assured data from the most recent three-year period, 2009 through 2011, and to suspend certain CAA requirements related to attainment for so long as the area continues to attain the standard. See 77 FR 44544; (July 30, 2012).

To summarize our proposed rule, we described the 24-hour PM_{10} NAAQS, which is 150 micrograms per cubic meter ($\mu g/m^3$), and reviewed the designation and classification of the Ogden City nonattainment area for that standard. We then discussed how EPA makes attainment determinations for PM_{10} and indicated that the 24-hour PM_{10} NAAQS is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at the monitoring site within the nonattainment area. See 40 CFR part 50, appendix K.

We described Utah Department of Environmental Quality's (UDEQ's) one PM_{10} monitoring site in the Ogden City nonattainment area. We noted that UDEQ has certified the data it submits to EPA's Air Quality System (AQS) database as quality-assured.

Next, we reviewed the ambient PM_{10} data collected at the monitor site in the Ogden City nonattainment area for the most recent three-year period, 2009 through 2011. We concluded that the area is attaining the PM_{10} standard because the expected number of exceedances per year for 2009 through 2011 for the Ogden City nonattainment area was equal to 1.0. For additional information on the PM_{10} NAAQS, the designation and classification of the Ogden City nonattainment area, the monitoring site, and the data we relied on for our clean data determination, please see 77 FR 44544.

In conjunction with, and based on, our proposed determination that the Ogden City nonattainment area is currently attaining the PM_{10} NAAQS, EPA proposed to determine that Utah's obligation to submit revisions to the Utah State Implementation Plan (SIP) to meet the following CAA requirements is not applicable for so long as the Ogden City nonattainment area continues to attain the PM_{10} standard: The part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the reasonably available control measure (RACM) requirements of section 189(a)(1)(C); the reasonable further progress (RFP) requirements of section 189(c); and the attainment demonstration, RACM, RFP, and contingency measure requirements of part D, subpart 1 contained in section 172. We proposed to suspend these SIP requirements based on application of the Clean Data Policy to the Ogden City nonattainment area. In doing so, we noted that our application of the Clean Data Policy to the Ogden City nonattainment area is consistent with a number of actions we have taken for other PM_{10} nonattainment areas that we also determined were attaining the NAAQS. For a detailed explanation of our Clean Data Policy and its application to the Ogden City nonattainment area, please see 77 FR 44544.

II. Response to Comments

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

III. EPA Action

No comments were submitted to change our assessment of the 2009 through 2011 ambient PM_{10} data collected in the Ogden City nonattainment area and related finding that the area is attaining the NAAQS, or our application of the Clean Data Policy as described in our proposed action. Therefore, EPA is finalizing its determination that the Ogden City nonattainment area in Utah is currently attaining the NAAQS for PM_{10}.

EPA is also taking final action to determine that Utah's obligation to make SIP submissions to meet the following CAA requirements is not applicable for as long as the Ogden City nonattainment area continues to attain the PM_{10} NAAQS: The part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the RACM requirements of section 189(a)(1)(C); the RFP

requirements of section 189(c); and the attainment demonstration, RACM, RFP, and contingency measure requirements of part D, subpart 1 contained in section 172.

This final action does not constitute a redesignation to attainment under CAA section 107(d)(3) because Utah has not submitted a maintenance plan and EPA has not approved such a plan for the Ogden City nonattainment area as meeting the requirements of section 175A of the CAA, nor has EPA determined that Utah has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains moderate nonattainment for the Ogden City nonattainment area until such time as EPA determines that Utah has met the CAA requirements for redesignating the Ogden City nonattainment area to attainment.

IV. Statutory and Executive Order Reviews

With this action, we are making a determination regarding attainment of the PM_{10} NAAQS based on air quality data and, based on this determination, suspending certain Federal requirements. Therefore, this action would not impose additional requirements beyond those imposed by State law or by the CAA. For that reason, this action:

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

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249; November 9, 2000), because the determinations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 17, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–31560 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0752; FRL–9766–8]

Determination of Attainment for the Nogales Nonattainment Area for the 2006 Fine Particle Standard; Arizona; Determination Regarding Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Nogales nonattainment area in Arizona has attained the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS based on the 2009–2011 monitoring period. Based on the above determination, the requirements for this area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines are suspended for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: This rule is effective on February 6, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0752 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, (415) 972–3963, or by email at *ungvarsky.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA.

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I. Summary of Proposed Action
II. Public Comments and EPA Responses
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I. Summary of Proposed Action

On October 30, 2012 (77 FR 65656), EPA proposed to determine that the Nogales nonattainment area [1] has attained the 2006 24-hour NAAQS [2] for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, $PM_{2.5}$).

In our proposed rule, we explained how EPA makes an attainment determination for the 2006 24-hour $PM_{2.5}$ NAAQS by reference to complete, quality-assured data gathered at a State and Local Air Monitoring Station(s) (SLAMS) and entered into EPA's Air Quality System (AQS) database and by reference to 40 CFR 50.13 (''National primary and secondary ambient air quality standards for $PM_{2.5}$'') and appendix N to [40 CFR] part 50 (''Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$''). EPA proposed the determination of attainment for the Nogales area based upon a review of the monitoring network operated by the Arizona Department of Environmental Quality (ADEQ) and the data collected at the one monitoring site operating during the most recent complete three-year period (i.e., 2009 to 2011). Based on this review, EPA found that complete, quality-assured and certified data for the Nogales area showed that the 24-hour design value for the 2009–2011 period was equal to or less than 35 μ/m^3 at the monitor site. See the data summary table on page 65658 of the October 30, 2012 proposed rule. We also noted that preliminary data available in AQS for 2012 indicates that the Nogales area continues to attain the NAAQS.

In our proposed rule, based on the proposed determination of attainment, we also proposed to apply EPA's Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS and thereby suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. See pages 65658–65660 of our October 30, 2012 proposed rule. In proposing to apply the Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS, we explained how we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and in individual rulemakings for the 1-hour ozone, PM_{10} and lead NAAQS.

Please see the October 30, 2012 proposed rule for more detailed information concerning the $PM_{2.5}$ NAAQS, designations of $PM_{2.5}$ nonattainment areas, the regulatory basis for determining attainment of the NAAQS, ADEQ's $PM_{2.5}$ monitoring network, EPA's review and evaluation of the data, and the rationale and implications for application of the Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS.

II. Public Comments and EPA Responses

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

III. EPA's Final Action

For the reasons provided in the proposed rule and summarized herein, EPA is taking final action to determine that the Nogales nonattainment area in Arizona has attained the 2006 24-hour $PM_{2.5}$ NAAQS based on the most recent three years of complete, quality-assured, and certified data in AQS for 2009–2011. Preliminary data available in AQS for 2012 show that this area continues to attain the standard.

EPA is also taking final action, based on the above determination of attainment, to suspend the requirements for the Nogales nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS. EPA's final action is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (*see* 40 CFR 51.918) and the 1997 fine particulate matter standards (*see* 40 CFR 51.1004(c)).

Today's final action does not constitute a redesignation of the Nogales nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the Nogales nonattainment area as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remain nonattainment for this area until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Nogales nonattainment area to attainment.

If the Nogales nonattainment area continues to monitor attainment of the 2006 $PM_{2.5}$ NAAQS, the requirements for the area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 $PM_{2.5}$ NAAQS will remain suspended. If after today's action EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 2006 $PM_{2.5}$ NAAQS, the basis for the suspension of the attainment planning requirements for the area would no longer exist, and the area would thereafter have to address such requirements.

IV. Statutory and Executive Order Reviews

This final action makes a determination of attainment based on air quality and suspends certain federal requirements, and thus, this action would not impose additional requirements beyond those imposed by state law. For this reason, the final action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

[1] Covering 76.1 square miles, the Nogales $PM_{2.5}$ nonattainment area is located within Santa Cruz County, Arizona, with the southernmost boundary of the nonattainment area and Santa Cruz County being the U.S./Mexico border.

[2] The 2006 24-hour $PM_{2.5}$ NAAQS is 35 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of the 98th percentile of 24-hour concentrations.

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes, and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Nitrogen oxides, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: December 18, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.131 is added to read as follows:

§ 52.131 Control Strategy and regulations: Fine Particle Matter.

(a) *Determination of Attainment:* Effective February 6, 2013, EPA has determined that, based on 2009 to 2011 ambient air quality data, the Nogales $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment for as long as this area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 $PM_{2.5}$ NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

(b) [Reserved]

[FR Doc. 2012–31639 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0721; FRL–9767–3]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision; South Coast

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In response to a remand by the United States Court of Appeals for the Ninth Circuit, and pursuant to the Clean Air Act, EPA is taking final action to find that the California State Implementation Plan (SIP) for the Los Angeles-South Coast Air Basin is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard. In response to this finding, California is required to submit a SIP revision correcting this deficiency within 12 months of the effective date of this rule. If EPA finds that California has failed to submit a complete SIP revision as required by this final rule, or if EPA disapproves such a revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan. EPA is also taking final action establishing the order in which mandatory sanctions would apply in the event that EPA makes a finding of failure to submit a SIP revision or disapproves the SIP revision. Specifically, the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later. Sanctions would not apply if EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on a preliminary or final determination that the State has corrected the SIP deficiencies.

DATES: This rule is effective on February 6, 2013.

ADDRESSES: EPA has established docket EPA–R09–OAR–2012–0721 for this action. The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105–3901. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901, 415–947–4192, *tax.wienke@epa.gov.*

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

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IV. Statutory and Executive Order Reviews

I. Summary of Proposed Action

On September 19, 2012 (77 FR 58072), EPA proposed to find that the California SIP for the Los Angeles-South Coast Air Basin (South Coast) [1] is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone national ambient air quality standard (NAAQS or ''standard''). EPA proposed this finding pursuant to the ''SIP call'' authority found in section 110(k)(5) of the Clean Air Act (CAA or ''Act'').[2] In our proposed rule, we explained that States remain obligated to adopt and implement an attainment demonstration plan for the 1-hour ozone standard, notwithstanding the revocation of the standard in 2005, under EPA's ''anti-backsliding'' regulations governing the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard.[3] See 40 CFR 51.905(a)(1)(i).

EPA also proposed to require California to submit a revision to its SIP correcting these deficiencies by a date no later than 12 months after the effective date of a final rule finding the current SIP inadequate. The SIP revision must meet the requirements of CAA section 182(c)(2)(A) [4] and demonstrate attainment of the 1-hour ozone standard as expeditiously as practicable but no later than five years from the effective date of a final SIP call unless the State can justify a later date, not to exceed 10 years beyond the effective date of the final SIP call. In considering whether a period longer than five years is warranted, EPA must consider the severity of the remaining nonattainment problem in the South Coast and the availability and feasibility of pollution control measures. See section 172(a)(2).

We noted that if EPA were to find that California has failed to submit a complete SIP revision or if EPA disapproves such revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan (FIP). EPA proposed that if EPA makes such a finding or disapproval, the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later. Sanctions would apply unless EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on a preliminary or final determination that the State has cured the SIP deficiencies.

EPA proposed this action in response to a decision by the United States Court of Appeals for the Ninth Circuit (Ninth Circuit or Court) in a lawsuit challenging EPA's partial approval and partial disapproval of the 2003 South Coast 1-Hour Ozone SIP.[5] See *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''*AIR* v. *EPA*'').

The 2003 South Coast 1-Hour Ozone SIP was intended by California to update the attainment demonstration for the 1-hour ozone standard for the South Coast contained in the 1997/1999 South Coast 1-Hour Ozone SIP that EPA approved in 2000. Among other issues, the petitioners in the *AIR* v. *EPA* case challenged EPA's conclusion that the Agency's disapproval of the updated attainment demonstration for the 1-hour ozone standard in the 2003 South Coast 1-Hour Ozone SIP did not obligate the Agency to promulgate a FIP because the plan that was disapproved was not required to be submitted given that the SIP contained a fully-approved 1-hour ozone attainment demonstration for the South Coast (i.e., the 1997/1999 South Coast 1-Hour Ozone SIP).

The court disagreed with EPA, and held that EPA must promulgate a FIP under CAA section 110(c) or issue a SIP call where EPA disapproves a new attainment demonstration unless the Agency determines that the SIP as approved remains sufficient to demonstrate attainment of the NAAQS.

In response, EPA reviewed the 1997/1999 South Coast 1-Hour Ozone SIP to determine whether it remained sufficient to demonstrate attainment of the 1-hour ozone standard notwithstanding the disapproval of the updated 1-hour ozone attainment demonstration in the 2003 South Coast 1-Hour Ozone SIP and determined that the SIP was substantially inadequate to comply with the obligation under EPA's anti-backsliding regulations to adopt and implement a 1-hour ozone attainment demonstration. In the September 19, 2012 proposed rule, EPA proposed this finding of substantial inadequacy based on the following considerations:

- Documentation included in the 2003 South Coast 1-Hour Ozone SIP showing that motor vehicle emissions were significantly underestimated in the 1997/1999 South Coast 1-Hour Ozone SIP; that the carrying capacity associated with attainment of the 1-hour ozone standard was significantly lower than projected for the 1997/1999 South Coast 1-Hour Ozone SIP; and that, as a result, additional emissions reductions would be necessary to attain the 1-hour ozone standard by the applicable attainment date (November 15, 2010) beyond those incorporated in the 1997/1999 South Coast 1-Hour Ozone SIP;
- EPA's ''anti-backsliding'' requirements promulgated in 2004 governing the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard and requiring a state to adopt and implement an attainment demonstration for the 1-hour ozone standard (40 CFR 51.905(a)(1)(i)) notwithstanding the revocation of the 1-hour ozone standard in areas designated as nonattainment for the 1997 8-hour ozone standard; and
- EPA's final determination at 76 FR 82133 (December 30, 2011) that the South Coast area failed to attain the 1-hour ozone standard by the applicable attainment date (November 15, 2010).

See the proposed rule at 77 FR 58072, at 58074–58075 (September 19, 2012).

For more information about the 1-hour and 8-hour ozone standards, the designations and classifications for the South Coast, the various South Coast SIP revisions submitted in response to CAA nonattainment area requirements, the litigation over EPA's action on the 2003 South Coast 1-Hour Ozone SIP, and the rationale behind the proposed 12-month deadline and sequence of mandatory sanctions, please see our September 19, 2012 proposed rule.

[1] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[2] Section 110(k)(5) provides, in relevant part, that: ''Whenever [EPA] finds that the [SIP] for any area is substantially inadequate to attain or maintain the relevant [NAAQS], * * *, or to otherwise comply with any requirement of this chapter, [EPA] shall require the State to revise the plan as necessary to correct such inadequacies.''

[3] Our finding of substantial inadequacy under CAA section 110(k)(5) for failure to ''adopt and implement'' a 1-hour ozone attainment demonstration is not intended as a finding of nonimplementation under CAA section 179(a)(4).

[4] Under CAA section 182(c)(2)(A), the State must submit a revision to the SIP that includes a demonstration that the plan, as revised, will provide for attainment of the ozone NAAQS. The attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by EPA to be at least as effective. Section 182(c)(2)(A) applies within ozone nonattainment areas classified as ''serious,'' but as a general matter, areas classified as ''extreme'' for the ozone nonattainment area, such as the South Coast, are subject to the requirements for lower-classified areas, such as those for ''serious'' areas, as well as those prescribed specifically for ''extreme'' areas.

[5] EPA's final action challenged in the *AIR* v. *EPA* case was published at 74 FR 10176 (March 10, 2009).

II. Response to Public Comments

As stated above, on September 19, 2012, EPA proposed to find that the California SIP was substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard (see 77 FR 58072), and held a 30-day comment period which ended on October 19, 2012. On October 16, 2012, we received two requests to extend the comment period. On October 25, 2012, we published a **Federal Register** notice reopening the comment period for 14 days (see 77 FR 65151). This comment period ended on November 8, 2012.

In response to the proposed rule, we received 11 comment letters that we have grouped into five categories. We received comments from:

- Pechanga Indian Reservation-Temecula Band of Luiseno Mission Indians (''Pechanga Tribe'');
- South Coast Air Quality Management District (SCAQMD), and the State of California Air Resources Board (CARB) (''government agencies'');
- Coalition for Clean Air, Communities for a Better Environment, Natural Resources Defense Council; and Physicians for Social Responsibility—Los Angeles, (''environmental and community groups'');
- American Chemistry Council, American Coatings Association, Consumer Specialty Products Association, International Fragrance Association, National Aerosol Association, and Personal Care Products Council (''industry groups''); and
- A private citizen.

None of the commenters challenged the proposed finding of substantial inadequacy, the proposed one-year deadline for submittal of a new 1-hour ozone attainment plan, the proposed sequence for application of mandatory sanctions in the event of failure by California to meet the deadline, or the proposed application of the provisions in 40 CFR 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions. Instead, the comments relate to the contents of a future 1-hour ozone attainment demonstration for the South Coast and the potential impacts of the SIP call on Indian tribes in the region. Below, we set forth a summary of the comments and EPA's responses.

Pechanga Tribe

Comment 1: In its comment letter, the Pechanga Tribe requested an opportunity to consult on a government to government basis with EPA Region IX regarding the potential impacts of this proposed action on federally recognized tribes located in the region.

Response 1: On November 28, 2012, EPA Region IX staff met with members and representatives of the Pechanga Tribe and explained that, as stated in the proposed rule, EPA foresaw no direct impact to the Tribe due to a SIP call for a new South Coast 1-hour ozone attainment demonstration plan. EPA acknowledged that a portion of Pechanga Indian country lies within the South Coast 1-hour ozone ''extreme'' nonattainment area, but indicated that, under the ''Tribal Authority Rule'' (40 CFR part 49), tribes are not subject to SIP submittal deadlines. See 40 CFR 49.4(a).[6] Moreover, under 40 CFR 49.4(c), Tribes will also not be treated as States with respect to the mandatory imposition of sanctions under section 179 of the Act because of a failure to submit an implementation plan or required plan element by a specific deadline, or the submittal of an incomplete or disapproved plan or element. Thus, the Tribes in the South Coast will not be subject to the deadline that we are setting today for the State of California for submittal of a new 1-hour ozone attainment demonstration for the South Coast, and the Tribes will not be subject to mandatory sanctions in the event that sanctions are imposed as a consequence of failure to submit or disapproval of the submitted SIP revision.

Government Agencies

Comment 2: In response to the attainment date that would be established under the proposed SIP call (i.e. as expeditiously as practicable but no later than five years unless the State can justify a later date, not to exceed 10 years), SCAQMD indicates that it and CARB intend to request and justify that the full ten years are needed for the attainment demonstration.

Response 2: This comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State. Consistent with the requirement of CAA section 172(a)(2)(A), EPA would consider the severity of nonattainment and the availability and feasibility of pollution control measures in determining whether to approve any future submitted plan with an attainment date that is later than five years from the effective date of this final rule.

Comment 3: SCAQMD asserts that the new technology provisions of CAA section 182(e)(5) are available for the purposes of the new 1-hour ozone attainment demonstration plan for the South Coast so long as the reductions to be obtained from them are not needed for the first ten years after November 15, 1990, i.e. through November 15, 2000, citing CAA section 182(e)(5). While the SCAQMD asserts that the plain language of section 182(e)(5) settles any question as to whether that provision applies to a new 1-hour ozone attainment demonstration plan for the ''extreme'' South Coast nonattainment area, it also asserts that there is no policy reason to interpret the statute to preclude reliance on section 182(e)(5) even if the language were ambiguous. CARB's comment letter expressed agreement and support for comments provided by SCAQMD on the availability of CAA section 182(e)(5) new technology provisions for the new South Coast 1-hour ozone attainment demonstration plan.

Response 3: We did not explicitly address section 182(e)(5)[7] in our proposed SIP call because its availability or lack of availability is not directly relevant to the issue of our finding of substantial inadequacy of the California SIP for the South Coast with respect to the 1-hour ozone standard, or the issues of submittal or attainment dates. Thus, this comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State. We will consider the approvability of the future South Coast 1-hour ozone attainment demonstration, including the control strategy on which it relies, once the plan is submitted, in the context of a subsequent rulemaking on the submitted plan.

Environmental and Community Groups

Comment 4: Citing the long period of nonattainment and the health effects of ozone at levels even below the 1-hour ozone standard, environmental and community groups request that the final

[6] Under 40 CFR 49.4(a), Tribes will not treated as States with respect to specific plan submittal and implementation deadlines for NAAQS-related requirements, such as the deadline established in today's final SIP call.

[7] Section 182(e)(5) states, in part: ''[EPA] may, * * *, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the [EPA] that (A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and (B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.'' Provisions in a SIP that rely on section 182(e)(5) are commonly referred to as ''black box'' or ''new technology'' provisions.

rule include more details about the need for a 1-hour ozone plan in the South Coast.

Response 4: EPA believes that the Agency provided sufficient support for its finding of substantial inadequacy and related SIP call. The rationale for the proposed finding and SIP call is set forth at 77 FR, 58072, 58074–58075. In short, in response to a remand by the Ninth Circuit in the *AIR* v. *EPA* case, we proposed to find the approved 1997/1999 South Coast 1-Hour Ozone SIP is substantially inadequate to provide for attainment of the 1-hour ozone standard and is therefore substantially inadequate to comply with EPA's ''anti-backsliding'' requirement at 40 CFR 51.905(a)(1)(i) to adopt and implement such a plan for the South Coast. We based this determination on a review of the technical information and updated control measure strategy contained in the 2003 South Coast SIP and also considered our determination in December 2011 that the South Coast had failed to attain the applicable attainment date (2010) for the 1-hour ozone standard. Today, we are taking final action to find that the California SIP is substantially inadequate and to issue the SIP call for a new 1-hour ozone attainment demonstration plan for the South Coast on the basis of the rationale set forth in the proposed rule.

Comment 5: The environmental and community groups believe that EPA should clearly state that the future 1-hour ozone attainment demonstration plan cannot rely on the new technology provisions of section 182(e)(5) (i.e., the ''black box''). The groups contend that the text of the CAA demonstrates that the black box was not intended to be used past the attainment date. In support for this contention, the groups note that, under section 182(e)(5), there can be no contingency measures that are ''adequate to produce emissions reductions sufficient, * * * to achieve the periodic emissions reductions * * * and attainment by the applicable dates'' where, as is the case for South Coast, the attainment date (2010) has passed.

Response 5: In issuing a SIP call, CAA section 110(k)(5) directs EPA to the extent that EPA deems appropriate to subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the EPA may adjust any dates applicable under such requirements as appropriate (except that the EPA may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed.) In this case, the prescribed attainment date (2010) under part D of the title I of the CAA for extreme 1-hour ozone nonattainment areas, such as the South Coast, has passed, and thus, CAA section 110(k)(5) authorizes EPA to establish a new attainment date for the purposes of the new South Coast 1-hour ozone attainment demonstration plan.

With respect to black box provisions, as noted in response to comment #3, we did not explicitly address section 182(e)(5) in our proposed SIP call because its availability or lack of availability is not directly relevant to the issue of our finding of substantial inadequacy of the California SIP for the South Coast with respect to the 1-hour ozone standard, or the issues of submittal or attainment dates. Thus, this comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State. We will consider the approvability of the future South Coast 1-hour ozone attainment demonstration, including the control strategy on which it relies, once the plan is submitted, in the context of a subsequent rulemaking on the submitted plan.

Comment 6: The environmental and community groups assert that the new requirements that must be fulfilled by SIPs in 1-hour ozone areas that fail to attain by the statutory deadline are provided in section 179(d). They further assert that the failure to attain does not allow areas to start all over again under section 182 and that the new plan should be governed by sections 110 and 172, neither of which provide for a black box. Moreover, they contend that the attainment deadline for these areas is governed by section 179(d)(3).

Response 6: We disagree that the new requirements for the new 1-hour attainment demonstration are governed by the provisions of section 179(d). The provisions of section 179(d) are triggered by a finding of failure to attain the standard under section 179(c), but under our anti-backsliding regulations governing the transition from the 1-hour ozone standard to the 8-hour ozone standard, we are no longer obligated to determine pursuant to section 179(c) whether an area attained the 1-hour ozone standard by the applicable attainment date for the 1-hour ozone standard. See 40 CFR 51.905(e)(2). In our 2011 determination that the South Coast failed to attain the applicable attainment date (2010) for the 1-hour ozone standard, we relied on section 301(a) and the relevant portion of section 181(b)(2) for the purpose of ensuring implementation of 1-hour ozone anti-backsliding requirements, such as contingency measures and section 185 major stationary source fee programs. See 76 FR 82133, at 82145 (December 30, 2011). We did not make the determination of failure to attain under section 179(c) and thus the provisions of section 179(d) do not apply.

As to the applicability of subpart 2 requirements, we note that the ''substantial inadequacy'' that is the basis for our SIP call relates directly to the requirements that continue to apply to an 8-hour ozone nonattainment area by virtue of that area's classification under subpart 2 for the 1-hour ozone standard at the time we designated the area as nonattainment for the 1997 8-hour ozone standard. In this instance, the South Coast 8-hour ozone nonattainment area remains subject to the obligation to adopt and implement the ''applicable requirements'' in 40 CFR 51.900(f) to the extent such requirements apply or applied to the South Coast as an ''extreme'' area for the 1-hour ozone standard in June 2004 (i.e., at designation for the 1997 8-hour ozone standard). One such ''applicable requirement'' is the attainment demonstration requirement. 40 CFR 51.900(f)(13).

EPA had approved a 1-hour ozone attainment demonstration plan for the South Coast (i.e., the 1997/1999 South Coast Ozone SIP) prior to revocation, but in response to the remand in the *AIR* v. *EPA* case, we reconsidered the adequacy of 1997/1999 South Coast Ozone SIP for compliance with the obligation to adopt and implement a 1-hour ozone attainment demonstration, and proposed to find the 1997/1999 South Coast Ozone SIP substantially inadequate to comply with the anti-backsliding requirements and to require California to submit a new 1-hour ozone attainment demonstration plan for the ''extreme'' South Coast 1-hour ozone nonattainment area within one year of the effective date of the final determination.

Even though we look to subpart 2 (of part D) and 40 CFR 51.905(a)(1) as the statutory and regulatory basis, respectively, for the new South Coast 1-hour ozone attainment demonstration, we do not view our SIP call for the South Coast as allowing California to start all over again. The new 1-hour ozone attainment demonstration plan necessarily will build upon the extensive ozone control strategy developed over the past 40 years in the South Coast. Moreover, the new plan will not be allowed 20 years to demonstrate attainment of the 1-hour ozone standard, as was initially allowed for ''extreme'' ozone nonattainment areas, under the CAA Amendments of 1990. Rather, the new plan must

demonstrate attainment as expeditiously has practicable but no later than five years from the final SIP call unless California can justify a later date, not to exceed 10 years beyond the final SIP call, by considering the severity of the remaining nonattainment problem in the South Coast and the availability and feasibility of pollution control measures.

Lastly, while we disagree that section 179(d)(3) applies to establish the attainment date for the new 1-hour ozone attainment demonstration plan, we note that the attainment deadline under section 179(d)(3) would only be a little over one year earlier than the deadline established in this final action because they both derive from the formulation set forth in section 172(a)(2) (''* * * as expeditiously as practicable, but no later than 5 years, * * * may extend the attainment date * * * for a period no greater than 10 years * * *''). The only difference is that the start date for the final SIP call will be the effective date of this final rule, whereas section 179(d)(3) would have established a start date of December 30, 2011, i.e., the publication date of our final finding of failure to attain the 1-hour ozone standard for the South Coast (76 FR 82133).

Comment 7: The environmental and community groups contend that, if black box measures are allowed for an attainment plan developed after a region failed to attain the deadline, the state or local air district would have no incentive to close the black box within the attainment timeframes laid out in the CAA and could continually roll the black box over past the attainment date. Second, as a practical matter, the environmental and community groups contend that allowance for black box measures for a plan with at most a ten year planning horizon does not allow for the time necessary to develop the types of new technologies envisioned in section 182(e)(5).

Response 7: With respect to black box provisions, as noted in response to comment #3, we did not explicitly address section 182(e)(5) in our proposed SIP call because its availability or lack of availability is not directly relevant to the issue of our finding of substantial inadequacy of the California SIP for the South Coast with respect to the 1-hour ozone standard, or the issues of submittal or attainment dates. Thus, this comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State.

Industry Groups

Comment 8: The industry groups assert that EPA should not require California to impose further VOC reductions on the consumer and commercial products for the new South Coast 1-hour ozone attainment demonstration. They point out that the 2003 State Strategy included stringent consumer and commercial products rules to achieve VOC reductions by 2010, and that this portion of the State Strategy was not withdrawn. They further contend that additional VOC reductions are unnecessary to provide for attainment of the 1-hour standard, and that EPA has the ability to issue a SIP call that focuses on NO_X reductions to address ozone attainment in the South Coast, citing *Michigan* v. *EPA.* Finally, the industry groups assert that control measures for additional VOC reductions from consumer products would likely not constitute reasonably available control technology (RACT) because they would not be economically or technically feasible.

Response 8: Through this action, EPA is not establishing specific requirements that must be included as part of the State's plan to attain the 1-hour ozone NAAQS. In general, a State has fairly broad discretion to select the mix of control measures it will rely on to demonstrate attainment and EPA's role is limited to ensuring that the State plan meets the minimum criteria in the CAA. We are requiring California to submit a new attainment demonstration for 1-hour ozone, and we leave to the state's discretion whether to impose further VOC reductions on sources.

Private Citizen

Comment 9: A private citizen states that the effect of methane on the air quality region is understated and asserts that methane affects the ozone layer. The citizen reports that current studies suggest spikes in methane emissions, possibly caused by broken pipelines, earthquake faults or malfunctioning mitigation equipment, and suggests that a multiple agency response is warranted to address the situation.

Response 9: This action is being taken with regard to the State's plan to address ground-level ozone and does not address the effect of pollutants on the ozone layer. EPA agrees that pollutants that affect the integrity of the ozone layer are a concern and separate programs under the Act address that problem. We note that many control measures that reduce VOC emissions have the co-benefit of reducing methane, and thus, the new 1-hour ozone attainment demonstration and related control measures could indirectly result in reductions of methane emissions in the region.

III. Final Action and Consequences

For the reasons provided in the proposed rule, and after due consideration of the comments received, EPA is taking final action, pursuant to section 110(k)(5) of the CAA, to find that the California SIP is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone NAAQS in the Los Angeles-South Coast ozone nonattainment area. In response to this finding, California must revise and submit to EPA an attainment demonstration SIP for 1-hour ozone for the South Coast within 12 months of the effective date of this rule. The SIP must provide for attainment of the 1-hour ozone NAAQS in the South Coast nonattainment area as expeditiously as practicable, but no later than five years from the effective date of today's rule, unless the State can demonstrate that it needs up to an additional five years to attain in light of the severity of the nonattainment problem and the availability and feasibility of control measures.

If EPA finds that California has failed to submit a complete SIP revision as required by this final rule, or if EPA disapproves such a revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a FIP.[8] In connection with mandatory sanctions, we are taking final action to establish the same sequence for application of mandatory sanctions (if California fails to submit a new 1-hour ozone plan or EPA disapproves the submitted plan) as established in 40 CFR 52.31. Specifically, our finding of failure to submit or our disapproval of the SIP revision will trigger the new source review (NSR) offset sanction in CAA section 179(b)(2) and the highway funding sanction under CAA section 179(b)(1) in the South Coast ozone nonattainment area 18 months, and 24 months, respectively, after the effective date of the finding or disapproval. The sanctions clock will permanently stop once we find the SIP submittal complete (if we had issued a finding of failure to submit a complete plan) or take final action approving (if we had disapproved the plan) SIP revisions meeting the

[8] Tribes having Indian country within the South Coast are not subject to the deadline established herein for the State of California nor would they be subject to the imposition of mandatory sanctions if California were to fail to submit a complete SIP revision or if EPA were to disapprove the SIP revision submitted by California in response to this final SIP call. See 40 CFR 49.4(a) and (c). We also note that the FIP provisions in CAA section 110(c)(1) do not apply to Indian country (40 CFR 49.4(d)).

relevant requirements of the CAA prior to the time the sanctions would take effect. Lastly, we are taking final action to apply the provisions in 40 CFR 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions where we make a preliminary finding that it is more likely than not that the deficiency has been corrected. A FIP clock triggered by a finding of failure to submit or a disapproval of a submitted SIP can be stopped only by EPA approval of a SIP revision correcting the SIP deficiency.

IV. Statutory and Executive Order Reviews

Under the CAA, a finding of substantial inadequacy and subsequent obligation on a State to revise its SIP arise out of section 110(a) and 110(k)(5). The finding and State obligation do not directly impose any new regulatory requirements. In addition, the State obligation is not legally enforceable by a court of law. EPA would review its intended action on any SIP submittal in response to the finding in light of applicable statutory and Executive Order requirements, in subsequent rulemaking acting on such SIP submittal. For those reasons, this rule:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Tribes with Indian country in the subject ozone nonattainment area would not be subject to the deadline established herein for the State of California nor would they be subject to the imposition of mandatory sanctions if California were to fail to submit a complete SIP revision or if EPA were to disapprove the SIP revision submitted by California in response to this final SIP call, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 19, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–31642 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0960; FRL–9766–4]

Interim Final Determination To Stay Sanctions, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay imposition of sanctions based on a proposed approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in this **Federal Register**. The revisions concern local rules that regulate inhalable particulate matter (PM_{10}) emissions from sources of fugitive dust such as unpaved roads and disturbed soils in open and agricultural areas in Imperial County.

DATES: This interim final determination is effective on January 7, 2013. However, comments will be accepted until February 6, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0960, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of

your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov*.

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

I. Background

On July 8, 2010 (75 FR 39366), we published a limited approval and limited disapproval of the following rules listed in Table 1, as adopted locally on November 9, 2005 and submitted by the State on June 16, 2006.

TABLE 1

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	800	General Requirements for Controls of Fine Particulate Matter	11/08/05	06/16/06
ICAPCD	804	Open Areas	11/08/05	06/16/06
ICAPCD	805	Paved & Unpaved Roads	11/08/05	06/16/06
ICAPCD	806	Conservation Management Practices	11/08/05	06/16/06

We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 9, 2010 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31. As such, offset sanctions began on February 9, 2012 and highway sanctions began on August 9, 2012.

On October 16, 2012, ICAPCD adopted revisions to Rules 800, 804, 805, and 806 that were intended to correct the deficiencies identified in our limited disapproval action. On November 7, 2012, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our July 8, 2010 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay imposition of sanctions that were triggered by our July 8, 2010 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised ICAPCD Rules 800, 804, 805, and 806, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay CAA section 179 sanctions associated with ICAPCD Rules 800, 804, 805, and 806 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The 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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of January 7, 2013. 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–31732 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0274; FRL–9730–4]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 27, 2012 and concerns oxides of nitrogen (NO_x) emissions from certain boilers, process heaters and steam generators. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on February 6, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0274 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Pérez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov*.

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

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I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
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I. Proposed Action

On April 27, 2012 (77 FR 25109), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	400.2	Boilers, Process Heaters and Steam Generators	02/23/10	07/20/10

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

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

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 30, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(381)(i)(A)(*7*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(381) * * *

(i) * * *

(A) * * *

(*7*) Rule 400.2, ''Boilers, Process Heaters and Steam Generators,'' adopted on February 23, 2010.

* * * * *

[FR Doc. 2012–30625 Filed 1–4–13; 10:08 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0587; FRL–9732–9]

Revisions to the California State Implementation Plan, San Diego APCD, Northern Sierra AQMD, and Sacramento Metropolitan AQMD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Diego Air Pollution Control District (SDAPCD), Northern Sierra Air Quality Management District (NSAQMD), and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the transfer of gasoline at gasoline dispensing facilities. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on March 8, 2013 without further notice, unless EPA receives adverse comments by February 6, 2013. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0587, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or Deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that

you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were amended by the local air agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
SDAPCD	61.4	Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks.	03/26/08	07/18/08
NSAQMD	214	Phase I Vapor Recovery Requirements	04/25/11	09/27/11
SMAQMD	448	Gasoline Transfer into Stationary Storage Containers	02/26/09	04/05/11
SMAQMD	449	Transfer of Gasoline into Vehicle Fuel Tanks	02/26/09	04/05/11

On August 22, 2008, October 24, 2011, and May 6, 2011, EPA determined that the submittal for SDAPCD Rule 61.4, NSAQMD Rule 214, and SMAQMD Rules 448 and 449 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There is no previous version of NSAQMD Rule 214 in the SIP, although the NSAQMD adopted earlier versions of these rules on March 27, 2007 and February 22, 2010, and CARB submitted them to us on March 7, 2008 and July 20, 2010. We approved an earlier version of SDAPCD Rule 61.4 into the SIP on May 13, 1993 (58 FR 28354). The SDAPCD adopted revisions to the SIP-approved version of SDAPCD Rule 61.4 on March 26, 2008 and CARB submitted them to us on July 18, 2008. We also approved earlier versions of SMAQMD Rule 448 into the SIP on January 23, 1996 (61 FR 1716) and SMAQMD Rule 449 into the SIP on March 24, 2003 (68 FR 14156). The SMAQMD adopted revisions to the SIP-approved versions of the two rules on February 26, 2009 and CARB submitted them to us on April 5, 2011. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules or rule revisions?

Volatile organic compounds (VOCs) help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The revisions to the gasoline transfer rules incorporate an exemption when widespread onboard refueling vapor recovery system is in use and update several standards to match what is required by the California Air Resources Board regarding certification, testing, monitoring, and recordkeeping. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SDAPCD, NSAQMD, and SMAQMD regulate ozone nonattainment areas (see 40 CFR part 81), so NSAQMD Rule 214, SMAQMD Rule 448, and SMAQMD Rule 449 must fulfill RACT. However, because SDAPCD was classified on May 14, 2012 (77 FR 28424), RACT SIP requirements for the district do not come into effect until one year after the effective date of the classification and do not currently apply to SDAPCD Rule 61.4.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Design Criteria for Stage I Vapor Control Systems Gasoline Service Stations'' (EPA–450/R–75–102–1975/11) November 1975.
4. ''*Gasoline Vapor Recovery Guidelines*'', EPA Region IX, April 24, 2000.
5. ''Technical Guidance—Stage II vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities.'' (EPA–450/3–91–022a) November 1991.
6. ''EPA's Draft *Model Rule, Gasoline Dispensing Facility—Stage II Vapor Recovery,*'' August 17, 1992.

B. Do the rules meet the evaluation criteria?

We believe NSAQMD Rule 214, SMAQMD Rule 448, and SMAQMD Rule 449 are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. While SDAPCD Rule 61.4 does not meet RACT requirements, it is consistent with the relevant policy, guidance regarding enforceability, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agencies modify the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by February 6, 2013, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 8, 2013. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 5, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(359)(i)(F), (388)(i)(D)(*4*) and (*5*) and (404)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(359) * * *

(i) * * *

(F) San Diego County Air Pollution Control District.

(*1*) Rule 61.4, ''Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks,'' revised on March 26, 2008.

* * * * *

(388) * * *

(i) * * *

(D) * * *

(*4*) Rule 448, ''Gasoline Transfer into Stationary Storage Containers,'' amended on February 26, 2009.

(*5*) Rule 449, ''Transfer of Gasoline into Vehicle Fuel Tanks,'' amended on February 26, 2009.

* * * * *

(404) * * *

(i) * * *

(B) * * *

(*2*) Rule 214, ''Phase I Vapor Recovery Requirements,'' amended on April 25, 2011.

* * * * *

[FR Doc. 2012–31636 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: EPA–R10–OAR–2010–0914; FRL—9764–7]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Eagle River PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Limited Maintenance Plan (LMP) submitted by the State of Alaska on September 29, 2010 for the Eagle River nonattainment area (Eagle River NAA) and the State's request to redesignate the area to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

DATES: This direct final rule will be effective March 8, 2013, without further notice, unless EPA receives adverse comments by February 6, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0914, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* R10-Public_Comments@epa.gov.
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FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553–6125, *spenillo.justin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, it is intended to refer to EPA.

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I. This Action

EPA is taking direct final action to approve the Limited Maintenance Plan (LMP) submitted by the State of Alaska on September 29, 2010, for the Eagle River nonattainment area (Eagle River NAA) and to concurrently redesignate the area to attainment for the PM_{10} NAAQS. EPA has reviewed air quality

data for the area and determined that the Eagle River NAA attained the PM_{10} NAAQS by the required attainment date, and that monitoring data continue to show attainment. EPA also approves exclusion of data from a high wind exceptional event on October 30, 2009.

II. Background

A. PM_{10} NAAQS

''Particulate matter,'' also known as particle pollution or PM, is a complex mixture of extremely small particles and liquid droplets. The size of particles is directly linked to their potential for causing health problems. EPA is concerned about particles that are 10 micrometers in diameter or smaller because those are the particles that generally pass through the throat and nose and enter the lungs. Once inhaled, these particles can affect the heart and lungs and cause serious adverse health effects. People with heart or lung diseases, children and older adults are the most likely to be affected by particle pollution exposure. However, even healthy individuals may experience temporary symptoms from exposure to elevated levels of particle pollution.

On July 1, 1987, EPA promulgated a NAAQS for PM_{10} (52 FR 24634). EPA established a 24-hour standard of 150 $\mu g/m^3$ and an annual standard of 50 $\mu g/m^3$, expressed as an annual arithmetic mean. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. In a rulemaking action dated October 17, 2006, EPA retained the 24-hour PM_{10} standard but revoked the annual PM_{10} standard (71 FR 61144, effective December 18, 2006).

B. Eagle River NAA and Planning Background

On August 7, 1987, EPA designated the ''Anchorage (Eagle River)'' (referred to as Eagle River henceforth) area as a PM_{10} nonattainment area due to measured violations of the 24-hour PM_{10} standard (52 FR 29383). The notice announcing the designation upon enactment of the 1990 CAA Amendments was published on March 15, 1991 (56 FR 11101). On November 6, 1991, the Eagle River NAA was subsequently classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA (56 FR 56694).

After the Eagle River NAA was designated nonattainment for PM_{10}, the Alaska Department of Environmental Conservation (ADEC) and Municipality of Anchorage (MOA) worked with the community of Eagle River to develop a plan to bring the area into attainment no later than December 31, 1994. The State submitted the plan to EPA on October 15, 1991, as a moderate PM_{10} State Implementation Plan (SIP) under section 189(a) of the CAA. The primary control measure submitted by the State was a comprehensive road paving program. EPA took final action to approve the State's moderate PM_{10} SIP on August 13, 1993 (58 FR 43084). On October 19, 2010, EPA made an attainment determination that the Eagle River nonattainment area attained the PM_{10} NAAQS (75 FR 64162).

The State of Alaska prepared a LMP and provided notice and an opportunity for public comment on the proposed plan. On September 29, 2010, the State submitted to EPA for approval the Eagle River PM_{10} LMP and requested that EPA redesignate the Eagle River NAA to attainment for the PM_{10} NAAQS.

III. Requirements for Redesignation

A. CAA Requirements for Redesignation of Nonattainment Areas

A nonattainment area can be redesignated to attainment after the area has measured air quality data showing the NAAQS has been attained and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I provide the criteria for redesignation (57 FR 13498, April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memo). The criteria for redesignation are:

1. The Administrator has determined that the area has attained the applicable NAAQS;
2. The Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA;
3. The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA;
4. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and
5. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA.

B. The LMP Option for PM_{10} Nonattainment Areas

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM_{10} nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' (LMP Option memo)). The LMP Option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas meeting the criteria outlined in the LMP Option memo. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP Option, the area should have attained the PM_{10} NAAQS and, based upon the most recent five years of air quality data at all monitors in the area, the 24-hour design value should be at or below 98 $\mu g/m^3$. If an area cannot meet this test, it may still be able to qualify for the LMP Option if the average design value (ADV) for the site is less than the site-specific critical design value (CDV). In addition, the area should expect only limited growth in on-road motor vehicle PM_{10} emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP Option memo also identifies core provisions that must be included in the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Conformity Under the LMP Option

The transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA's LMP Option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP Option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM_{10} NAAQS would result. For transportation conformity purposes, EPA would conclude that

emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in 40 CFR 93.158 (a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

IV. Review of the Alaska Submittal Addressing the Requirements for Redesignation and LMPs

A. Has the Eagle River NAA attained the applicable NAAQS?

To demonstrate that an area has attained the PM_{10} NAAQS States must submit an analysis of ambient air quality data from an ambient air monitoring network representing peak PM_{10} concentrations. The data should be quality-assured and stored in the EPA Air Quality System database. EPA has reviewed air quality data for the area and has determined that the Eagle River NAA attained the PM_{10} NAAQS [1] by the applicable attainment date of December 31, 1994, and continues to attain the PM_{10} NAAQS. EPA's analysis is described below.

The 24-hour PM_{10} NAAQS is 150 μg/m^3. An area has attained this 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with Federal requirements (40 CFR part 58 including appendices).

A comprehensive air quality monitoring plan, meeting the requirements of 40 CFR part 58, was submitted by ADEC to EPA on January 18, 1980 (40 CFR 52. 70), and approved by EPA on April 15, 1981 (72 FR 21944). Updated monitoring plans have been subsequently submitted, with the most recent approval by EPA on October 25, 2012. The monitoring plan describes the Alaska monitoring network throughout the State, which includes site #02–020–1004 (Parkgate Site) in the Eagle River area. In the LMP submittal, ADEC States that the nonattainment designation was based on data collected at the Parkgate Site. With the exception of two volcanic eruptions and high wind exceptional events, a review of data from 1988 through the present show that PM_{10} concentrations recorded at this site remain well below the 24-hour PM_{10} NAAQS. In addition, ADEC states that the Parkgate Site is operated in compliance with EPA monitoring guidelines set forth in 40 CFR part 58, Ambient Air Quality Surveillance. More information on the monitoring plan can be found at *http://dec.alaska.gov/air/am/am_airmonplan.htm*.

Data from the Parkgate Site has been quality assured by ADEC and submitted to EPA's Air Quality System (AQS), accessible through EPA's AirData Web site at *http://www.epa.gov/airdata/*. To show attainment for the 24-hour PM_{10} NAAQS the three most recent years of data, calendar years 2009–2011, must be below 1.0 Expected number of Exceedances (EE), as established in Appendix K to 40 CFR part 50. The Parkgate Site recorded one exceedance during the 2009–2011 period on October 30, 2009. ADEC has flagged this exceedance as being caused by a high wind exceptional event. Under EPA's Exceptional Events Rule, the Agency may exclude data from a regulatory determination related to an exceedance or violation of the NAAQS if the State adequately demonstrates that an exceptional event caused the exceedance or violation. 40 CFR 50.1 and 50.14. For the reasons set forth in the AK Eagle River PM_{10} October 30, 2009 Exceptional Event concurrence letter and analysis (November 2, 2012), EPA excluded data showing an exceedance on October 30, 2009 in determining whether the Eagle River NAA has attained the PM_{10} NAAQS. ADEC also submitted an exceedance on October 31, 2009 for consideration as an exceptional event however this request was not approved as described in the concurrence letter. The concurrence letter explains how ADEC met its burden to demonstrate that the October 30, 2009 exceedance qualifies as an exceptional event. Based on this demonstration, the area's EE was 0.4, which is well below the 1.0 upper limit. EPA therefore concludes that the area was not violating the PM_{10} NAAQS during the three-year period 2009 to 2011 (Eagle River PM_{10} NAAQS and LMP Determination, November 8, 2012).

B. Does the Eagle River NAA have a fully approved SIP under section 110(k) of the CAA?

To qualify for redesignation, the SIP for an area must be fully approved under section 110(k) of the CAA, and must satisfy all requirements that apply to the area. As discussed in Section II.B. above, Alaska submitted a moderate PM_{10} SIP for the Eagle River NAA on October 15, 1991. EPA took final action to fully approve the State's moderate PM_{10} SIP on August 13, 1993 (58 FR 43084), as satisfying all requirements that apply to the area. Thus the area has a fully approved nonattainment area SIP under section 110(k) of CAA.

C. Has the State met all applicable requirements under section 110 and Part D of the CAA?

Section 107(d)(3)(E) of the CAA requires that a state containing a nonattainment area meet all applicable requirements under section 110 and Part D of the CAA for the area to be redesignated to attainment. EPA interprets this to mean that the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Alaska meets these requirements.

(1) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for nonattainment plans. These requirements include, but are not limited to: Submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements (57 FR 13498, April 16, 1992). EPA's approval of Alaska's SIP for attainment and maintenance of national standards can be found at 40 CFR 52.72. For purposes of redesignation of the Eagle River PM_{10} NAA, EPA has reviewed the Alaska SIP and finds that the State has satisfied all applicable requirements under CAA section 110(a)(2) for the PM_{10} NAAQS.

(2) Part D Requirements

Part D of the CAA contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM_{10} nonattainment areas must meet the general provisions of Subpart 1 and the specific PM_{10} provisions in Subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these

[1] Because the annual PM_{10} standard was revoked effective December 18, 2006, see 71 FR 61144 (October 17, 2006), this notice discusses only attainment of the 24-hour PM_{10} standard.''

requirements as they apply to the Eagle River PM_{10} NAA.

(2)(a) Part D, Section 172(c)(2)—Reasonable Further Progress

Section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble (57 FR 13538, April 16, 1992). CAA section 172(c)(2) requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the CAA defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' The requirements for reasonable further progress, identification of certain emissions increases and other measures needed for attainment were satisfied with the approved Eagle River PM_{10} SIP (58 FR 43084). In the October 19, 2010 action (75 FR 64162), EPA determined that the Eagle River NAA attained the 24-hour PM_{10} NAAQS by the December 31, 1994, attainment date. Therefore, EPA believes no further showing of RFP or quantitative milestones is necessary.

(2)(b) Part D, Section 172(c)(3)—Emissions Inventory

For redesignation, Section 172(c)(3) of CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Eagle River PM_{10} NAA. Alaska included an emissions inventory for the Eagle River area for the year 2007 in the September 29, 2010 submittal. The inventory estimated emissions during spring break-up and fall freeze-up include: Dust from paved roads; wind-generated dust from roads, parking lots and un-vegetated areas; fireplaces and woodstoves; natural gas combustion; and motor vehicles exhaust, tire and brake wear. The emissions inventory included emissions estimates for unpaved roads for the initial SIP attainment plan (*Eagle River PM_{10} Control Plan*), but all roads have been paved and so those emissions have not been included in the 2007 nor 2020 inventories. Emissions estimates for road dust and motor vehicle exhaust, brake wear, and tire wear were developed using the EPA-approved MOBILE6.2 model, and vehicle miles traveled estimates were obtained from the 2007 Chugiak-Eagle River Long Range Transportation Plan. The remaining emissions estimates were calculated using EPA approved AP–42 emission factors. EPA reviewed the inventory and associated calculations submitted by Alaska and believes that the 2007 Eagle River emissions inventory is current, accurate and comprehensive and therefore meets the requirements of section 172(c)(3) of the CAA.

(2)(c) Part D, Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR. The state must have an approved major NSR program that meets the requirements of CAA section 172(c)(5). EPA evaluated and initially approved the Alaska major NSR program on July 5, 1983 (48 FR 30623) and most recently approved revisions to Alaska's NSR program on February 11, 2011 (76 FR 7116). In the Eagle River PM_{10} NAA, the requirements of the Part D NSR program will be replaced by the State's PSD program requirements upon the effective date of redesignation.

(2)(d) Part D, Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area. On July 18, 1980 Alaska submitted a comprehensive air quality monitoring plan (40 CFR 52.70), meeting the requirements of 40 CFR part 58, to EPA. EPA approved the plan on April 15, 1981 (72 FR 21944). This monitoring plan has been updated, with the most recent approval by EPA on October 25, 2012 (Alaska Air Monitoring Plan Approval Letter, dated October 25, 2012). As described in section IV. A., ADEC operate a comprehensive monitoring network.

(2)(e) Part D, Section 172(c)(9)—Contingency Measures

The CAA requires that contingency measures take effect if an area fails to meet RFP requirements or fails to attain the NAAQS by the applicable attainment date. Because, as part of this action, EPA has determined the Eagle River NAA attained the PM_{10} NAAQS by the applicable attainment date of December 31, 1994, contingency measures are no longer required under section 172(c)(9) of the CAA. However, contingency provisions are required for maintenance plans under Section 175A. See section VI. F. for a description of Alaska's maintenance plan contingency provisions.

(2)(f) Part D, Section 189(a), (c), and (e)—Additional Provisions for Particulate Matter Nonattainment Areas

Section 189(a), (c), and (e) apply to moderate PM_{10} nonattainment areas. Any of these requirements which were applicable and due prior to the submission of the redesignation request must be fully approved into the SIP before redesignating the area to attainment. With respect to the Eagle River PM_{10} NAA, these requirements include:

(a) Provisions to assure that reasonably available control measures were implemented by December 10, 1993 (section 189(a)(1)(C));

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable, but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable (section 189(a)(1)(B));

(c) Quantitative milestones which were achieved every three years and which demonstrate RFP toward attainment by December 31, 1994 (section 189(c)(1)); and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determined that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area (section 189(e)).

Provisions for reasonably available control measures, attainment demonstration, and RFP milestones were fully approved into the SIP upon EPA approval of the moderate PM_{10} SIP for the Eagle River NAA on August 13, 1993 (58 FR 43084). EPA most recently approved revisions to Alaska's NSR program on February 9, 2011 (76 FR 7116). Alaska's major NSR rules include control requirements that apply to major stationary sources of PM_{10} in nonattainment areas and attainment/unclassifiable areas. For the Eagle River area, EPA determined that major stationary sources do not contribute significantly to PM_{10} levels in excess of the NAAQS. Therefore, in EPA's action to approve the moderate PM_{10} SIP for Eagle River, EPA granted the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM_{10} precursors (58 FR 43084).

D. Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?

Section 107(d)(3)(E)(iii) of the CAA provides that a nonattainment area may

not be redesignated unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP. Therefore, a State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions by demonstrating that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Permanent and enforceable control measures in the Eagle River moderate PM_{10} SIP include road paving and surfacing projects to address fugitive dust. These controls were approved by EPA into the Eagle River PM_{10} SIP, and they are both permanent and federally enforceable (58 FR 43084). As described in the submittal, the primary control measure relied on is the road paving program which either paved or surfaced all of the roads in the area by 2007. The program paved 22 miles of road which equals almost half of the roads in the area. The Municipality of Anchorage (MOA) commits itself to maintenance of the roads during their 10–15-year lifetime and resurfacing thereafter. The MOA also will work with the Alaska Department of Transportation and Public Facilities to limit the amount of silt allowed in winter traction sand as well as explore other road maintenance techniques that minimize road dust while still cleaning and maintaining safe roads.

EPA believes that areas that qualify for the LMP Option will meet the NAAQS, even under worst case meteorological conditions. Therefore, under the LMP Option, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria. A description of the LMP qualifying criteria and how the Eagle River area meets these criteria is provided below. By qualifying for the LMP Option, Alaska presumptively demonstrates that the air quality improvements in the Eagle River area are the result of permanent emission reductions and not a result of either economic trends or meteorology.

E. Does the area have a fully approved maintenance plan pursuant to section 175A of the CAA?

In this action, we are approving the LMP in accordance with the principles outlined in the LMP Option memo. Upon the effective date of this action, the area will have a fully approved maintenance plan.

F. Has the State demonstrated that the Eagle River NAA qualifies for the LMP option?

The LMP Option memo outlines the requirements for an area to qualify for the LMP Option. First, the area should be attaining the NAAQS. In this action, EPA has determined that the Eagle River NAA attained the PM_{10} NAAQS by the required attainment date, and continues to be in attainment with the PM_{10} NAAQS. Please see section V. A. for a detailed discussion.

Second, the average design value (ADV) for the past five years of monitoring data must be at or below the critical design value (CDV). The CDV is a margin of safety value at which an area has been determined to have a one in ten probability of exceeding the NAAQS. The LMP Option memo provides two methods to review monitoring data for the purpose of determining qualification for the LMP Option. The first method is a comparison of a site's ADV with the CDV of 98 $\mu g/m^3$ for the 24 hour PM_{10} NAAQS and 40 $\mu g/m^3$ for the annual PM_{10} NAAQS. A second method that applies to the 24-hour PM_{10} NAAQS is the calculation of a site-specific CDV and a comparison of the site-specific CDV with the ADV for the past five years of monitoring data. The State's submittal provides a comparison of five-year ADVs compared to the 24-hour CDV, as described in the first method for review of monitoring data to determine qualification for the LMP Option. Alaska's analysis demonstrates that the Eagle River NAA meets the LMP design value criteria for the period 2003–2007. Using EPA-recommended methodology, Alaska calculated the average 24-hour design value for the area to be 92.3 $\mu g/m^3$, which is below the CDV of 98 $\mu g/m^3$. Alaska did not include two events that they considered to be exceptional events on March 12, 2003 and December 2, 2007.

Given that the LMP memo requires that the most recent five years of data be used to determine LMP eligibility, EPA calculated average design values using more recent data from 2007–2011. EPA found that the Eagle River area meets the LMP design value criteria for both the 24-hour ADV (95 $\mu g/m^3$ compared to the 98 $\mu g/m^3$ 24 hr ADV) and the annual ADV (17 $\mu g/m^3$ compared to the 40 $\mu g/m^3$ annual ADV) (Eagle River PM_{10} NAAQS and LMP Determination Memo, November 8, 2012). EPA's calculations did not include data from October 30, 2009, which EPA agreed was an exceedance caused by an exceptional event. EPA finds that Eagle River meets the design value criteria outlined in the LMP Option memo.

Third, the area must meet the motor vehicle regional emissions analysis test in attachment B of the LMP Option memo. Using the methodology outlined in attachment B, Alaska submitted an analysis of whether increased emissions from on-road mobile sources would increase PM_{10} concentrations in the Eagle River NAA to levels that would threaten the assumption of maintenance that underlies the LMP policy. Based on monitoring data for the period 2003–2007, Alaska has determined that the Eagle River NAA passes the motor vehicle regional emissions analysis test. EPA has reviewed the calculations in Appendix A of the State's submittal and concurs with this conclusion.

As described above, the Eagle River NAA meets the qualification criteria set forth in the LMP Option memo and therefore qualifies for the LMP Option. The LMP Option memo also indicates that once a state selects the LMP Option and it is in effect, the state will be expected to determine, on an annual basis, that the LMP criteria are still being met. If the state determines that the LMP criteria are not being met, it should take action to reduce PM_{10} concentrations enough to requalify for the LMP Option. One possible approach the state could take is to implement contingency provisions. The State's submittal included a description of contingency provisions which are discussed in Section V. I. EPA believes the contingency provisions submitted by Alaska meet the requirements of CAA section 175A as outlined in the LMP Option memo.

As a result of the above analysis, EPA is approving the LMP for the Eagle River area and the State's request to redesignate the Eagle River NAA to attainment for PM_{10}.

G. Does the State have an approved attainment emissions inventory which can be used to demonstrate attainment of the NAAQS?

Pursuant to the LMP Option memo, the state's approved attainment plan should include an emissions inventory which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP Option. The state should review its inventory every three years to ensure emissions growth is incorporated in the inventory if necessary.

Alaska's submittal includes an emissions inventory for the year 2007. After reviewing the 2007 emissions inventory and determining that it is current, accurate and complete, as well as reviewing monitoring data for the years 2003–2007, EPA has determined that the 2007 emissions inventory is representative of the attainment year inventory because the NAAQS was not violated during 2007. In addition, the year 2007 is representative of the level of emissions during the time period used to calculate the average design value because 2007 is one of the years during the five-year period used to calculate the design value (2003–2007). The submittal meets EPA guidance, as described above, for purposes of an attainment emissions inventory.

H. Does the LMP include an assurance of continued operation of an appropriate EPA-approved air quality monitoring network, in accordance with 40 CFR part 58?

PM_{10} monitoring was established in the Eagle River area in 1985. ADEC currently maintains a PM_{10} monitoring network which includes the Parkgate Site within the Eagle River area. This monitoring network was developed and has been maintained in accordance with Federal siting and design criteria in 40 CFR part 58 and in consultation with Region 10. EPA most recently approved Alaska's air monitoring plan on October 25, 2012 (Alaska Air Monitoring Plan Approval Letter, dated October 25, 2012). In the September 29, 2010 submittal, Alaska states that it will continue to monitor for PM_{10} in the Eagle River NAA through the end of the maintenance planning period (2020).

I. Does the plan meet the Clean Air Act requirements for contingency provisions?

CAA Section 175A states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the LMP Option memo and Calcagni memo, these contingency provisions are considered to be an enforceable part of the SIP. The plan should clearly identify the provisions to be adopted, a schedule and procedures for adoption and implementation, and a specific time limit for action by the state. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency provision, the contingency provision that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the provision. The LMP Option memo and Calcagni memo state that EPA will review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation.

ADEC has included maintenance plan contingency provisions to ensure the area continues to meet the PM_{10} NAAQS. Specifically, the submittal includes a list of potential contingency measures based on the primary sources of PM_{10} identified in the emission inventory. These include traffic-related paved road dust, wind-blown dust from roadways, parking lots and cleared areas, and fireplaces and woodstoves. Traffic-related road dust and wind-blown dust contingency provisions include application of chemical dust palliatives based on a successful field study in 2008 during their spring break-up period, and the potential use of road sweeping. Another provision primarily directed at wind-blown dust would require that traction sand materials meet specifications which would reduce the amount of re-entrained dust. Fireplace and woodstove provisions would include curtailment scenarios if economics or meteorology increased the amount of PM_{10} emissions generated by residential wood combustion.

The contingency provisions submitted by ADEC will be formally assessed by MOA within 30 days following the violation of the PM_{10} NAAQS. Within 120 days a report, will be prepared and ultimately approved by ADEC. The report will assess existing controls and provide a recommendation with respect to the contingency provisions or alternatives. Actions will occur at the discretion of the Municipal Mayor and Assembly. Some measures may require changes to the local ordinances. The contingency provisions identify potential control measures and provide a specific schedule for review, recommendation, adoption and implementation. EPA believes the contingency provisions are adequate to meet CAA Section 175A requirements and the LMP Option memo.

J. Has the State met conformity requirements?

(1) Transportation Conformity

Under the LMP Option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP Option are not subject to the budget test, the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state must document and ensure that:

(a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

(b) Transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108;

(c) The MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

(d) Conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

(e) The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

(f) Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

(g) Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

In the 2012 adequacy finding for the Eagle River, Alaska Particulate Matter (PM_{10}) Limited Maintenance Plan, EPA determined that the Eagle River area met the criteria to be exempted from regional emissions analysis for PM_{10} (77 FR 25164,[2] April 27, 2012). However, project level conformity requirements would continue to apply to the area. With EPA's approval of the LMP, the area continues to be exempt from performing a regional emissions analysis, but must meet project-level conformity analyses as well as the transportation conformity criteria mentioned above.

(2) General Conformity

For Federal actions required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new

[2] This adequacy finding for Eagle River AK incorrectly references a submission of date of September 20, 2011. The correct submission date was September 29, 2010.

violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP'' (40 CFR 93.158(a)(5)(i)(A)).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the state and local air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Alaska has not chosen to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

V. Final Action

EPA is taking direct final action to approve the LMP submitted by the State of Alaska for the Eagle River NAA and concurrently redesignate the area to attainment for the PM_{10} NAAQS. EPA has reviewed air quality data for the area and determined that the Eagle River NAA attained the PM_{10} NAAQS by the required attainment date, and that air monitoring data continue to show attainment.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 8, 2013 without further notice unless the Agency receives adverse comments by February 6, 2013.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 8, 2013 and no further action will be taken on the proposed rule.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: December 17, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart C—Alaska

■ 2. Section 52.73 is amended by adding paragraph (e)(1) to read as follows:

§ 52.73 Approval of plans.

* * * * *

(e) * * *

(1) *Eagle River.* (i) EPA approves as a revision to the Alaska State Implementation Plan, the Eagle River PM–10 Limited Maintenance Plan (Volume II Sections III.D.2 of the State Air Quality Control Plan adopted August 20, 2010, effective October 29, 2010, and Volume III Sections III.D.2.2 of the Appendices adopted August 20, 2010, effective October 29, 2010) submitted by the Alaska Department of Environmental Conservation on September 29, 2010.

(ii) [Reserved]

* * * * *

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.302, the table entitled ''Alaska—PM–10'' is amended by revising the entry for ''Anchorage, Community of Eagle River'' to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	*	*	*
Anchorage				
Community of Eagle River	March 8, 2013	Attainment.		
* *	*	*	*	*

* * * * *

[FR Doc. 2012–31431 Filed 1–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–XC427

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the Atlantic migratory group southern zone to 1,500 lb (680 kg), round weight, per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

DATES: Effective 6 a.m., local time, January 6, 2013, until 12:01 a.m., local time, March 1, 2013, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 18 to the FMP (76 FR 82058, December 29, 2011) implemented a commercial annual catch limit (equal to the commercial quota) of 3.13 million lb (1.42 million kg) for the Atlantic migratory group of Spanish mackerel. Atlantic migratory group Spanish mackerel are divided into a northern and southern zone for management purposes. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, Florida, boundary.

For the southern zone, seasonally variable trip limits are based on an adjusted commercial quota of 2.88 million lb (1.31 million kg). The adjusted commercial quota is calculated to allow continued harvest in the southern zone at a set rate for the remainder of the current fishing year, February 28, 2013, in accordance with 50 CFR 622.44(b)(2). Beginning December 1, annually, the trip limit is unlimited on weekdays and limited to 1,500 lb (680 kg) of Spanish mackerel per day on weekends. After 75 percent of the adjusted commercial quota of Atlantic migratory group Spanish mackerel is taken until 100 percent of the adjusted commercial quota is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a permitted vessel in amounts exceeding 1,500 lb (680 kg) per day.

NMFS has determined that 75 percent of the adjusted commercial quota for Atlantic group Spanish mackerel has been taken. Accordingly, the 1,500 lb (680 kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, January 6, 2013, until 12:01 a.m., local time, March 1, 2013, unless changed by subsequent notification in the **Federal Register**.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Atlantic migratory group Spanish mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the Atlantic migratory group Spanish mackerel resource because the capacity of the commercial fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: January 2, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–58 Filed 1–2–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 4
Monday, January 7, 2013

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AD85

Further Proposed Guidance Regarding Compliance With Certain Swap Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Further Proposed Guidance.

SUMMARY: On July 12, 2012, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published for public comment, pursuant to section 4(c) of the Commodity Exchange Act (''CEA''), a proposed order (''Proposed Order'') that would grant market participants temporary conditional relief from certain provisions of the CEA, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''Dodd-Frank''), and the Commission also published its proposed interpretive guidance and policy statement (''Proposed Guidance'') regarding the cross-border application of the swap provisions of the CEA as added by Title VII of the Dodd-Frank Act. The Commission is proposing further guidance on certain specific aspects of the Proposed Guidance (''Further Proposed Guidance''). The Commission has separately determined to finalize the Proposed Order.

DATES: Comments on the Further Proposed Guidance must be received on or before February 6, 2013.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD85, by any of the following methods:

- *Agency Web Site: http://www.cftc.gov.*
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedure established in CFTC regulation 145.9 (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Carlene S. Kim, Deputy General Counsel, (202) 418–5613, *ckim@cftc.gov,* Terry Arbit, Deputy General Counsel, (202) 418–5357, *tarbit@cftc.gov,* Mark Fajfar, Assistant General Counsel, (202) 418–6636, *mfajfar@cftc.gov,* Office of General Counsel; Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, (202) 418–5977, *gbarnett@cftc.gov;* Jacqueline H. Mesa, Director, Office of International Affairs, (202) 418–5386, *jmesa@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act,[1] which amended the CEA [2] to establish a new regulatory framework for swaps. The legislation was enacted to reduce systemic 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'') and major swap participants (''MSPs''); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real-time public reporting; and (4) enhancing the Commission's rulemaking and enforcement authorities over all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight. Section 722(d) of the Dodd-Frank Act also amended the CEA to add section 2(i), which provides that the swap provisions of the CEA apply to cross-border activities when certain conditions are met, namely, when such activities have a ''direct and significant connection with activities in, or effect on, commerce of the United States'' or when they contravene Commission rulemaking.[3]

In the two years since its enactment, the Commission has finalized 41 rules to implement Title VII of the Dodd-Frank Act. The finalized rules include those promulgated under CEA section 4s,[4] which address registration of SDs and MSPs and other substantive requirements applicable to SDs and MSPs. Notably, many section 4s requirements applicable to SDs and MSPs are tied to the date on which a person is required to register, unless a later compliance date is specified.[5] A number of other rules specifically

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[2] 7 U.S.C. 1 *et seq.* (amended 2010).

[3] 7 U.S.C. 2(i).

[4] 7 U.S.C. 6s.

[5] Examples of section 4s implementing rules that become effective for SDs and MSPs at the time of their registration include requirements relating to swap data reporting (Commission regulation 23.204) and conflicts of interest (Commission regulation 23.605 (c)–(d)). The chief compliance officer requirement (Commission regulations 3.1 and 3.3) is an example of those rules that have specific compliance dates. The compliance dates are summarized on the Compliance Dates page of the Commission's Web site. (*http://www.cftc.gov/LawRegulation/DoddFrankAct/ComplianceDates/index.htm*).

applicable to SDs and MSPs have been proposed but not finalized.[6]

Further, the Commission published for public comment the Proposed Guidance,[7] which set forth the manner in which it proposed to interpret section 2(i) of the CEA as it applies to the requirements under the Dodd-Frank Act and the Commission's regulations promulgated thereunder regarding cross-border swap activities. Specifically, in the Proposed Guidance, the Commission described the general manner in which it proposed to consider: (1) Whether a non-U.S. person's swap dealing activities are sufficient to require registration as a ''swap dealer'',[8] as further defined in a joint release adopted by the Commission and the Securities and Exchange Commission (''SEC'') (collectively, the ''Commissions''); [9] (2) whether a non-U.S. person's swap positions are sufficient to require registration as a ''major swap participant,'' [10] as further defined in the Final Entities Rules; and (3) the treatment of foreign branches, agencies, affiliates, and subsidiaries of U.S. SDs and of U.S. branches of non-U.S. SDs. The Proposed Guidance also generally described the policy and procedural framework under which the Commission may permit compliance with a comparable regulatory requirement of a foreign jurisdiction to substitute for compliance with the requirements of the CEA. Last, the Proposed Guidance set forth the manner in which the Commission proposed to interpret section 2(i) of the CEA as it applies to the clearing, trading, and certain reporting requirements under the Dodd-Frank Act with respect to swaps between counterparties that are not SDs or MSPs.

Contemporaneously with the Proposed Guidance, the Commission published the Proposed Order pursuant to section 4(c) of the CEA,[11] in order to foster an orderly transition to the new swaps regulatory regime and to provide market participants greater certainty regarding their obligations with respect to cross-border swap activities during the pendency of the Proposed Order. The Proposed Order would grant temporary relief from certain swap provisions of Title VII of the Dodd-Frank Act.

The public comment periods on the Proposed Order and the Proposed Guidance ended on August 13, 2012 and August 27, 2012, respectively. The Commission received approximately 26 letters on the Proposed Order and approximately 288 letters on the Proposed Guidance from a variety of market participants and other interested parties, including major U.S. and non-U.S. banks and financial institutions that conduct global swaps business, trade associations, clearing organizations, law firms (representing international banks and dealers), individual citizens, and foreign regulators.[12] The Commission staff also held numerous meetings and discussions with various market participants, domestic bank regulators, and other interested parties to discuss the Proposed Order and the Proposed Guidance.[13]

Further, the Commission staff closely consulted with the staff of the SEC in an effort to increase understanding of each other's regulatory approaches and to harmonize the cross-border approaches of the two agencies to the greatest extent possible, consistent with their respective statutory mandates.[14] The Commission expects that this consultative process will continue as each agency works towards implementing its respective cross-border policy.

The Commission also recognizes the critical role of international cooperation and coordination in the regulation of derivatives in the highly interconnected global market, where risks are transmitted across national borders and market participants operate in multiple jurisdictions. Close cooperative relationships and coordination with other jurisdictions take on even greater importance given that, prior to the recent reforms, the swaps market has largely operated without regulatory oversight and many jurisdictions are in differing stages of implementing their regulatory reform. To this end, the Commission staff has actively engaged in discussions with their foreign counterparts in an effort to better understand and develop a more harmonized cross-border regulatory framework. The Commission expects that these discussions will continue as it finalizes the cross-border interpretive guidance and as other jurisdictions develop their own regulatory requirements for derivatives.[15]

The Commission has determined not to take further action on the Proposed Guidance at this time. The Commission believes it will be beneficial to have further consultations with other domestic and international regulators in an effort to harmonize cross-border regulatory approaches prior to taking action with respect to the Proposed Guidance. The Commission also believes that further consideration of public comments, including the comments that may be received on the Further Proposed Guidance regarding the Commission's interpretation of the term ''U.S. person,'' and its guidance regarding aggregation for purposes of SD registration, will be helpful to the Commission in issuing final interpretive guidance.

Nonetheless, the Commission has separately determined to finalize the Proposed Order as a final, time-limited exemptive order (''Final Order'') that is substantially similar to the Proposed Order, except for the addition of provisions regarding registration and certain modifications and clarifications

[6] These include rules under CEA section 4s(e), 7 U.S.C. 6s(e) (governing capital and margin requirements for SDs and MSPs).

[7] ''Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act,'' 77 FR 41214, Jul. 12, 2012.

[8] 7 U.S.C. 1a(49).

[9] *See* ''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 (''Final Entities Rules'').

[10] 7 U.S.C. 1a(33).

[11] ''Exemptive Order Regarding Compliance With Certain Swap Regulations,'' 77 FR 41110 Jul. 12, 2012.

[12] Some of the commenters submitted a single comment letter addressing both the Proposed Order and the Proposed Guidance. The comment letters submitted in response to the Proposed Order and Proposed Guidance may be found on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1234.*

Approximately 200 individuals submitted substantially identical letters to the effect that oversight of the $700 trillion global derivatives market is the key to meaningful reform. The letters stated that because the market is inherently global, risks can be transferred around the world with the touch of a button. Further, according to these letters, loopholes in the Proposed Guidance could allow foreign affiliates of Wall Street banks to escape regulation. Lastly, the letters requested that the Proposed Guidance be strengthened to ensure that the Dodd-Frank derivatives protections will directly apply to the full global activities of all important participants in the U.S. derivatives markets.

[13] The records of these meetings and communications can be found on the Commission's Web site at: *http://cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm.*

[14] In addition to differences in the applicable statutory provisions, there are also differences in the markets and products overseen by each agency, which may lead to divergent approaches to cross-border activities.

[15] This is one aspect of the Commission's on-going bilateral and multilateral efforts to promote international coordination of regulatory reform. The Commission staff is engaged in consultations with Europe, Japan, Hong Kong, Singapore, Switzerland, Canada, Australia, Brazil, and Mexico on derivatives reform. In addition, the Commission staff is participating in several standard-setting initiatives, co-chairs the IOSCO Task Force on OTC Derivatives, and has created an informal working group of derivatives regulators to discuss implementation of derivatives reform. *See also* Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-border OTC Derivatives Market, included in CFTC Press Release 6439–12, Dec. 4, 2012.

addressing public comments.[16] Under the Final Order, a non-U.S. person that registers as an SD or MSP may delay compliance with certain entity-level requirements of the CEA (and Commission regulations promulgated thereunder), and non-U.S. SDs and MSPs and foreign branches of U.S. SDs and MSPs may delay compliance with certain transaction-level requirements of the CEA (and Commission regulations promulgated thereunder), subject to specified conditions. Recently, the Commission staff granted time-limited, no-action relief to promote continuity in the application of Dodd-Frank requirements and facilitate the transition to those requirements by enabling swap market participants to apply a uniform and readily ascertainable standard regarding which swaps must be included in the calculations under the SD and MSP definitions.[17] The Final Order continues that process and furthers the same purposes.[18]

This release sets forth the Further Proposed Guidance.

II. Further Proposed Guidance

The Commission continues to review and consider the comments received on the Proposed Guidance, and to discuss these issues with domestic and foreign regulators. In this process, the Commission is considering several approaches that may further the purposes of the Proposed Guidance, which include enabling swap market participants to apply a uniform and readily ascertainable standard regarding which swaps must be included in the calculations under the SD and MSP definitions. In order to facilitate the Commission's further consideration of these issues, the Commission seeks comment on the following proposed interpretations.

A. Aggregation of Affiliates' Swaps for Purposes of the De Minimis Test

Commission regulation 1.3(ggg)(4) requires that a person include, in determining whether its swap dealing activities exceed the de minimis threshold, the aggregate notional value of swap dealing transactions entered by its affiliates under common control.[19] Under the Proposed Guidance, a non-U.S. person, in determining whether its swap dealing transactions exceed the de minimis threshold, would include the aggregate notional value of swap dealing transactions entered into by its non-U.S. affiliates under common control but would not include the aggregate notional value of swap dealing transactions entered into by its U.S. affiliates.[20] The Final Order provides that a non-U.S. person is not required to include, in its determination of whether it exceeds the de minimis threshold, the swap dealing transactions of any of its U.S. affiliates, and a non-U.S. person that is an affiliate of a person that is registered as an SD is not required to include in such determination the swap dealing transactions of any of its non-U.S. affiliates that engage in swap dealing activities, so long as such excluded affiliates are either (1) engaged in swap dealing activities with U.S. persons as of the effective date of the Final Order or (2) registered as an SD.[21]

The Commission also is proposing an alternative interpretation of the aggregation requirement in Commission regulation 1.3(ggg)(4). Under this alternative, a non-U.S. person would be required, in determining whether its swap dealing transactions exceed the de minimis threshold, to include the aggregate notional value of swap dealing transactions entered into by all its affiliates under common control (i.e., both non-U.S. affiliates and U.S. affiliates), but would not be required to include in such determination the aggregate notional value of swap dealing transactions of any non-U.S. affiliate under common control that is registered as an SD.[22]

Under the aggregation rule stated in Commission regulation 1.3(ggg)(4), any affiliate of a person that is registered as an SD will also have to register if it engages in any swap dealing transactions, even if the aggregate amount of such swap dealing transactions among all the unregistered affiliates is below the de minimis threshold. Based on comments received, the Commission understands that the application of this requirement to non-U.S. affiliates of non-U.S. SDs may, in certain circumstances, impose significant burdens on such non-U.S. affiliates without advancing significant regulatory interests of the Commission. Because the conduct of swap dealing business through locally-organized affiliates may in some cases be required in order to comply with legal requirements or business practices in foreign jurisdictions, such non-U.S. affiliates may be numerous and it would be impractical to require all such non-U.S. affiliates to register as SDs. Further, the Commission's interest in registration may be reduced for a non-U.S. affiliate of a registered non-U.S. SD where the non-U.S. affiliate (or group of such affiliates) engages in only a small amount of swap dealing activity with U.S. persons.

On the other hand, the Commission has also considered that given the borderless nature of swap dealing activities, an SD may conduct swap dealing activities through various affiliates in different jurisdictions, which suggests that its interpretation should take into account the applicable swap dealing transactions entered by all of a non-U.S. person's affiliates under common control worldwide. Otherwise, affiliated persons may not be required to register solely because their swap dealing activities are divided, such that each affiliate falls below the de minimis level. The Commission is concerned that permitting such affiliates whose swap dealing activities individually fall below the de minimis level, but whose swap dealing activities in the aggregate exceed the de minimis level, to avoid registration as SDs would provide an incentive for firms to spread their swap dealing activities among several unregistered affiliates rather than centralize their swap dealing in

[16] *See* ''Final Exemptive Order Regarding Compliance with Certain Swap Regulations,'' Dec. 21, 2012.

[17] *See* CFTC Division of Swap Dealer and Intermediary Oversight, Re: Time-Limited No-Action Relief: Swaps Only With Certain Persons to be Included in Calculation of Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception and Calculation of Whether a Person is a Major Swap Participant, No-Action Letter No. 12–22, Oct. 12, 2012 (''CFTC Letter No. 12–22'').

[18] The Commission intends that the Final Order is in addition to any no-action relief issued or to be issued by the Commission staff. Unless specifically provided in any letter providing no-action relief, the Final Order does not limit the availability of any no-action relief.

[19] 17 CFR 1.3(ggg)(4).

[20] Proposed Guidance, 77 FR at 41218–41220. Further, where the potential non-U.S. SD's swap obligations are guaranteed by a U.S. person, the non-U.S. person would be required to register with the Commission as an SD when the aggregate notional value of its swap dealing activities (along with the swap dealing activities of its non-U.S. affiliates that are under common control and also guaranteed by a U.S. person) with U.S. persons and non-U.S. persons exceeds the de minimis threshold. Additionally, the Proposed Guidance clarified that a non-U.S. person without a guarantee from a U.S. person would not be required to register as an SD if it does not engage in swap dealing with U.S. persons as part of ''a regular business'' with U.S. persons, even if the non-U.S. person engages in dealing with non-U.S. persons.

[21] *See* Final Order paragraph (3). For this purpose, the Commission construes ''affiliates'' to include persons under common control as stated in the Final Entities Rules with respect to the term ''swap dealer,'' which defines control as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.'' *See* Final Entities Rules, 77 FR at 30631, fn. 437.

[22] Also, under this alternative, a non-U.S. person would not be required to include the aggregate notional value of swap dealing transactions of any of its non-U.S. affiliates under common control where the counterparty to such affiliate is also a non-U.S. person.

registered firms. Such a result would increase systemic risks to U.S. market participants and impede the Commission's ability to protect U.S. markets.

The Commission requests comment on all aspects of this proposed alternative approach. In particular, should this interpretation apply to non-U.S. persons that are guaranteed by a U.S. person with respect to their swap obligations in the same way that it applies to non-U.S. persons that are not so guaranteed? If so, should the Commission continue to construe the term ''guarantee'' for this purpose to mean any collateral promise by a guarantor to answer for the debt or obligation of an obligor under a swap? [23] Should the term ''guarantee'' include arrangements such as keepwells and liquidity puts?

Would it be appropriate that non-U.S. persons are not required to include in the de minimis calculation the swap dealing transactions of their U.S. affiliates under common control? Alternatively, should non-U.S. persons be permitted to exclude from the de minimis calculation the swap dealing transactions of their U.S. affiliates under common control that are registered as SDs?

To the extent that the Commission adopts a final interpretation that does not require a person to include the swap dealing activities of one or more of its affiliates under common control in its determination of whether its swap dealing activity exceeds the de minimis threshold, the Commission is interested in commenters' views as to whether a person engaged in swap dealing activities could take advantage of such an interpretation to spread its swap dealing activities into multiple affiliates, each under the de minimis threshold, and therefore avoid the registration requirement, even though its aggregate level of swap dealing by the affiliates exceeds the de minimis threshold. Accordingly, if the Commission were to adopt such an interpretation with respect to aggregation, should the Commission include any conditions or limits in any such interpretation on the overall amount of swap dealing engaged in by unregistered persons within an affiliated group?

B. Definition of ''U.S. Person''

As noted above, in the Proposed Guidance the term ''U.S. person'' would be defined by reference to the extent to which swap activities or transactions involving one or more such persons have the relevant connection with activities in, or effect on, U.S. commerce.[24] That is, the term ''U.S. person'' identifies those persons whose swap activities—either individually or in the aggregate—satisfy the jurisdictional nexus under section 2(i) of the CEA.

The Commission is proposing alternatives for two ''prongs'' of the proposed definition of the term ''U.S. person'' in the Proposed Guidance: Prong (ii)(B), which relates to U.S. owners that are responsible for the liabilities of a non-U.S. entity; and prong (iv), which relates to commodity pools and funds with majority-U.S. ownership.

The Commission's proposed alternative version of prong (ii)(B) would limit its scope to a legal entity that is directly or indirectly majority-owned by one or more natural persons or legal entities that meet prong (i) or (ii) of the definition of the term ''U.S. person'' in the Final Order, in which such U.S. person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity. This alternative prong (ii)(B) would not include an entity that is a limited liability company or limited liability partnership where partners have limited liability. Further, the majority-ownership criterion would avoid capturing those legal entities that have negligible U.S. ownership interests. Unlimited liability corporations where U.S. persons have majority ownership and where such U.S. persons have unlimited liability for the obligations and liabilities of the entity would be covered under this alternative to prong (ii)(B).[25]

The alternative prong (ii)(B) would be as follows:

> (ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is either (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States or (B) directly or indirectly majority-owned by one or more persons described in prong (i) or (ii)(A) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity (other than a limited liability company or limited liability partnership where partners have limited liability);

This alternative proposed prong would treat an entity as a U.S. person if one or more of its U.S. majority owners has unlimited responsibility for losses of, or nonperformance by, the entity. This would reflect that when the structure of an entity is such that the U.S. direct or indirect owners are ultimately liable for the entity's obligations and liabilities, the connection to activities in, or effect on, U.S. commerce satisfies the requisite jurisdictional nexus. This ''look-through'' requirement also would serve to prevent persons from creating such indirect ownership structures for the purpose of evading the Dodd-Frank regulatory regime. However, this alternative proposed prong would not cover a legal entity organized or domiciled in a foreign jurisdiction simply because the entity's swap obligations are guaranteed by a U.S. person.

The Commission requests comment on all aspects of this alternative prong (ii)(B).

With respect to prong (iv) of the definition of the term ''U.S. person'' in the Proposed Guidance, which relates to majority direct- or indirect-owned commodity pools, pooled accounts, or collective investment vehicles, the Commission is proposing an alternative under which any commodity pool, pooled account, investment fund or other collective investment vehicle would be deemed a U.S. person if it is

[23] *See* ''Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,'' 77 FR 48207, 48225 fn. 185, Aug. 13, 2012.

[24] *See* Proposed Guidance, 77 FR at 41218. Specifically, as set forth in the Proposed Guidance, the definition of the term ''U.S. person'' would include, but not be limited to:

(i) Any natural person who is a resident of the United States;

(ii) Any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is either (A) organized or incorporated under the laws of the United States or having its principal place of business in the United States (legal entity) or (B) in which the direct or indirect owners thereof are responsible for the liabilities of such entity and one or more of such owners is a U.S. person;

(iii) Any individual account (discretionary or not) where the beneficial owner is a U.S. person;

(iv) Any commodity pool, pooled account or collective investment vehicle (whether or not it is organized or incorporated in the United States) of which a majority ownership is held, directly or indirectly, by a U.S. person(s);

(v) Any commodity pool, pooled account or collective investment vehicle the operator of which would be required to register as a commodity pool operator under the CEA;

(vi) A pension plan for the employees, officers or principals of a legal entity with its principal place of business inside the United States; and

(vii) An estate or trust, the income of which is subject to U.S. income tax regardless of source.

[25] Unlimited liability corporations include, solely by way of example, entities such as an unlimited company formed in the U.K. (*see* Brian Stewart, Doing Business in the United Kingdom § 18.02[2][c]) or an unlimited liability company formed under the law of Alberta, British Columbia or Nova Scotia (*see* Richard E. Johnston, Doing Business in Canada § 15.04[5]).

(directly or indirectly) majority-owned by one or more natural persons or legal entities that meet prong (i) or (ii) of the definition of the term ''U.S. person'' in the Final Order. For purposes of this alternative prong (iv), majority-owned would mean the beneficial ownership of 50 percent or more of the equity or voting interests in the collective investment vehicle. The alternative prong (iv) would include a minor modification to clarify that it applies regardless of whether the collective investment vehicle is organized or incorporated in the United States. Similar to the alternative prong (ii)(B) discussed above, the collective investment vehicle's place of organization or incorporation would not be determinative of its status as a U.S. person.

The alternative prong (iv) would clarify that a pool, fund, or other collective investment vehicle that is publicly traded will be deemed a U.S. person only if it is offered, directly or indirectly, to U.S. persons. This would address concerns expressed by commenters that ownership verification is particularly difficult for pools, funds, and other collective investment vehicles that are publicly traded.[26]

The alternative prong (iv) would be as follows:

(iv) A commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (ii) and that is directly or indirectly majority-owned by one or more persons described in prong (i) or (ii), except any commodity pool, pooled account, investment fund, or other collective investment vehicle that is publicly-traded but not offered, directly or indirectly, to U.S. persons.

This alternative proposed prong (iv) is intended to capture collective investment vehicles that are created for the purpose of pooling assets from U.S. investors and channeling these assets to trade or invest in line with the objectives of the U.S. investors, regardless of the place of the vehicle's organization or incorporation. These collective investment vehicles may serve as a means to achieve the investment objectives of their beneficial owners, rather than being separate, active operating businesses. As such, the beneficial owners would be directly exposed to the risks created by the swaps that their collective investment vehicles enter into. The Commission requests comment on all aspects of this alternative prong (iv).

[26] *See* Letter from Security Industry and Financial Markets Association (Aug. 27, 2012) at A–20.

Issued in Washington, DC, on December 21, 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Appendices to Further Proposed Guidance Regarding Compliance With Certain Swap Regulations—Commission Voting Summary

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia and Wetjen voted in the affirmative; Commissioner Sommers voted in the negative.

[FR Doc. 2012–31734 Filed 1–4–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–148873–09]

RIN 1545–BJ16

IRS Truncated Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that create a new taxpayer identifying number known as an IRS truncated taxpayer identification number, a TTIN. As an alternative to using a social security number (SSN), IRS individual taxpayer identification number (ITIN), or IRS adoption taxpayer identification number (ATIN), the filer of certain information returns may use a TTIN on the corresponding payee statements to identify the individual being furnished a statement. The TTIN displays only the last four digits of an individual's identifying number and is shown in the format XXX–XX–1234 or ***–**–1234. These proposed regulations affect filers of certain information returns who will be permitted to identify an individual payee by use of a TTIN on the payee statement furnished to the individual, and those individuals who receive payee statements containing a TTIN.

DATES: Written or electronic comments must be received by February 21, 2013. Outlines of topics to be discussed at the public hearing scheduled for March 12, 2013 must be received by February 20, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148873–09), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–148873–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–148873–09). The public hearing will be held in the Internal Revenue Service Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Tammie A. Geier, (202) 622–3620; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Procedure and Administration Regulations (26 CFR Part 301). These amendments implement the pilot program announced in Notice 2009–93 (2009–51 IRB 863), extended and modified in Notice 2011–38 (2011–20 IRB 785), which together authorized filers of certain information returns to truncate an individual payee's nine-digit identifying number on specified paper payee statements furnished for calendar years 2009 through 2012. See § 601.601(d)(2).

The pilot program was implemented in response to concerns about the risk of identity theft stemming from the inclusion of a taxpayer identifying number on a payee statement. In particular, the risks of misappropriation and subsequent misuse of that number were reported to be greatest with respect to paper payee statements.

I. Information Reporting

Information returns are returns, statements, forms, or other documents that must be filed with the IRS to report transactions (for example, payments, distributions, or transfers) with another person in a calendar year. Section 6724(d)(1); Treas. Reg. § 301.6721–1(g)(1). Persons required to file information returns with the IRS are

filers. Treas. Reg. § 301.6721–1(g)(6). Generally, filers must furnish a statement to the person on the other side of the transaction—the payee—containing the information shown on the information return filed with the IRS. See Treas. Reg. § 301.6721–1(g)(5) (defining ''payee'' for purposes of sections 6721 and 6722). The payee may be the recipient of a payment (as referred to on Copy B of Form 1099–MISC, ''Miscellaneous Income''), a plan participant receiving distributions (as referred to on Copy B of Form 1099–R, ''Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.''), a transferor selling or exchanging real estate (as referred to on Copy B of Form 1099–S, ''Proceeds from Real Estate Transactions''), a payer/borrower making interest payments (as referred to on Copy B of Form 1098, ''Mortgage Interest Statement''), a debtor whose debt was discharged, canceled or forgiven (as referred to on Copy B of Form 1099–C, ''Cancellation of Debt''), or a student receiving scholarships, grants or qualified tuition (as referred to on Copy B of Form 1098–T, ''Tuition Statement''). The statement furnished to the payee is referred to as a payee statement. Section 6724(d)(2); Treas. Reg. § 301.6722–1(d)(2). In certain circumstances, persons required to file information returns may file substitute forms with the IRS and furnish substitute form statements to payees rather than use the official IRS forms. Rev. Proc. 2011–60. See § 601.601(d)(2).

II. Taxpayer Identifying Numbers

Section 6011(a) requires, in part, that every person required to make a return or statement shall include therein the information required by forms or regulations. Regulations, forms, or instructions to forms may require that the filer of an information return include the identifying number of the payee on the corresponding payee statement.

Section 6109(a) authorizes the Secretary to prescribe regulations with respect to the inclusion in returns, statements, or other documents of an identifying number as may be prescribed for securing proper identification of a person. A taxpayer identifying number is also referred to as a TIN, which section 7701(a)(41) defines as the identifying number assigned to a person under section 6109.

Section 6109(a)(3) generally provides that any person required to make a return, statement, or other document with respect to another person shall request from the other person, and shall include in the return, statement, or other document, the identifying number as may be prescribed for securing proper identification of the other person. Thus, for information reporting purposes, a filer of an information return must request a TIN from the payee and include the TIN on the information return.

Flush language in section 6109(a) states that the identifying number of an individual (or the individual's estate) is the individual's social security account number. Section 6109(d) provides that, except as otherwise specified under regulations, the social security account number issued to an individual under the Social Security Act is the identifying number for individuals for purposes of the Code. Regulations provide that the principal types of taxpayer identifying numbers are SSNs, ITINs, ATINs, and employee identification number (EINs). Treas. Reg. § 301.6109–1(a)(1)(i). SSNs, ITINs, and ATINs are used to identify individuals. Treas. Reg. § 301.6109–1(a)(1)(ii). An EIN is used to identify an individual or other person (whether or not an employer). Treas. Reg. § 301.7701–12.

Summary of Comments

Comments received in response to the Notices, and other feedback from the payor community, reflect that filers' participation in the pilot was positive. Some filers, however, noted a few limitations that prevented participation. Several commentators suggested expanding the pilot program by recommending that truncation be authorized on a greater number of payee statements, that truncation be permitted on electronically furnished payee statements, and that filers be permitted to truncate an individual payee's EIN in addition to the other types of taxpayer identifying numbers (SSNs, ITINs, and ATINs) included in the pilot program. A permanent voluntary program was encouraged, rather than a mandatory program. Other commentators suggested that taxpayers could be adversely affected by the truncation of their identifying numbers on payee statements due to the inability to identify errors in the first five masked digits. Also, some state tax authorities stated that the truncation of taxpayer identifying numbers on Federal payee statements that are attached to state income tax returns might hamper state income tax processing. Treasury and the IRS gave serious consideration to the state government concerns, but concluded that truncation is unlikely to hamper state income tax return processing significantly because the vast majority of payee statements attached to state returns are Forms W–2, which are not subject to the truncation program, and because payee information is available to the states through data sharing programs with the Federal government.

All comments were considered in developing the regulations that, as proposed, create a permanent truncation program. The proposed regulations expand the scope of the pilot program so that filers are permitted to furnish payee statements by electronic means. With regard to including a greater number of payee statements, the pilot program and, therefore, the proposed regulations are limited in scope by statute. For example, section 6051(a)(2) requires that the written statement furnished to employees (Form W–2, ''Wage and Tax Statement'') show the name of the employee ''and his social security account number.'' Accordingly, these proposed regulations do not expand the number of payee statements included beyond those included in the pilot program.

Some commentators reported that the inability to truncate a payee's EIN on a payee statement resulted in their inability to participate in the pilot program. As described in the comments, some filers could not differentiate the type of identifying number assigned to a payee and/or could not differentiate numbers belonging to individuals. As explained in the comments, the affected filers, because of software limitations, could either truncate all payee identifying numbers, including EINs (whether assigned to an individual or a corporation, for example), or none at all. The IRS believes the misuse of EINs is less frequently an element of identity theft. As these regulations are proposed in response to the risk of identity theft stemming from the inclusion of an individual's taxpayer identifying number on a payee statement, these proposed regulations do not permit truncation for numbers that may be assigned to taxpayers other than individuals. The IRS seeks further comments regarding the number of filers who are unable to differentiate EINs from payee identifying numbers belonging to individuals and the feasibility of making software changes to address this issue.

Some commentators explained that their systems could not readily accommodate truncation (as exemplified above with respect to EINs) and that filers of information returns have varying volume and procedures. Accordingly, participation in the truncation program proposed by the regulations is voluntary.

Explanation of Provisions

These proposed regulations create and allow filers of certain information returns to use an IRS truncated taxpayer identification number, a TTIN, to identify individuals on the payee statements corresponding to those information returns. The proposed regulations provide that the TTIN may be used in lieu of a payee's SSN, ATIN, or ITIN, but use of a TTIN is not mandatory. A TTIN may be used only on a payee statement and may be used on payee statements furnished by paper or electronic means. A filer may not use a TTIN on an information return filed with the IRS. A filer may not truncate its own identifying number on information returns or payee statements. A filer may not truncate a payee's EIN under the proposed regulations.

The payee statements on which TTINs may be included are the same statements included in the current pilot program in Notice 2011–38. The current pilot program includes all statements in the Forms 1099, 1098, and 5498 series, with the exception of Form 1098–C, Contributions of Motor Vehicles, Boats, and Airplanes, because that form is not a payee statement but an ''acknowledgement.'' Any subsequent changes to the list will appear in published guidance.

These proposed regulations also amend certain existing regulations under sections 6042, 6043, 6044, 6045, 6049, 6050A, 6050E, 6050N, 6050P, and 6050S to specifically authorize the use of TTINs on payee statements furnished under those sections. Those regulations set forth requirements for payee statements that could be read as inconsistent with the use of TTINs to identify payees, in some cases requiring that the payee be furnished a copy of the information return filed with the IRS. Other information reporting regulations that do not contain provisions contradictory to the use of TTINs are not being updated in these proposed regulations.

Many of the regulations governing the furnishing of payee statements do not provide for the use of substitute statements. These regulations are not being revised to address substitute statements at this time. For information regarding substitute statements, see Rev. Proc. 2011–60 (2011–52 IRB 934) (or its successor), republished as Publication 1179, ''General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.'' Rev. Proc. 2011–60 also contains rules for electronic delivery of payee statements. Provisions relating to the use of TTINs in electronically furnished payee statements, if any, will be included in successor revenue procedures to Rev. Proc. 2011–60. See § 601.601(d)(2).

Proposed Effective and Applicability Dates

These regulations are proposed to take effect when published in the **Federal Register** as final regulations. The rules in these proposed regulations may be relied upon by the affected filers before the publication of the Treasury decision.

Effect on Other Documents

The following publication will be obsolete as of the date this notice of proposed rulemaking is published as final regulations in the **Federal Register**:

Notice 2011–38, 2011–20 IRB 785.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. The Treasury Department and the IRS specifically request comments on issues encountered by filers and payees alike, whether filers should be permitted to truncate a payee's EIN and, if so, why and whether truncation should be permitted on additional types of payee statements. The Treasury Department and the IRS further request that filers provide details as to whether the exclusion of EINs from these regulations prevents them from using TTINs at all. All comments submitted by the public will be made available for public inspection and copying.

A public hearing has been scheduled for February 21, 2013 beginning at 10:00 a.m., in the Internal Revenue Service Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 21, 2013 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 20, 2013. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Tammie A. Geier of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6042–4 is amended by revising paragraph (b) to read as follows:

§ 1.6042–4 Statements to recipients of dividend payments.

* * * * *

(b) *Form and content of the statement.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement that contains provisions that are substantially similar to those of the official Form 1099 for the respective calendar year. For further guidance on how to prepare an acceptable substitute statement, see Rev. Proc. 2011–60 (or its successor) republished as Publication 1179, ''General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.'' See § 601.601(d)(2) of this chapter. An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual recipient. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 3.** Section 1.6043–4 is amended by adding two new sentences to the end of paragraph (b)(4) to read as follows:

§ 1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.

* * * * *

(b) * * *

(4) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual shareholder in lieu of the identifying number appearing on the Form 1099–CAP filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 4.** Section 1.6044–5 is amended by adding two new sentences to the end of paragraph (b) to read as follows:

§ 1.6044–5 Statements to recipients of patronage dividends.

* * * * *

(b) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual recipient in lieu of the identifying number appearing on the corresponding information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 5.** Section 1.6045–2 is amended by adding two new sentences to the end of paragraph (c) to read as follows:

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(c) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual customer in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 6.** Section 1.6045–3 is amended by adding two new sentences to the end of paragraph (e)(1) to read as follows:

§ 1.6045–3 Information reporting for an acquisition of control or a substantial change in capital structure.

* * * * *

(e) * * *

(1) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual customer. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 7.** Section 1.6045–4 is amended by revising paragraph (m)(1) to read as follows:

§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1,1991.

* * * * *

(m) * * *

(1)(i) *Requirement of furnishing statements.* A reporting person who is required to make a return of information under paragraph (a) of this section shall furnish to the transferor whose TIN is required to be shown on the return a written statement of the information required to be shown on such return. The written statement must bear either the legend shown on the recipient copy of Form 1099 or the following: This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

(ii) This requirement may be satisfied by furnishing to the transferor a copy of a completed Form 1099 (or substitute Form 1099 that complies with current revenue procedures). An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual transferor in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

(iii) In the case of a real estate transaction for which a Uniform Settlement Statement is used, this requirement also may be satisfied by furnishing to the transferor a copy of a completed statement that is modified to comply with the requirements of this paragraph (m), and by designating on the Uniform Settlement Statement the items of information (such as gross proceeds or allocated gross proceeds) required to be set forth on the Form 1099. For purposes of this paragraph (m), a statement shall be considered furnished to a transferor if it is given to the transferor in person, either at the closing or thereafter, or is mailed to the transferor at the transferor's last known address.

* * * * *

■ **Par. 8.** Section 1.6045–5 is amended by adding two sentences before the last sentence of paragraph (a)(3)(i) to read as follows:

§ 1.6045–5 Information reporting on payments to attorneys.

(a) * * *

(3) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual attorney in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations). * * *

* * * * *

■ **Par. 9.** Section 1.6049–6 is amended by adding paragraph (b)(3) to read as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(b) * * *

(3) With respect to both statements to persons receiving payments of interest and persons holding obligations, the statement shall include the name, address, and taxpayer identifying number of such person. An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying

number for an individual person. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 10.** Section 1.6050A–1 is amended by adding two sentences to the end of paragraph (c)(1) to read as follows:

§ 1.6050A–1 Reporting requirements of certain fishing boat operators.

* * * * *

(c) * * *

(1) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for the individual in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 11.** Section 1.6050E–1 is amended by adding two sentences to the end of paragraph (k)(1) to read as follows:

§ 1.6050E–1 Reporting of State and local income tax refunds.

* * * * *

(k) * * *

(1) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for the individual in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 12.** Section 1.6050N–1 is amended by adding two sentences to the end of paragraph (b) to read as follows:

§ 1.6050N–1 Statements to recipients of royalties paid after December 31, 1986.

* * * * *

(b) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual recipient. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

■ **Par. 13.** Section 1.6050P–1 is amended by:

■ a. Removing ''section;'' from paragraph (f)(1)(i) and adding ''section.'' in its place; and

■ b. Adding two sentences to the end of paragraph (f)(1)(i) to read as follows:

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(f) * * *

(1) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the TIN of an individual for whom there was an identifiable event in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations);

* * * * *

■ **Par. 14.** Section 1.6050S–1 is amended by:

■ a. Removing ''section;'' from paragraph (c)(1)(i) and adding ''section.'' in its place; and

■ b. Adding two sentences to the end of paragraph (c)(1)(i) to read as follows:

§ 1.6050S–1 Information reporting for qualified tuition and related expenses.

* * * * *

(c) * * *

(1) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the TIN for the individual in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations);

* * * * *

■ **Par. 15.** Section 1.6050S–3 is amended by:

■ a. Removing ''section;'' from paragraph (d)(1)(i) and adding ''section.'' in its place; and

b. Adding two sentences to the end of paragraph (d)(1)(i) to read as follows:

§ 1.6050S–3 Information reporting for payments of interest on qualified education loans.

* * * * *

(d) * * *

(1) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the TIN for the individual payor in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 16.** The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 17.** Section 301.6109–4 is added to read as follows:

§ 301.6109–4 IRS truncated taxpayer identification numbers.

(a) *In general*—(1) *Definition.* An IRS truncated taxpayer identification number (TTIN) is an individual's social security number (SSN), IRS individual taxpayer identification number (ITIN), or IRS adoption taxpayer identification number (ATIN) that is truncated by replacing the first five digits of the nine-digit number with Xs or asterisks. The TTIN is shown in the format XXX–XX–1234 or ***–**–1234.

(2) *Use of a TTIN.* (i) A TTIN may be used by a filer of certain information returns to identify an individual on the corresponding payee statement furnished to the individual, as authorized by regulations, forms or form instructions, or other guidance published by the Internal Revenue Service. A TTIN may not be used on payee statements corresponding to the Form W–2 series, the Form 1098–C (Contributions of Motor Vehicles, Boats, and Airplanes), or where identification of a taxpayer by an SSN, ITIN, or ATIN is mandated by statute.

(ii) A TTIN cannot be used by a filer on any information return filed with the Internal Revenue Service.

(iii) A TTIN may only be used for identifying individuals assigned SSNs, ITINs, or ATINs.

(iv) A filer may not truncate its own taxpayer identifying number on any document.

(v) Use of a TTIN is permissive and not mandatory.

(b) *Definitions*—(1) *Filer.* A *filer* means a person who is required to report a transaction to the Internal Revenue Service on an information return.

(2) *Information return.* An *information return* means the returns, statements, forms, or other documents that businesses must file with the Internal Revenue Service to report transactions with other persons.

(3) *Payee statement.* A *payee statement* means the copy of the information set forth on an information return filed with the IRS that is furnished to the individual payee, recipient, participant, transferor, payer/borrower, debtor, or student, depending upon the specific reporting requirements.

(c) *Effective/applicability date.* This section applies after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The rules in these proposed regulations may be relied upon by the affected filers prior to the publication of final regulations.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–31745 Filed 1–2–13; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0903: FRL–9768–5]

Approval and Promulgation of Implementation Plans; Oregon: Open Burning and Enforcement Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Oregon's State Implementation Plan submitted to the EPA by the Oregon Department of Environmental Quality on February 16, 2001, July 14, 2005, August 28, 2006, and May 20, 2008. The February 16, 2001 submittal relates to open burning rules. The July 2005, August 2006, and May 2008 submittals relate to enforcement procedures, civil penalties, and procedures in contested cases (appeals).

DATES: Written comments must be received on or before February 6, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2008–0903, by any of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Justin A. Spenillo, EPA, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.
- *Email: R10-Public_Comments@epa.gov.*
- *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Justin A. Spenillo, Office of Air, Waste, and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2008–0903. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553–6125, *spenillo.justin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' are used, it is intended to refer to the EPA.

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I. This Action

Title I of the Clean Air Act (CAA), as amended by Congress in 1990, specifies the general requirements for states to submit State Implementation Plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) and EPA's actions regarding approval of those SIPs. In this action, the EPA is proposing to approve and incorporate by reference revisions to Oregon's open burning rules submitted by the Oregon Department of Environmental Quality (ODEQ) on February 16, 2001. Oregon's open burning rules are currently codified at Oregon Administrative Rules (OAR) Chapter 340, Division 264.

The EPA is also proposing to approve but not incorporate by reference (with certain exceptions explained below) the enforcement provisions in Chapter 340, Division 12 submitted by ODEQ on July 14, 2005 and August 28, 2006.

We are also proposing to approve but not incorporate by reference revisions related to procedures in contested cases (that is, appeals from ODEQ actions) found at OAR Chapter 340, Division 11. These revisions were submitted by ODEQ on May 20, 2008.

Each of the above described submittals (the February 16, 2001, July 14, 2005, August 28, 2006, and May 20, 2008 submittals) contains an amendment to OAR 340–200–0040, which describes the State's procedures for adopting its Clean Air Act Implementation Plan and references all of the state air regulations that have been adopted by the Environmental Quality Commission for approval into the SIP (as a matter of state law), whether or not they have yet been submitted to or approved by the EPA. We are proposing no action on the revisions to OAR 340–200–0040 in each of ODEQ's SIP submittals because it is unnecessary to take action on a provision addressing State SIP adoption procedures and because the federally-approved SIP consists only of

regulations and other requirements that have been submitted by ODEQ and approved by EPA.

Finally, the EPA is proposing to take no action on the expedited enforcement process set forth in OAR 340–150–0250 included in ODEQ's July 14, 2005 submittal because this section applies to underground storage tank regulations and does not relate to attainment or maintenance of the NAAQS or other requirements of section 110 of the CAA.

II. Why are we proposing to approve these revisions?

We are proposing to approve the SIP revisions submitted by ODEQ on February 16, 2001; July 14, 2005; August 28, 2006; and May 20, 2008, subject to the exceptions discussed in more detail below, because they serve to clarify and strengthen Oregon's existing SIP and are consistent with CAA requirements. A more detailed explanation of the basis for our approval is provided below and in the materials included in the docket.

A. EPA's Review of OAR Chapter 340, Division 264 Open Burning Rules (February 16, 2001 Submittal)

The federally-approved open burning rules previously codified at OAR Chapter 340, Division 23, have been recodified at OAR Chapter 340, Division 264. In addition to the recodification, ODEQ's February 16, 2001 submittal includes revisions to ODEQ's federally-approved open burning rules that fall into several categories: changes related to growth, additional requirements, delegation, alterations to exemptions, and clarifications. The first category of revisions updates the list of open burning control areas to reflect population growth since the SIP was last revised. For example, commercial burning is now prohibited except by permit in Madras, Tillamook, and Warranton, and adjoining areas within three miles of these cities' limits (all located in Lincoln County). See OAR 340–264–0100 (previously at OAR 340–023–055). In general, this category of revisions imposes more stringent requirements on additional geographic areas, and thus makes the open burning requirements more stringent.

A second category consists of revisions that impose additional requirements in all geographic areas and thus make the open burning regulations overall more stringent. For example, OAR 340–264–0050(2) (previously at OAR 340–023–0040) now requires that a person responsible for a fire not only constantly attend the open burning, but also be capable of and have the necessary equipment for extinguishing the fire and completely extinguish the fire before leaving it. As another example, OAR 340–264–0060(8) (previously at OAR 340–023–0040) requires that most open burning debris be burned on site unless a letter permit is issued.

OAR 340–264–0010 and -0075 are new provisions that allow ODEQ to delegate authority to issue and enforce open burning permits to a city, county, fire protection district, forest protection district or other state agency that ODEQ determines is capable of effectively administering the permit program and authorizes ODEQ to withdraw any such delegation upon a finding that the entity is not effectively administering the program. Given the narrow scope of the delegation to local agencies, that the delegated authority will continue to be carried out under the SIP-approved open burning regulations, and that ODEQ has the ultimate responsibility under this provision, EPA believes these provisions do not affect the stringency of ODEQ's open burning regulations and are consistent with the requirements of the CAA. See CAA 110(a)(2)(E).

Another category of revisions to ODEQ's open burning rules exempts open burning that is subject to restrictions under the current SIP. OAR 340–264–0040 (previously at OAR 340–023–0035) adds three narrow activities to the list of activities exempt from ODEQ's open burning rules: fires set for disposal of dry tumbleweed; agricultural burning for disease or pest control when authorized in writing by the Department of Agriculture; and open burning of animal carcasses by the Department of Agriculture because of an animal disease emergency. That regulation also expands the exemption for slash burning on forest land conducted under Oregon's Smoke Management program to lands within one-eighth of a mile of forest land. Given the very narrow scope of these changes and the other revisions that make ODEQ's open burning rules more stringent than the open burning rules currently approved in the SIP, EPA believes these revisions will not interfere with attainment or maintenance of the NAAQS or other requirements of the CAA.

The remaining revisions clarify existing requirements. For example, revisions to OAR 340–264–0050 (previously at OAR 340–023–0040) clarify that persons responsible for open burning activities are also strictly liable for violations of the rules and clarify ODEQ's authority to extinguish existing fires. As another example, revisions to OAR 340–264–0040(3) (previously at OAR 340–023–035(3)) clarify that open burning fires otherwise exempt from the open burning rules are still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshall.

One set of clarifications to ODEQ's rules requires further discussion. Based on statutory clarifications to ODEQ's authority to regulate agricultural open burning in 1999, ODEQ has revised its open burning rules to make clear that it does not have authority to regulate agricultural open burning except for its explicit statutory and regulatory authority to regulate field burning in the Willamette Valley as provided in ORS 468A.555 to –620 and OAR Division 340, Chapter 266. The open burning rules currently in the SIP do have provisions that purport to make agricultural open burning in some areas outside of the Willamette Valley subject to the general statewide requirements and prohibitions for open burning. See, e.g., OAR 340–023–022, –040, –042, –055, –060, –065, –070, –075, –080, –085, –090. The underlying statutory authority approved into the SIP, however, has for many years exempted all agricultural operations and the growing or harvesting of crops from regulation—except for field burning in the Willamette Valley regulated under ORS 468A.555 to 468A.620. See 56 FR 30006 (July 30, 1991); 60 FR 37013 (July 19, 1995). On December 27, 2011, EPA approved revisions to Oregon's SIP which include statutory and regulatory changes narrowing the exemption for agricultural operations (76 FR 80747). These changes, however, narrow the agricultural operations exemption only to the extent necessary to meet the requirements of the CAA. Because there is no express requirement to regulate agricultural open burning in the CAA and no information showing that the lack of regulation of agricultural open burning in Oregon is interfering with attainment or maintenance of the NAAQS, the most recent SIP revisions to the agricultural operations exemption do not have a bearing on whether the regulation of agricultural open burning has ever been or currently is subject to regulation by ODEQ. EPA therefore concludes that agricultural open burning (except for field burning in the Willamette Valley) has not previously been subject to regulation by ODEQ under the SIP and, therefore, Oregon's revision of its open burning rules to make this clear (and EPA's approval of those revisions) does not affect the stringency of the SIP-approved open burning rules.

Based on EPA's review and analysis of OAR Chapter 340, Division 264, EPA is proposing to approve this revision to Oregon's SIP as meeting the requirements of section 110 of the Clean

Air Act. In addition, EPA proposes to remove from the SIP the regulations previously codified at OAR Chapter 340, Division 023 because they have been recodified and no longer exist at the location previously approved in the SIP.

B. EPA's Review of Division 12 Rules (July 14, 2005 and August 28, 2006 Submittals)

ODEQ has submitted two SIP revisions to OAR 340, Division 12, one on July 14, 2005 and one on August 28, 2006. Division 12 contains enforcement procedures and civil penalty provisions that apply across all programs implemented by ODEQ, including the air quality regulations that EPA has approved into the SIP. Division 12 provides the authority and procedures under which ODEQ notifies regulated entities of violations, determines the appropriate penalties for violations, and assesses penalties for such violations. The revisions to Division 12 made by ODEQ in 2005 and 2006 clarify the differences between formal and informal enforcement processes, make adjustments to the penalty matrices, and streamline and reorganize the rules to more closely track ODEQ's enforcement and penalty calculation process.

EPA has reviewed the revisions to Division 12 and finds that they continue to provide ODEQ with adequate authority for enforcing the SIP as required by Section 110 of the CAA and 40 CFR 50.230(b). Importantly, OAR 340–012–0160(3) gives ODEQ the discretion to deviate from the penalty matrices and assess penalties of up to $10,000 per day, per violation based on the facts and circumstances of the individual case. EPA is therefore proposing to approve into the SIP the revisions to Division 12 submitted by ODEQ, subject to the qualifications and in the manner discussed below.

First, where ODEQ submitted a regulation in Division 12 as part of its July 14, 2005 submittal and that regulation was subsequently revised and submitted as part of ODEQ's August 28, 2006 submittal, EPA is proposing to approve the version of the regulation submitted as part of the August 28, 2006 submittal. The docket contains a chart showing the version of the regulations in Division 12 we are approving.

Second, EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of Section 110 of the CAA. Therefore, EPA is not approving the following regulations in Division 12 that do not relate to air emissions: OAR–340–012–0055, –0060, –0065, –0066, –0067, –0068, –0071, –0072, –0074, –0079, –0081, –0083, –0097. In addition, EPA is approving the remaining sections in Chapter 340, Division 12 only to the extent they relate to enforcement of requirements contained in the Oregon SIP.

Finally, although EPA is approving the rules in Division 12 in the manner discussed above, EPA is not incorporating these rules by reference into the Code of Federal Regulations because EPA relies on its independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

In approving these SIP revisions, EPA also notes that ORS 468.126 prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's Title V program or to any other program if the application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because the application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

C. EPA's Review of Division 11 Rules (May 20, 2008 Submittal)

Oregon's May 20, 2008 submittal revises OAR Chapter 340, Division 11, which addresses procedures in contested cases (appeals of ODEQ actions). These rule revisions were adopted by Oregon on October 17, 2007 and became effective on March 20, 2008. The rules were revised to improve the clarity and completeness of contested case appeals coming before the Environmental Quality Commission.

Division 11 provides authority needed for implementing the SIP and is consistent with the Clean Air Act requirements for the issuance of permits and enforcement authority. It is not appropriate to incorporate these rules by reference into the Code of Federal Regulations, however, because EPA relies on its own administrative and enforcement procedures in enforcing the Clean Air Act.

D. EPA's Review of OAR 340–200–0040 (February 16, 2001, July 14, 2005, August 28, 2006, and May 20, 2008 Submittals)

On February 16, 2001, July 14, 2005, August 28, 2006 and May 20, 2008, Oregon submitted revisions to OAR 340–200–0040. EPA is proposing no action on these revisions because it is unnecessary to take action on provisions addressing State SIP adoption procedures and incorporating by reference all of the revisions adopted by the Environmental Quality Commission for approval into the Oregon SIP (as a matter of state law).

E. EPA's Review of OAR 340–150–0250 (July 14, 2005 Submittal)

ODEQ's July 14, 2005 SIP submittal included OAR 340–150–0250. We are taking no action on this submittal because this section applies to underground storage tank regulations and does not relate to attainment or maintenance of the NAAQS or other requirements of section 110 of the CAA.

III. Summary of Action

EPA is proposing to approve revisions to OAR, Chapter 340, Divisions 11, 12, and 264 because they are consistent with Clean Air Act requirements. We are also proposing to take no action on revisions to OAR, Chapter 340, Division 200–0040 submitted on February 16, 2001, July 14, 2005, August 28, 2006, and May 20, 2008 and OAR, Chapter, Division 150–0250 submitted on July 14, 2005 for the reasons discussed in Section II.

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative Rules within ''Indian Country'' as defined in 18 U.S.C. 1151. Therefore, this proposed SIP approval does not extend to ''Indian Country'' in Oregon.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting, and recordkeeping requirements.

Dated: December 27, 2012.

Kate Kelly,

Acting Regional Administrator, Region 10.

[FR Doc. 2013–00056 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0587; FRL–9733–1]

Revisions to the California State Implementation Plan, San Diego APCD, Northern Sierra AQMD, and Sacramento Metropolitan AQMD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego Air Pollution Control District (SDAPCD), Northern Sierra Air Quality Management District (NSAQMD), and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from transfer of gasoline at gasoline dispensing facilities. We are proposing to approve four local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by February 6, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0587, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: NSAQMD Rule 214 Phase I Vapor Recovery Requirements, SDAPCD Rule 61.4 Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks, SMAQMD Rule 448 Gasoline Transfer into Stationary Storage Containers, and SMAQMD Rule 449 Transfer of Gasoline into Vehicle Fuel Tanks. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 5, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–31634 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0960; FRL–9766–5]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California Implementation Plan (SIP). These revisions concern local rules that regulate inhalable particulate matter (PM_{10}) emissions from sources of fugitive dust such as unpaved roads and disturbed soils in open and agricultural areas in Imperial County. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by February 6, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0960, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB)

TABLE 1—SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted	Submitted
ICAPCD	800	General Requirements for Control of Fine Particulate Matter (PM_{10}).	10/16/12	11/07/12
ICAPCD	804	Open Areas	10/16/12	11/07/12
ICAPCD	805	Paved and Unpaved Roads	10/16/12	11/07/12
ICAPCD	806	Conservation Management Practices (CMPs)	10/16/12	11/07/12

On November 21, 2012, EPA determined that the submittal for ICPACD Rules 800, 804, 805 and 806 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We finalized a limited approval and limited disapproval of an earlier version of the submitted rules on July 8, 2010 (75 FR 39366). That action incorporated Rules 800, 804, 805 and 806 into the California SIP, including those provisions identified as deficient.

C. What is the purpose of the submitted rule revisions?

PM_{10} contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM_{10} emissions. ICAPCD's Regulation VIII consists of seven interrelated rules designed to limit emissions of PM_{10} from anthropogenic fugitive dust sources in Imperial County.

Rule 800, General Requirements for Control of Fine Particulate Matter, provides definitions, a compliance schedule, exemptions and other requirements generally applicable to all seven rules. It requires the U.S. Bureau of Land Management (BLM), U.S. Border Patrol (BP) and DPR to submit dust control plans (DCP) to mitigate fugitive dust from areas and/or activities under their control. Appendices A and B describe methods for determining compliance with opacity and surface stabilization requirements in Rules 801 through 806.

Rule 801, Construction and Earthmoving Activities, establishes a

20% opacity limit and control requirements for construction and earthmoving activities. Affected sources must submit a DCP and comply with other portions of Regulation VIII regarding bulk materials, carry-out and track-out, and paved and unpaved roads. The rule exempts single family homes and waives the 20% opacity limit in winds over 25 mph under certain conditions.

Rule 802, Bulk Materials, establishes a 20% opacity limit and other requirements to control dust from bulk material handling, storage, transport and hauling.

Rule 803, Carry-Out and Track-Out, establishes requirements to prevent and clean-up mud and dirt transported onto paved roads from unpaved roads and areas.

Rule 804, Open Areas, establishes a 20% opacity limit and requires land owners to prevent vehicular trespass and stabilize disturbed soil on open areas larger than 0.5 acres in urban areas, and larger than three acres in rural areas. Agricultural operations are exempted.

Rule 805, Paved and Unpaved Roads, establishes a 20% opacity limit and control requirements for unpaved haul and access roads, canal roads and traffic areas that meet certain size or traffic thresholds. It also prohibits construction of new unpaved roads in certain circumstances. Single family residences and agricultural operations are exempted.

Rule 806, Conservation Management Practices, requires agricultural operation sites greater than 40 acres to implement at least one conservation management practice (CMP) for each of several activities that often generate dust at agricultural operations. In addition, agricultural operation sites must prepare a CMP plan describing how they comply with Rule 806, and must make the CMP plan available to the ICAPCD upon request.

EPA approved versions of all of these rules on July 8, 2010, but required revisions only to Rules 800, 804, 805 and 806. As a result, ICAPCD did not revise or resubmit Rules 801, 802 or 803.

ICAPCD Rules 800, 804, 805 and 806 were revised primarily to:

- Clarify and strengthen requirements for recreational off-highway vehicle (OHV) activity;
- Demonstrate BACM;
- Clarify the definition of disturbed surface area and conservation management practice (CMP);
- Verify responsibility for stabilizing public unpaved roads in the county by the Imperial County Department of Public Works;
- Include opacity limits and stabilization requirements for high-traffic unpaved agricultural roads and traffic areas;
- Add CMP requirements for cropland-others, windblown dust control and agricultural tilling and harvesting; and
- Remove the exemption for border patrol roads.

EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM_{10} nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM_{10} nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The ICAPCD regulates a PM_{10} nonattainment area classified as serious (see 40 CFR part 81), so Rules 800, 804, 805 and 806 must implement BACM.

Guidance and policy documents that we use to evaluate enforceability and BACM requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).
5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.
6. ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP relaxations. The revised rules adequately address all deficiencies identified in our July 8, 2010 (75 FR 39366) final limited disapproval of a previous version of these rules. Rules 801, 802, and 803 were approved in the July 8, 2010 rulemaking as meeting BACM requirements and are not affected by this action. The TSD has more information on our evaluation.

C. Reasonable Control for Exceptional Events

EPA's preliminary view is that the Regulation VIII rules as revised in October 2012 constitute reasonable control of the sources covered by Regulation VIII for the purpose of evaluating whether an exceedance of the PM_{10} NAAQS is an exceptional event pursuant to the exceptional events rule, including reasonable and appropriate control measures on significant contributing anthropogenic sources. This statement does not extend to exceedances of NAAQS other than the PM_{10} NAAQS, or to events that differ significantly in terms of meteorology, sources, or conditions from the events that were at issue in EPA's July 2010 final action and associated litigation. EPA is not making any determinations at this time with respect to any specific PM_{10} exceedances.

D. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules but are not currently the basis for rule disapproval.

E. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP. If finalized as proposed, this action would permanently terminate all sanctions and FIP implications associated with the July 8, 2010 final action.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 17, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–31729 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket No. EPA–R10–OAR–2010–0914; FRL–9764–6]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Eagle River PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Limited Maintenance Plan (LMP) submitted by the State of Alaska on September 29, 2010, for the Eagle River nonattainment area (Eagle River NAA) and the State's request to redesignate the area to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). EPA is proposing to approve the State's request because it meets Clean Air Act (CAA) requirements for redesignation. EPA has also published, at the same time, a direct final rule of the same title because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. Any parties interested in commenting on this action should do so at this time. If EPA receives adverse comments, EPA will withdraw the direct final rule and will then address all public comments in a subsequent final rule based on this proposed rule.

DATES: Comments must be received on or before February 6, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0914, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Justin A. Spenillo, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Justin A. Spenillo, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0914. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy

during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553–6125, *spenillo.justin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 17, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–31433 Filed 1–4–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2008–0476; FRL– 9767–9]

Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards: Notice of Actions Denying Petitions for Reconsideration and Stay Requests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of actions denying petitions for reconsideration and stay requests.

SUMMARY: The EPA is providing notice that it has responded to petitions for reconsideration of rules published in the **Federal Register** on May 21, 2012, and June 11, 2012, that together promulgated the initial air quality designations for the 2008 ozone national ambient air quality standards for all areas in the United States. The rules are titled, ''Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards,'' and ''Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards for Several Counties in Illinois, Indiana, and Wisconsin; Corrections to Inadvertent Errors in Prior Designations.'' Subsequent to publishing the rules, during the time period from June through October 2012, the EPA received numerous petitions requesting that the EPA reconsider its designation decisions for certain areas. The EPA carefully considered the petitions and supporting information, along with information contained in the rulemaking docket, in reaching decisions on the petitions. The EPA denied all the petitions for reconsideration in separate letters to the petitioners dated December 14, 2012. The letters explain the EPA's reasons for the denials. Four petitioners also requested that the EPA stay the effectiveness of the designation rule as it applies for a particular area, pending reconsideration. Because the EPA denied the reconsideration requests, the EPA also denied the stay requests.

FOR FURTHER INFORMATION CONTACT: Carla Oldham, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, N.C. 27711, phone number (919) 541–3347 or by email at: *oldham.carla@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Where can I get copies of this document and other related information?

This **Federal Register** notice, the petitions for reconsideration, and the response letters to the petitioners are available in the docket that the EPA established for the rulemakings to promulgate the air quality designations for the 2008 ozone standards under Docket ID NO. EPA–HQ–OAR–2008–0476. The table below identifies the Petitioners, the dates the EPA received the Petitions, the document identification number of the Petitions, the date of the EPA's responses, and the document identification number for the EPA's responses.

Petitioners	Dates of petitions to the EPA	Petition: Document No. in docket	Date of the EPA response	The EPA response: Document No. in docket
Atlanta, GA Nonattainment Area				
Georgia Environmental Protection Division.	July 20, 2012	0695	December 14, 2012	0726
Charlotte, NC-SC Nonattainment Area				
South Carolina Department of Health and Environmental Control.	July 20, 2012	0698	December 14, 2012	0727
US Senators Graham and DeMint and US Congressman Mulvaney from SC.	July 19, 2012	0699	December 14, 2012	0722
York County, SC	July 24, 2012	0700	December 14, 2012	0721
Knoxville, TN Nonattainment Area				
Anderson, Blount, and Knox Counties, TN.	July 20, 2012 and October 16, 2012.	0696	December 14, 2012	0717

Petitioners	Dates of petitions to the EPA	Petition: Document No. in docket	Date of the EPA response	The EPA response: Document No. in docket
Memphis, TN-MS-AR Nonattainment Area				
DeSoto County, MS	July 17, 2012	0697	December 14, 2012	0723
Shelby County, TN	July 20, 2012 and September 18, 2012.	0702	December 14, 2012	0718
State of Mississippi	July 17, 2012	0701	December 14, 2012	0756
State of Tennessee	July 19, 2012	0703	December 14, 2012	0719
Chicago-Naperville, IL-IN-WI Nonattainment Area				
Indiana Department of Environmental Management.	August 10, 2012	0724	December 14, 2012	0728
Dallas-Fort Worth, TX Nonattainment Area				
Bridgeport Area Chamber of Commerce, TX.	July 17, 2012	0730	December 14, 2012	0742
Chico City Council, TX	July 18, 2012	0706	December 14, 2012	0732
City of Bridgeport, TX	July 20, 2012	0735	December 14, 2012	0745
City of Boyd, TX	August 7, 2012	0707	December 14, 2012	0731
City of Runaway Bay, TX	July 17, 2012	0708	December 14, 2012	0746
Corporation for Economic Development for the City of Bridgeport.	July 17, 2012	0754	December 14, 2012	0743
Devon Energy Corporation	July 20, 2012 and October 30, 2012.	0714	December 14, 2012	0736
Gas Processors Association and Texas Pipeline Association.	July 20, 2012 and October 30, 2012.	0709	December 14, 2012	0738
Look Local Wise County Task Force, TX.	July 18, 2012	0720	December 14, 2012	0747
Martin Marietta Materials	July 20, 2012	0752	December 14, 2012	0739
Mauldin Pharmacy, Inc. dba Valu-Rite Pharmacy.	July 17, 2012	0704	December 14, 2012	0737
Newark City Council, TX	July 19, 2012	0744	December 14, 2012	0750
Runaway Bay Economic Development Corporation.	July 12, 2012	0729	December 14, 2012	0733
Targa Resources Corporation	July 20, 2012	0715	December 14, 2012	0748
Texas Commission on Environmental Quality.	July 18, 2012	0713	December 14, 2012	0753
TXI Operations, LP	July 19, 2012	0710	December 14, 2012	0740
U.S. Ply	July 17, 2012	0749	December 14, 2012	0734
Wayne Smith, Texas House of Representatives.	July 12, 2012	0705	December 14, 2012	0755
Wise County, TX	June 15, 2012	0725	December 14, 2012	0741
Uinta Basin, UT Unclassifiable Area				
WildEarth Guardians, Southern Utah Wilderness Alliance and Utah Physicians for a Healthy Environment.	July 19, 2012	0711	December 14, 2012	0751
Multiple Unclassifiable/Attainment Areas				
Sierra Club	July 20, 2012	0712	December 14, 2012	0716

Note: All document numbers listed in the table are in the form of "EPA–HQ–OAR–2008–0476–xxxx."

All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the Docket, EPA/DC, EPA West, 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742.

In addition, the EPA has established a Web site for the ozone designations rulemakings at: *http://www.epa.gov/ozonedesignations.* This **Federal Register** notice, the petitions for reconsideration, and the response letters to the petitions are also available on this Web site along with other information relevant to the designation process.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' In the rules establishing air quality designations for the 2008 ozone national ambient air quality standards, the EPA determined that the actions are of nationwide scope and effect for the purposes of section 307(b)(1). (*See* 77 FR 30088; May 21, 2012 and 77 FR 34221; June 11, 2012.)

The EPA has determined that its actions denying the petitions for reconsideration also are of nationwide scope and effect because these actions directly relate to the ozone designations rulemakings that the EPA previously determined are of nationwide scope and effect. Thus, any petitions for review of the final letters denying the petitions for reconsideration must be filed in the Court of Appeals for the District of Columbia Circuit on or before March 8, 2013.

Dated: December 27, 2012.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2013–00053 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 78, No. 4

Monday, January 7, 2013

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.

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing meeting.

DATE AND TIME: Friday, January 11, 2013; 9:30 a.m. EST.

PLACE: 1331 Pennsylvania Ave NW., Suite 1150, Washington, DC 20425.

Briefing Agenda—9:30 a.m.–2:45 p.m.

This briefing is open to the public.

Topic: Sexual Assault in the Military

I. Introductory Remarks by Chairman

II. Panel I—9:30 a.m.–10:55 a.m.: Perspective of Victim and Accused Speakers' Remarks and Questions from Commissioners

III. Panel II—11:05 a.m.–12:30 p.m.: Academic Scholar Panel Speakers' Remarks and Questions from Commissioners

IV. Lunch—12:30 p.m.–1:15 p.m.

V. Panel III—1:15 p.m.–2:45 p.m.: Military Panel Speakers' Remarks and Questions from Commissioners

VI. Adjourn Briefing

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: January 1, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordinating Unit.

[FR Doc. 2013–00076 Filed 1–3–13; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC428

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's (Council) Groundfish Oversight Committee will meet jointly with the Groundfish Advisory Panel and Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meetings will be held on Thursday, January 24, 2013, at 9 a.m., and Friday, January 25, 2013, at 8:30 a.m.

ADDRESSES: The meetings will be held at the Marriott Portland at Sable Oaks, 200 Sable Oaks Drive, So. Portland, ME 04106; telephone: (207) 871–8000.

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 items of discussion in the committee's agenda are as follows:

Thursday, January 24, 2013, Beginning at 9 a.m.

The Groundfish Oversight Committee will hold a joint meeting with the Groundfish Advisory Panel (GAP) and the Recreational Advisory Panel (RAP). The Committee and Panels will receive an update from the Closed Area Technical Team (CATT) on possible modifications to groundfish fishing closed areas that will be considered in conjunction with the establishment of habitat closed areas. The modifications are being developed as part of the Omnibus Essential Fish Habitat amendment (76 **Federal Register** 35408). The CATT will provide an overview of ongoing analyses and may provide suggested closure options for the Committee to consider. The Committee, after considering the advice of the GAP and RAP, may develop closed area recommendations for the Council's consideration. Alternatively, the Committee may provide additional guidance to the CATT.

Friday, January 25, 2013, Beginning at 8:30 a.m.

The Committee will meet to develop a specifications package that will specify Acceptable Biological Catches (ABCs) and Annual Catch Limits (ACLs) for fishing year 2013. The Committee may also develop advice for an interim action designed to reduce overfishing on Gulf of Maine cod and Gulf of Maine haddock in 2013. 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 identified in this notice and any issues arising after publication of this notice 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 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 (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 2, 2013.

William Chappell,

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

[FR Doc. 2013–00061 Filed 1–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 485–065]

Georgia Power Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 485–065.

c. *Date Filed:* December 14, 2012.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Bartletts Ferry Hydroelectric Project.

f. *Location:* The existing project is located on the Chattahoochee River, along the Georgia-Alabama border, in Harris County, Georgia, and Lee and Chambers counties, Alabama. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* George A. Martin, Hydro Relicensing Project Manager, Georgia Power Company, 241 Ralph McGill Blvd., NE., BIN 10221, Atlanta, GA 30308; Telephone—(404) 506–1357; Email—*gamartin@southernco.com.*

i. *FERC Contact:* Allan Creamer, (202) 502–8365, or *allan.creamer@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The project consists of a 2,052-foot-long dam, two powerhouses, and a 5,850-acre reservoir (Bartletts Ferry Reservoir or Lake Harding) at a normal water surface elevation of 520.16 feet mean sea level (msl; or 521.0 Plant Datum).

The west side of the project, from west to east, consists of: (1) A 1,230-foot-long, 11.25-foot-high, 22-bay auxiliary labyrinth spillway; (2) a 286-foot-long, 35-foot-high, earth-fill embankment dam; (3) a 92-foot-long by 94-foot-high concrete gravity intake structure, equipped with four vertical lift steel intake gates, connected to the west powerhouse by four 15-foot diameter penstocks; (4) a powerhouse containing three vertical Francis turbines rated at 15 megawatts (MW) each and a fourth vertical Francis turbine rated at 20 MW, with a total installed capacity of 65 MW; and (5) a 634-foot-long concrete gravity spillway with nineteen 21-foot-high by 25-foot-wide radial gates, two 9-foot-high by 11-foot-wide vertical lift trash gates, and four abandoned siphons in two spillway bays.

The east side of the project, from west to east, consists of: (1) A 915-foot-long, 125-foot-high, earth-fill embankment dam; (2) a 650-foot-long intake canal leading to a 177-foot-long concrete gravity intake structure; (3) two penstocks; and (4) a powerhouse with two vertical Francis turbines rated at 54 MW each, with a total installed capacity of 108 MW.

The project is operated in a peaking mode, and is coordinated with the peaking operations at the U.S. Army Corps of Engineers' upstream West Point Dam. The project is normally operated between elevations 518.16 and 520.16 feet msl (or 519.0 and 521.0 PD), with normal daily average fluctuations of about ¾ foot. The project has an average annual generation of approximately 395,577 megawatt-hours.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis.	April 2013.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	June 2013.
Commission issues Draft EA or EIS.	December 2013.
Comments on Draft EA or EIS.	January 2014.
Modified Terms and Conditions.	March 2014.
Commission Issues Final EA or EIS.	May 2014.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00014 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. P–1892–026, P–1855–045 and P–1904–073; Project Nos. P–1889–081 and P–2485–063]

TransCanada Hydro Northeast Inc.; FirstLight Hydro Generating Company; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project Nos.:* P–1892–026, P–1855–045, P–1904–073, P–1889–081, and P–2485–063.

c. *Dated Filed:* October 31, 2012.

d. *Submitted By:* TransCanada Hydro Northeast Inc. (P–1892–026, P–1855–045, and P–1904–073); FirstLight Hydro Generating Company (P–1889–081, and P–2485–063).

e. *Names of Projects:* Wilder Project (P–1892–026), Bellows Falls Project (P–1855–045), Vernon Project (P–1904–073), Turners Falls Project (P–1889–081), Northfield Mountain Pumped Storage Project (P–2485–063).

f. *Location:* The Wilder Project is located on the Connecticut River in Orange and Windsor Counties, Vermont (VT) and Grafton County, New Hampshire (NH).

The Bellows Falls Project is located on the Connecticut River in Windham County, VT and Cheshire County, NH.

The Vernon Project is located on the Connecticut River in Windsor and Windham Counties, VT and Sullivan and Cheshire Counties, NH.

The Turners Falls Project and Northfield Mountain Pumped Storage

Project are located on the Connecticut River in Franklin County, Massachusetts (MA), Windham County, VT and Cheshire County, NH. The Turners Falls impoundment on the Connecticut River is also the lower reservoir for the Northfield Mountain Pumped Storage Project.

The Turners Falls Project is the only project that includes federal lands. Approximately 20 acres of federally-owned lands are associated with the Department of the Interior's U.S. Geological Survey (USGS) Conte Laboratory, located within the Turners Falls project boundary.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contacts:* Wilder, Bellows Falls, and Vernon Projects—John Ragonese, Relicensing Project Manager, TransCanada Hydro Northeast Inc., 4 Park Street, Suite 402, Concord, NH 03301, (603) 498–2851, or email *John_Ragonese@transcanada.com.*

Turners Falls and Northfield Mountain Pumped Storage Projects—John S. Howard, Director—FERC Hydro Compliance, FirstLight Hydro Generating Company, Northfield Mountain Station, 99 Millers Falls Road, Northfield, MA 01360, (413) 659–4489 or email *John.Howard@gdfsuezna.com.*

i. *FERC Contact:* Ken Hogan at (202) 502–8434 or email at *Kenneth.Hogan@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402, and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating TransCanada Hydro Northeast Inc., and FirstLight Hydro Generating Company as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act for their respective projects.

m. Both TransCanada Hydro Northeast Inc., and FirstLight Hydro Generating Company filed with the Commission a Pre-Application Documents (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of the PADs are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the project specific docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PADs and the Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the addresses above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents 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. 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.

All filings with the Commission must clearly identify the following on the first page as appropriate: Wilder Project No. 1892–026, Bellows Falls Project No. 1855–045, Vernon Project No. 1904–073, Turners Falls Project No. 1889–081), and/or Northfield Mountain Pumped Storage Project No. 2485–063, and bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by March 1, 2013.

p. *Scoping Process:* The Commission intends to prepare a multi-project Environmental Impact Statement (EIS) for the projects' licensing in accordance with the National Environmental Policy Act (NEPA). The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

Commission staff will hold six project specific scoping meetings in the vicinity of each project at the times and places noted below. The daytime meetings will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meetings are primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meeting types, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Wilder Project—Evening Scoping Meeting

Date & Time: Monday January 28, 2013 at 7:00 p.m.

Location: Kilton Public Library, 80 Main Street, West Lebanon, NH 03784, 603–298–8544.

For directions please visit: *http://www.leblibrary.com/getting-here.*

Wilder & Bellows Falls Projects—Joint Daytime Scoping Meeting

Date & Time: Tuesday, January 29, 2013 at 9:00 a.m.

Location: Kilton Public Library, 80 Main Street, West Lebanon, NH 03784, 603–298–8544.

For directions please visit: *http://www.leblibrary.com/getting-here.*

Bellows Falls—Evening Scoping Meeting

Date & Time: Tuesday, January 29, 2013 at 7:00 p.m.

Location: Bellows Falls Middle School, 15 School St., Bellows Falls, VT 05101.

For directions please call Bev Baldasaro at (802) 463–4366.

Vernon, Northfield Mountain, and Turners Falls Projects—Joint Daytime Scoping Meeting

Date & Time: Wednesday, January 30, 2013 at 9:00 a.m.

Location: Great Falls Discovery Center, 2 Avenue A., Turners Falls, MA 01376, (413) 863–3221.

For directions please visit: *http://www.greatfallsma.org/.*

Vernon Project—Evening Scoping Meeting

Date & Time: Wednesday, January 30, 2013 at 7:00 p.m.

Location: Marlboro College Graduate School, 28 Vernon Street, Brattleboro, VT 05301, Grad School Common Area, 1st Floor, (802) 258–9200.

For directions please visit: *http://gradschool.marlboro.edu/contact/.*

Northfield Mountain and Turners Falls Projects—Joint Scoping Evening Meeting

Date & Time: Thursday, January 31, 2013 at 6:00 p.m.

Location: Great Falls Discovery Center, 2 Avenue A., Turners Falls, MA 01376, (413) 863–3221.

For directions please visit: *http://www.greatfallsma.org/.*

In addition to the six project specific scoping meetings identified above, we will hold a public scoping meeting specifically to identify cumulatively effected resources and to help identify the incremental effect of licensing these five Connecticut River projects with other past, present and reasonably foreseeable future actions within the Connecticut River Basin. We invite all interested agencies, Indian tribes, NGOs, and individuals to attend the Cumulative Effects scoping meeting to assist us in identifying cumulatively effected resources and the associated geographic scope that should be analyzed in the EIS. The time and location of that meeting is:

Connecticut River Projects' Cumulative Effects—Daytime Scoping Meeting

Date & Time: Thursday, January 31, 2013 at 9:00 a.m.

Location: Great Falls Discovery Center, 2 Avenue A., Turners Falls, MA 01376, (413) 863–3221.

For directions please visit: *http://www.greatfallsma.org/.*

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Environmental Site Review

An environmental site review is typically held in conjunction with the Commission's NEPA scoping meetings. However, Commission staff anticipated that access to some project facilities would be limited by winter weather conditions during the early part of 2013 when scoping for these projects was scheduled. For this reason, and to provide all interested stakeholders an opportunity to view the projects' facilities, the Commission hosted the environmental site reviews in October 2012, before the onset of winter. Public notice of the environmental site reviews was issued on August 3, 2012, and published in eight newspapers from the Connecticut River projects' region. The site visits were widely attended by individuals representing, local, state, and federal government agencies, NGOs, and members of the public. At this time, the Commission does not intend to host any future environmental site reviews for these five Connecticut River projects.

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00015 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2686–074]

Duke Energy Carolinas, LLC; Notice of Application Accepted For Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2686–074.

c. *Date Filed:* June 29, 2012.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* West Fork Project.

f. *Location:* The West Fork Project is located on the West Fork of the Tuckasegee River in Jackson County, North Carolina. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis J. Whitaker, Manager, Northern Region, Duke Energy Lake Services, Duke Energy Carolinas, LLC, P.O. Box 1006,1 Charlotte, NC 28201; Phone: (704) 382–1594.

i. *FERC Contact:* Jade Alvey at (202) 502–6864, or email: *jade.alvey@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 22, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *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: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2686–074) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by article 408 of the license, Duke Energy Carolinas, LLC requests Commission approval of a proposed shoreline management plan (SMP) for the project. The SMP defines shoreline management classifications for the shorelines within the project boundary, identifies allowable uses and prohibited uses within the shoreline areas, and describes the shoreline use evaluation process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2686) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00018 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–050]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2165–050.

c. *Date Filed:* November 20, 2012.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Warrior River Project.

f. *Location:* Smith Lake, Crane Hill, Cullman County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jason Powers, Alabama Power Company, 600 18th Street North, Birmingham, AL 35203–8180, (205) 257–1000, *jpowers@southernco.com.*

i. *FERC Contact:* Jade Alvey, (202) 502–6864, *jade.alvey@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 21, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *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: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2165–050) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Alabama Power Company requests Commission approval to grant Smith RV Resort a permit to use project lands and waters within the project boundary on Smith Lake for the construction of a floating dock (2832 square feet) with 20 tie cleats placed for a total of 10 boat slips. The application also requests permission for approval of a floating day use pier (480 square feet) with 11 temporary mooring cleats. In addition, the application includes an existing dock with 10 boat slips and 20 tie cleats (2802 square feet), a day use pier (294 square feet) with 6 tie cleats, and a boat ramp. The licensee is requesting that the existing and proposed facilities be considered for approval together. The application provides specific

measurements for each structure, as well as their distance from the existing structures.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2165) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00016 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP13–25–000 and Docket No. PF 12–13–000; Docket Nos. CP13–27–000 and Docket No. PF12–12–000]

Cameron LNG, LLC; Cameron Interstate Pipeline, LLC; Notice of Applications

Take notice that on December 7, 2012, Cameron LNG, LLC (Cameron LNG), 101 Ash Street, San Diego, California 92101, filed in Docket No. CP13–25–000 an application, pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, for authorization to site, construct, and operate new liquefaction and export facilities in Cameron and Calcasieu Parishes, Louisiana (Liquefaction Project). Also take notice that on December 14, 2012, Cameron Interstate Pipeline, LLC (Cameron Interstate), 101 Ash Street, San Diego, California 92101, filed in Docket No. CP13–27–000 an application, pursuant to section 7(c) of the NGA and Parts 157 and 284 of the Commission's regulations, for authorization to construct and operate additional loop pipeline, compression and metering facilities in Beauregard, Calcasieu, and Cameron Parishes (Pipeline Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Cameron LNG requests authorization to construct three liquefaction trains with a total production capacity of 12 million metric tones per annum (MPTA) of LNG, a fourth storage tank, electrical power generation and other facilities within the site of and adjacent to its existing LNG terminal. Cameron LNG anticipates placing the first train into service in July 2017 and the last in July 2018 for a total capability to export approximately 1.7 billion cubic feet per day (Bcfd) of domestic natural gas. Cameron Interstate requests authorization to construct 21 miles of 42-inch diameter pipeline looping its existing system, a new 56,820 horsepower compressor station in Calcasieu Parish, a new pipeline interconnection and modifications to four other interconnections as well as metering facilities at the Cameron LNG terminal. The cost of the pipeline project is estimated to be approximately $286.5 million. Upon completion, the proposed pipeline facilities will allow reversal of flow north to south on Cameron Interstate's system to provide up to 2.33 Bcfd of domestic natural gas supply to Cameron LNG's liquefaction facilities. Cameron Interstate proposes to charge incremental rates for the new north to south transportation service and requests waiver of the Commission's regulations to, among other things, update its pro forma rates as the time for commencement of service to reflect actual costs and to substitute such updated rates for those provided in the application. Cameron LNG and Cameron Interstate request issuance of an order by October 1, 2013 granting the authorizations requested.

Any questions regarding either Cameron LNG's application in Docket No. CP13–25–000 or Cameron Interstate's application in Docket No. CP13–27–000 should be directed to counsel representing both companies, William D. Rapp, 101 Ash Street, San Diego, California 92101, or phone (619)699–5050, or email *wrapp@sempraglobal.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

On May 9, 2012, the Commission staff granted Cameron LNG's request to utilize the Pre-Filing Process and assigned Docket No. PF12–13 to staff activities involved with Cameron LNG's Liquefaction Project. Now, as of the filing of the application on December 7, 2012, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–25–000, as noted in the caption of this Notice.

On May 9, 2012, the Commission staff also granted Cameron Interstate's request to utilize the Pre-Filing Process and assigned Docket No. PF12–12 to staff activities involved with Cameron Interstate's related Pipeline Project. Now, as of the filing of the application on December 14, 2012, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–27–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper, using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 16, 2013.

Dated: December 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00023 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9282–034]

37 Wilton Road, Milford LLC, and 282 Route 101 LLC, PVM Commercial Center, LLC; Notice of Application For Transfer of License, and Soliciting Comments and Motions To Intervene

On December 19, 2012, 37 Wilton Road, Milford LLC, and 282 Route 101 LLC (transferors) and PVM Commercial Center, LLC (transferee) filed an application for transfer of license for the Pine Valley Project, FERC No. 9282, located on the Souhegan River in Hillsborough County, New Hampshire.

Applicants seek Commission approval to transfer the license for the Pine Valley Project from 37 Wilton Road, Milford LLC, and 282 Route 101 LLC, to PVM Commercial Center, LLC.

Applicants' Contact: For transferors: Mr. Mark Prolman, 37 Wilton Road, Milford LLC and 282 Route 101 LLC, 100 Elm Street, Nashua, NH 03060, telephone (603) 880–6655. For transferee: Mr. Marc Daigle, PVM Commercial Center, LLC, 1264 Main Street, Waltham, MA 02451, telephone (781) 899–4002.

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 date of this notice. 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–9282) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00026 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2698–059]

Duke Energy Carolinas, LLC; Notice of Application Accepted For Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2698–059.

c. *Date Filed:* June 29, 2012.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* East Fork Project.

f. *Location:* The East Fork Project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina. The project occupies 23.15 acres of the Nantahala National Forest administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a—825r.

h. *Applicant Contact:* Dennis J. Whitaker, Manager, Northern Region, Duke Energy Lake Services, Duke Energy Carolinas, LLC, P.O. Box 1006,1 Charlotte, NC 28201; Phone: (704) 382–1594.

i. *FERC Contact:* Jade Alvey at (202) 502–6864, or email: *jade.alvey@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 22, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *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: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2698–059) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by article 408 of the license, Duke Energy Carolinas, LLC requests Commission approval of a proposed shoreline management plan (SMP) for the project. The SMP defines shoreline management classifications for the shorelines within the project boundary, identifies allowable uses and prohibited uses within the shoreline areas, and describes the shoreline use evaluation process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2698) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00025 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13124–003]

Copper Valley Electric Association, Inc.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** 47897), the Office of Energy Projects has reviewed Copper Valley Electric Association, Inc.'s application for an original license to construct the Allison Creek Hydroelectric Project (FERC Project No. 13124–003). The proposed 6.5-megawatt project would be located on Allison Creek near Valdez, Alaska. The project would not occupy any federal lands.

Staff prepared a draft environmental assessment (EA) which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *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. 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.

For further information, contact Kim Nguyen by telephone at 202–502–6105, or by email at *kim.nguyen@ferc.gov.*

Dated: December 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00012 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2558–029]

Green Mountain Power Corporation; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the 21.595-megawatt (MW) Otter Creek Hydroelectric Project (Commission Project No. 2558–029) and has prepared a draft environmental assessment (draft EA). The project consists of three developments (Proctor, Beldens, and Huntington Falls) located on Otter Creek in Addison and Rutland counties, Vermont.

In the draft EA, Commission staff analyzes the potential environmental effects of relicensing the project and concludes that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact Commission Online Support at *CommissionOnlineSupport@ferc.gov;* toll-free at 1–866–208–3676; or for TTY, (202) 502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact Commission Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *www.ferc.gov/docfiling/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *www.ferc.gov/docsfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact Commission Online Support. 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. Please affix, ''Otter Creek Hydroelectric Project, P–2558–029'' to all comments.

For further information, contact Aaron Liberty at (202) 502–6862 or by email at *aaron.liberty@ferc.gov.*

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00017 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR09–22–000; PR00–16–000]

Enogex LLC; Notice of Filing

Take notice that on February 1, 2012, Enogex LLC (Enogex) filed a refund report in accordance with the unpublished Delegated Letter Order dated December 16, 2011, accepting the Stipulation and Agreement of Settlement (''Settlement'') filed by Enogex on October 4, 2011, in the above-referenced proceedings, as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, January 4, 2013.

Dated: December 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00020 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ13–5–000]

City of Riverside, California; Notice of Filing

Take notice that on December 17, 2012, City of Riverside, California

submitted its tariff filing per 35.28(e): Filing 2013 TRBAA and ETC Update to be effective 1/1/2013.

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 December 31, 2012.

Dated: December 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00013 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–18–000]

Kansas Gas Service, a Division of ONEOK, Inc.; Notice of Petition for Rate Approval

Take notice that on December 14, 2012, Kansas Gas Service, a division of ONEOK, Inc. (KGS) filed pursuant to 284.123 of the Commissions regulations to revise the rates, terms and conditions of its interstate interruptible transportation service to conform to the recently revised rates and terms of service approved by the Kansas Corporation Commission for intrastate wholesale transportation service, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, January 4, 2013.

Dated: December 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00021 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–19–000]

Cranberry Pipeline Corporation; Notice of Petition for Rate Approval

Take notice that on December 18, 2012, Cranberry Pipeline Corporation (Cranberry) filed pursuant to 284.123 of the Commissions regulations a petition for rate approval, requesting the retention of its existing rates applicable to firm and interruptible transportation, and proposed new, lower storage rates for services rendered on its system in the State of West Virginia. Cranberry is also proposing to retain its existing fuel and lost-and-unaccounted-for percentages applicable to transportation and storage services, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, January 4, 2013.

Dated: December 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00022 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–28–000]

Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on December 14, 2012, Dominion Transmission, Inc. (Dominion), 701 East Cary Street, Richmond, Virginia 23219, filed a prior notice application pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and Dominion's blanket certificate issued in Docket No. CP82–537–000, to replace 3.36 miles of existing 26-inch diameter pipeline located in Fairfield, Franklin and Muskingum counties, Ohio, and 1.57 miles of 30-inch diameter pipeline located in Beaver County, Pennsylvania, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Brad Knisley, Regulatory and Certificates Analyst, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219 or telephone (804) 771–4412 or fax (804) 771–4804 or by email *Brad.A.Knisley@dom.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: December 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00024 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7577–012]

Burton Creek Hydro Inc., Sollos Energy, LLC'

Notice of Transfer of Exemption

1. By letter filed December 19, 2012, Burton Creek Hydro Inc. informed the Commission that its exemption from licensing for the Burton Creek Hydro Project, FERC No. 7577, originally issued September 25, 1985,[1] has been transferred to Sollos Energy, LLC. The project is located on Burton Creek in Lewis County, Washington. The transfer of an exemption does not require Commission approval.

2. Sollos Energy, LLC, Mr. Samuel Perry located at 5980 SE 30th Street, Mercer Island, Washington 98040 is now the exemptee of the Burton Creek Hydro Project, FERC No. 7577.

Dated: December 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00019 Filed 1–4–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9768–4]

Notification of a Public Meeting and a Public Teleconference of the Clean Air Scientific Advisory Committee Lead Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting and a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Lead Review Panel to conduct a peer review of EPA's *Integrated Science Assessment for Lead (Third External Review Draft—November 2012)* and EPA's *Policy Assessment for the Review of the Lead National Ambient Air Quality Standards (First External Review Draft—January 2013).*

DATES: The CASAC Lead Review Panel face-to-face public meeting will be held on Tuesday, February 5, 2013, from 8:30 a.m. to 5:30 p.m. (Eastern Time) and on Wednesday, February 6, 2013, from 8:30 a.m. to 1:00 p.m. (Eastern Time). The follow-up public teleconference of the CASAC Lead Review Panel will be held on Monday, April 1, 2013, from 1:00 p.m. to 4:00 p.m. (Eastern Time).

ADDRESSES: The CASAC Lead Review Panel face-to-face public meeting will be held at the Hilton Garden Inn Raleigh-Cary hotel, 131 Columbus Avenue, Cary, North Carolina, 27518 (919–377–0440). The CASAC Lead Review Panel's follow-up public teleconference will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further

[1] 32 FERC ¶ 62,641, Order Granting Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less.

information concerning the CASAC Lead Review Panel's face-to-face public meeting and follow-up public teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO) via telephone at: (202) 564–2050 or email at *yeow.aaron@epa.gov.* General information concerning the CASAC can be found on the EPA web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Lead Review Panel will hold a face-to-face public meeting and a public teleconference to peer review EPA's third external review draft of the *Integrated Science Assessment for Lead (November 2012)* and EPA's first external review draft of the *Policy Assessment for the Review of the Lead National Ambient Air Quality Standards (January 2013).* This is being prepared as part of the review of the National Ambient Air Quality Standards (NAAQS) for lead. The CASAC Lead Review Panel and the CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including lead. EPA is currently reviewing the primary (health-based) and secondary (welfare-based) NAAQS for lead. The CASAC Lead Review Panel previously reviewed EPA's first external review draft of the *Integrated Science Assessment for Lead (May 2011)* as reported in a CASAC letter to the EPA Administrator, dated December 9, 2011 (EPA–CASAC–12–002) and previously reviewed EPA's second external review draft of the *Integrated Science Assessment for Lead (February 2012)* as reported in a CASAC letter to the EPA Administrator, dated July 20, 2012 (EPA–CASAC–12–005).

Technical Contacts: Any technical questions concerning the *Integrated Science Assessment for Lead (Third External Review Draft—November 2012)* should be directed to Dr. Ellen Kirrane (*kirrane.ellen@epa.gov*) and technical questions concerning the *Policy Assessment for the Review of the Lead National Ambient Air Quality Standards (First External Review Draft—January 2013)* should be directed to Dr. Deirdre Murphy (*murphy.deirdre@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments for a federal advisory committee to consider pertaining to EPA's charge to the panel or meeting materials. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation will be limited to five minutes for the public face-to-face meeting and will be limited to three minutes for the public teleconferences. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by January 29, 2013, to be placed on the list of public speakers for the face-to-face public meeting and by March 25, 2013, for the follow-up public teleconference.

Written Statements: Written statements should be supplied to the Mr. Yeow, DFO, via email at the contact information noted above by January 29, 2013 for the face-to-face public meeting and by March 25, 2013, for the follow-up public teleconference so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the public meeting and/or teleconference to give EPA as much time as possible to process your request.

Dated: December 27, 2012.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2013–00050 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9768–6]

Notice of Public Meeting: Designation of an Ocean Dredged Material Disposal Sites (ODMDS) in Eastern Long Island Sound; Connecticut, New York, and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 1 announces the rescheduled public meeting to discuss the Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) to Evaluate the Potential Designation of One or More Ocean Dredged Material Disposal Sites (ODMDS) to Serve the Eastern Long Island Sound Region. The public meeting was originally scheduled for November 15, 2012, but was delayed due to the recovery efforts related to Superstorm Sandy. EPA is requesting written comments from federal, state, and local governments, industry, non-governmental organizations, and the general public on the need for action, the range of alternatives considered, and the potential impacts of the alternatives.

DATES: This public meeting will be held on January 9, 2013, from 2:30 p.m. to 5:30 p.m. Registration will begin at 2:00 p.m.

ADDRESSES: The meeting will be held at the Suffolk Community College Culinary Arts Center, 20 E. Main Street, Riverhead, New York 11901. Directions are available at: *http://department.sunysuffolk.edu/CulinaryArtsandHospitalityCenter_E/5009.asp.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact: Ms. Jean Brochi, *Mailing Address:* U.S. EPA, Region 1, 5 Post Office Square, Suite 100, OEP06–1, Boston, MA 02109–3912, *Phone:* (617) 918–1536, *email: ELIS@epa.gov, TDY:* (617) 918–1189.

SUPPLEMENTARY INFORMATION: *Meeting Access:* Seating at the meeting will be on a first-come basis. Although the meeting facility does comply with the Americans with Disabilities Act, if you are unsure that your specific needs can be accommodated, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least five business days prior to the meeting.

Procedures for Providing Public Input: You may participate in this meeting by providing oral or written comments: *Oral comments:* To the extent that time permits, interested persons of the public may be permitted to present oral comments at the meeting. A sign-in sheet will be available at the registration desk for each individual or group wishing to make brief oral comments. *Written comments:* Written comments may be provided at the public meeting at the registration desk. Written comments may also be provided by email to *ELIS@epa.gov* or by mail using the information under **FOR FURTHER INFORMATION CONTACT**. Please note that the comment period for the Notice of Intent will end on January 31, 2013.

Dated: December 27, 2012.

H. Curtis Spalding,

Regional Administrator, EPA—New England.

[FR Doc. 2013–00055 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–SFUND–2012–0947; FRL–9768–3]

Proposed Administrative Cost Recovery Settlement Under Section 122(h) of the Comprehensive Environmental Response Compensation and Liability Act, as Amended, Former W&J Lanyon Zinc Works Superfund Site, Pittsburg, Crawford County, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA), notice is hereby given of an administrative settlement with MCP Industries, Inc., for compromise of past response costs concerning the Former W&J Lanyon Zinc Works Superfund Site (the ''Site'') in Pittsburg, Crawford County, Kansas. The settlement also requires MCP Industries, Inc., to pay certain future response costs incurred to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the MCP Industries, Inc., for the Work, past response costs, and future response costs once paid. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Region 7 office located at 11201 Renner Boulevard, Lenexa, Kansas 66219.

DATES: Comments must be submitted on or before February 6, 2013.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region 7 office, 11201 Renner Boulevard, Lenexa, Kansas 66219, Monday through Friday, between the hours of 8:00 a.m. through 4:00 p.m. A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551–7567. Requests should reference the Former W&J Lanyon Zinc Works Superfund Site, EPA Docket No. CERCLA–07–2012–0012. Comments should be addressed to: Denise L. Roberts, Senior Assistant Regional Counsel, 11201 Renner Boulevard, Lenexa, Kansas 66219.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, at telephone: (913) 551–7559; fax number: (913) 551–7925/Attn: Denise L. Roberts; Email address: *roberts.denise@epa.gov.*

Dated: December 12, 2012.

Cecilia Tapia,

Director, Superfund Division, Region 7.

[FR Doc. 2013–00052 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 10, 2013, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

- December 13, 2012

Reports

- Auditor's Report on FCA FY 2012/2011 Financial Statements

Closed Session*

- Executive Meeting with Auditors

Dated: January 2, 2013.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–00075 Filed 1–3–13; 11:15 am]

BILLING CODE 6705–01–P

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(2).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Jacksonville Bancorp, Inc.,* Jacksonville, Illinois; to become a bank holding company through the termination of the election by Jacksonville Savings Bank, Jacksonville, Illinois to be treated as a savings association.

Dated: Board of Governors of the Federal Reserve System, January 2, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–00046 Filed 1–4–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Paul J. Muchowski, Ph.D., The J. David Gladstone Institutes: Based on the report of an investigation conducted by The J. David Gladstone Institutes (Gladstone) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Paul J. Muchowski, former Senior Investigator, Gladstone Institute of Neurological Disease, Gladstone, engaged in research misconduct in research supported by National Institute of Neurological Diseases and Stroke (NINDS), National Institutes of Health (NIH), grant R01 NS054753–06A1.

ORI found that the Respondent engaged in research misconduct by falsifying and fabricating data that was included in one (1) funded NIH grant R01 NS054753–06A1 and two (2) submitted NIH grant applications R01 NS054753–06 and R01 NS047237–06.

Specifically, ORI finds that the Respondent knowingly and intentionally:

• Falsely reported research experiments when the results did not exist at the time the grant applications were submitted. Specifically:

► in Figures 19–21 and related text of grant application R01 NS047237–06, the Respondent claimed he had successfully transduced human neuroblastoma SH–SY5Y cells expressing α-synuclein (αSyn) with lentiviruses containing small hairpin RNAs (shRNAs) that targeted *Cog6, Stx7, Vps52,* or *Vps33a.* The Respondent reported lentiviral expressed *Cog6* significantly exacerbated α-Syn toxicity in SH–SY5Y cells, when only plasmid shRNAs were generated and utilized at the time the grant application was submitted.

► in Figure 5 and the accompanying text of grant R01 NS054753–06A1, the Respondent described the insertion of toxic and inert mutant huntingtin (htt) fragments into maltose binding protein-Htt-Cerulean constructs with a nonpathogenic (25Q) or pathogenic (46Q) polyQ repeat, with and without Cerulean. The modified proteins were claimed to have been purified, when the constructs had not been made at the time the grant was submitted.

► in Figures 5 and 6 and the accompanying text of grant R01 NS054753–06A1, the Respondent claimed to have cloned toxic and inert mutant htt fragments into lentiviral constructs and generated lentiviruses, when the constructs were not made.

► in Figure 6 and related text in grant R01 NS054753–06A1, the Respondent claimed to have tested immunoblots of lysates from primary neurons with an antibody against mutant htt, which demonstrated that levels of htt expression in transduced cells were roughly equivalent to levels in normal neurons, when the experiment was not conducted.

• Falsified Figure 3 of grant application R01 NS054753–06 by labeling the Western blot images for the expression of mutant htt in lentiviral-transduced primary neurons as 'Cortex' (left panel) and 'Striatum' (right panel), when the results were actually from the microglial cell lines N9 and BV2, respectively.

Dr. Muchowski has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of two (2) years, beginning on December 10, 2012:

(1) To have his research supervised; Respondent agreed that prior to the submission of an application for PHS support for a research project on which his participation is proposed and prior to his participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of his duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of his research contribution; he agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan; and

(2) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–00010 Filed 1–4–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting Standards Subcommittee

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Standards.

Time and Date: February 27, 2013 9:30 a.m.–5:00 p.m. EST

Place: U.S. Department of Health and Human Services, HHS, 200 Independence Ave, SW., Room 705–A, Washington, DC 20201, (202) 690–7100.

Status: Open

Purpose: The purpose of the meeting is to learn about the current state of standards and operating rules for electronic claims attachments. In accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Affordable Care Act of 2010 (ACA), the Department of Health and Human Services (HHS) must adopt a standard and operating rules for electronic claims attachments. The National Committee on Vital Health Statistics is the public advisory body to the Secretary of HHS and will make recommendations based on information gleaned at the hearing. The Sub-Committee is interested in evaluating the innovations underway in industry as the convergence occurs between the clinical and administrative information exchanges, and industry moves from a claim-centric, transaction-based administrative information infrastructure to quality-oriented and outcomes-based reporting.

Contact Person for More Information: Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245 or Lorraine Doo, lead staff for the Standards Subcommittee, NCVHS, Centers for Medicare and Medicaid Services, Office of E-Health Standards and Services, 7500 Security Boulevard, Baltimore, Maryland, 21244, telephone (410) 786–6597. Program information as well as summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: December 21, 2012.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2013–00011 Filed 1–4–13; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Using Health Information Technology in Practice Redesign: Impact of Health Information Technology on Workflow.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 31st, 2012 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by February 6, 2013.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *dorislefkowitz@AHRO.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Using Health Information Technology in Practice Redesign: Impact of Health Information Technology on Workflow

The Agency for Healthcare Research and Quality (AHRQ) is a lead Federal agency in developing and disseminating evidence and evidence-based tools on how health information technology (IT) can improve health care quality, safety, efficiency, and effectiveness.

Health IT has the potential to improve the quality, safety, efficiency, and effectiveness of care. In particular, health IT can aid health care professionals in improving care delivery by redesigning care processes to be more effective and efficient (e.g., engaging care settings in practice redesign). The use of health IT to support practice redesign requires a deep understanding of the interaction between health IT and workflow, ideally through a human factors and socio-technical framework. Unfortunately, these health IT-workflow interactions are poorly understood and the research to date has largely focused on large academic medical centers and large health maintenance organizations, while the impact of health IT on workflow in smaller, ambulatory care practices is not well studied.

To that end, AHRQ conducted an in-depth study of existing research and evidence in the area of the impact of health IT on workflow, its linkage to clinician adoption, and its links to the safety, quality, efficiency, and effectiveness of care delivery. However, most of the articles found were not focused directly on workflow, so the quality of evidence related to workflow change varied substantially. The majority of studies described research completed in large clinics affiliated with academic medical centers, health maintenance organizations or national health systems outside the U.S., limiting applicability to other settings, particularly small and medium-sized primary care and other ambulatory care settings. Also, most of the studies did not use a scientifically rigorous design. Finally, most of the literature did not include descriptions of the socio-technical context of health IT implementations and use, making it difficult to understand the role of potentially conflating or mediating factors such as training, technical support, and organizational culture.

These gaps and limitations of existing research study designs and findings related to health IT and workflow limit the relevance and quality of the available evidence for health care organizations wishing to effectively implement health IT systems to support

current work without negatively affecting existing workflow processes. The existing evidence is of equally limited utility to those organizations seeking to use health IT systems to support redesign of their ambulatory care settings.

The goal of the project is to understand the impact of implementing health IT-enabled care coordination on workflow within small community-based primary care clinics in various stages of practice redesign. The focus of this study is the interaction of health IT and care coordination workflow in the context of practice redesign. This study will focus on clinic staff caring for patients with diabetes within small primary care clinics to understand enablers and barriers to care coordination workflow through the use of health IT.

The study will be conducted over a 14-month period in six Vanderbilt University Medical Center (VUMC) affiliated-clinics that each have an electronic health record (EHR) but are in different phases of introducing the health IT component of a care coordination redesign program called My Health Team (MHT). MHT was launched at Vanderbilt University Medical Center to redesign ambulatory care delivery for patients with three chronic conditions (diabetes, hypertension, and congestive heart failure) through intensified patient engagement, dedicated care coordinators, and specific health IT tools to facilitate scalable chronic disease management. The health IT component of MHT, layered on a mature ERR, enables (1) diabetes, hypertension and congestive heart failure registries, (2) a shared view of the care plan for the patient among clinical staff, (3) alerts and reminders to track patients' acute care episodes, (4) closed-loop feedback of patient self-management through at-home physiological monitoring and two-way electronic clinical messaging (via the patient portal), and (5) frequent patient contact with coordinators in between physician visits by telephone and using a secure patient portal.

This study is intended to address existing gaps and generate findings of particular relevance to health IT and workflow by employing a mixed-methods, theoretically-grounded research design that focuses on the socio-technical factors in smaller, ambulatory care settings.

Combining this formal approach with iterative observations and analysis across six clinics for 14 months will generate a detailed understanding of changes in health IT-workflow interaction for each clinic over time, and across clinics in various implementation phases (pre-MHT, early-MHT, or mature-MHT). Each clinic will be observed at two time points: the first (time = 0 months) to capture baseline interactions, and the second (time = 12 months) to capture interactions later in adoption. Although each clinic will be observed over a period of 12 months, the total study period will span 14 months to allow for staggered observation windows for the clinics. All clinics are anticipated to exhibit changes to health IT-workflow interactions over time given that learning and efforts to streamline workflow at each practice are ongoing. The early-MHT clinics, engaged actively in practice redesign, will be observed at a third time point—midway between the first and second observation period—since more changes, and possibly more rapid changes in workflow and the use of health IT could occur. The 6-month interval between observation periods was chosen based on prior experience with MHT implementation in which many adoption changes occur during a 3–5 month period during practice redesign. Thus, in clinics anticipated to experience slower change, an observation period of one year is anticipated to allow capture of workflow patterns that have occurred; in fast-changing clinics, a 6-month observation interval will improve capture of key interactions.

This study is being conducted by AHRQ through its contractor, RTI International, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following activities will be carried out:

(1) Project orientation meeting—Researchers will hold an orientation meeting for clinic staff to introduce them to the study. Up to ten staff members at each clinic will be asked to participate in the orientation meetings. During the orientation meeting, research staff will explain the purpose of the study, provide an overview of the study schedule, explain processes for recruiting individual clinic staff to participate, and answer any questions that clinic staff might have.

(2) Direct observation by researchers of clinic staff performing care coordination activities with patients, caregivers, and providers to capture their workflow, health IT usage, and work processes. A total of 14 observation periods will take place across the six clinics. Each site will have an initial observation period that occurs over several weeks, with an estimated 60 hours of observation time per site. The two sites in the early MHT phase of implementation will also have a middle observation period (at 6 months), and all six sites will have a final observation period (at 12 months). The middle and final observation periods, which build on data gathered during the initial observation period, are shorter—approximately 30 hours of observation per site, because observations will be more targeted as a result of the previously collected contextual data. Observations will be recorded on the Direct Observation Field Notes Form. This data collection will not burden the clinic staff and is not included in the burden estimates in Exhibit 1.

(3) Artifact and spatial data collection—Artifacts such as paper notes or forms, or reminder postcards identified by researchers during direct observations as relevant to understanding workflow and health IT, will be collected.

Spatial data, such as still photographs of the workplace and/or objects in the workplace, will be collected to augment observation data. These will enable the researcher to capture spatial relationships and other dimensions, such as the proximity of work stations, exam rooms, and technology. For example, a health IT tool may include the functionality to print information to give to the patient, but if the printer is not conveniently located for the user, busy clinic staff may choose not to use this function. An image or drawing of this spatial relationship can be included in the data and will be coded in the data analysis phase. The choice of using a photograph or a drawing will be dependent upon the type of information that is needed to better understand the context of the workflow. For example, to capture the overall configuration of the workspace, photographs will be taken. When other information such as process flows are being captured, the observer will draw a sketch of that process. This may include the steps that a nurse takes to retrieve a patient chart, call the patient from the waiting room, escort the patient to a station where vital signs are measured, and escort them to an exam room.

Artifacts and spatial data will be used to enrich the understanding of the environment in which care coordination activities and health IT interact and will

add information that is important for modeling workflow. This data collection will not burden the clinic staff and is not included in the burden estimates in Exhibit 1.

(4) Semi-structured individual interviews and surveys with clinic staff to further understand their use of health information technology and work routines. During each observation period, up to six staff members at each clinic will be asked to participate in semi-structured interviews and to complete the Technology Assessment Model (TAM) survey. The interview will address up to five key topic areas: demographics; general experience with technology; work routines; interactions with computers in the work context; and strategies for dealing with unanticipated health IT or workflow challenges. The survey will be used to consistently assess the staff attitudes that may impact their experience of using health IT and adapting workflow to their needs.

(5) Semi-structured interviews and surveys with patients with diabetes to gather information from patients as participant-observers of clinical workflow and health IT, to understand the impact of work processes on their experience of care, and to identify enablers and barriers in clinic work processes from their perspective. During the initial observation period in each clinic, and during the final observation period in two of the clinics (early-MHT), eight patients with diabetes will be invited to participate in semi-structured interviews and to complete the Patient Activation Measure and Summary of Diabetes Self-Care Activities surveys (64 patients total). Since fewer changes are anticipated in the pre-MHT and mature-MHT clinics, patients will be interviewed at baseline only in these four clinics. Since the pre-MHT and mature-MHT clinics will not undergo changes in technology during the study period, it is anticipated that saturation of patient experiences and observations of workflow, technology use and interactions will occur during the initial observation period. Greater changes are anticipated at the early-MHT clinics as they adopt MHT, therefore, patient interviews will be conducted at these two clinics twice. The purpose of the patient interviews is to gather information from patients as participant-observers of clinical workflow and health IT, to understand the impact on their experience of care, and to identify enablers and barriers in work processes from their perspective. The interviews will address six key areas related to care coordination, including (1) general care experience; (2) patient workflow; (3) information needs; (4) barriers; (5) strategies; (6) evaluation. The Patient Activation Measure (PAM) and Summary of Diabetes Self-Care Activities (SDSCA) surveys will be used to understand patient motivation for self-care and the potential impact on care processes and workflows.

The focus of this research is anticipated to be relevant to many other settings in which health IT is used to support care coordination activities for diabetes and other chronic conditions. This focus is especially important given the cost and illness burden of diabetes. Information collected by the study will help researchers and practitioners better understand the impact of workflow and health IT in ambulatory care practices.

The lessons learned from this research may be used in a variety of ways: (1) To identify additional workflow components that ambulatory practices should consider when implementing health IT systems; (2) to identify issues to address in best practice guidelines health IT implementation; and (3) to identify issues for consideration in the design and evaluation of other health IT tools.

The study findings will be widely disseminated to health IT researchers and implementers via AHRQ's National Resource Center for Health IT Web site, email alerts, and conference presentations.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annual burden hours for each respondent's time to participate in this study.

A total of up to 60 persons will participate in the project orientation meeting across the six clinics (up to 10 per clinic), which will last up to 30 minutes.

The staff semi-structured interviews will be completed by a total of up to 36 persons across the six clinics (up to 6 per clinic) and requires one hour. Those same individuals will also be asked to complete Technology Acceptance Model surveys; each survey response is estimated to take 30 minutes. Clinic staff interviews and administration of surveys will take place at the clinics either two or three times. Staff interviews will be conducted twice at each of the pre-MHT and mature-MI–IT clinics, at the initial and final observation periods (eight total sets of interviews), for a total of up to 48 staff interviews. Staff interviews will be conducted three times at the two early-MHT clinics, during the initial, middle, and final observation periods, for up to 36 staff interviews across the two early-MHT clinics for all observation periods. In total, up to 84 interviews of clinic staff will be conducted with up to 36 individual staff for an average of 2.33 responses per staff member, as shown in Exhibit 1.

Up to 64 patients will be asked to participate in the patient-semi structured interview, which should take no longer than 1 hour. Those same patients will be asked to complete the Patient Activation Measures survey, which is estimated to take 12 minutes, and the Summary of Diabetes Self Care Activities survey, which should take no longer than 18 minutes. Patient interviews and surveys will take place at the clinics either once or twice. Up to eight patients will be interviewed during the initial observation period at each of the clinics for a total of 48 patient interviews across all six clinics. Up to 8 patients will be interviewed during the final observation period at each of the two early-MHT clinics, for a total of 16 patient interviews during the final observation period across the two early-MHT clinics. In total, up to 64 patient interviews and surveys will be conducted. The total annual burden is estimated to be 252 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this research. The total annual burden is estimated to be $6,670.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Maximum number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Project orientation meeting	60	1	30/60	30
Staff Semi-Structured Interviews	36	[a] 2.33	1	84
Technology Acceptance Model Survey	36	[a] 2.33	30/60	42
Patient Semi-Structured Interviews	64	1	1	64
Patient Activation Measures Survey	64	1	12/60	13

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Maximum number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Summary of Diabetes Self Care Activities Survey	64	1	18/60	19
Total	324	na	na	252

[a] This is an average based on the study design and the number of interviews that respondents will complete. Two thirds of respondents will participate in two interviews. One third will participate in three interviews.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Maximum number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Project orientation meeting	60	30	$34.80	$1,044
Staff Semi-Structured Interviews	36	84	32.03	2,691
Technology Acceptance Model Survey	36	42	32.03	1,345
Patient Semi-Structured Interviews	64	64	16.57	1,060
Patient Activation Measures Survey	64	13	16.57	215
Summary of Diabetes Self Care Activities Survey	64	19	16.57	315
	324	252	na	6,670

* Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States May 2011, ''U.S. Department of Labor, Bureau of Labor Statistics.'' For the project orientation meeting, the hourly rate is a weighted average of two physicians or surgeons, all other ($88.78), two registered nurses ($33.32), two licensed practical nurses ($19.79), two medical assistants ($13.99), one health care support worker other ($14.80), and one health care practitioners and technician other ($21.61). For the interviews and surveys with clinic staff, hourly wage is an average including one physician or surgeon, all other ($88.78), one registered nurse ($33.32), one licensed practical nurse ($19.79), one medical assistant ($13.99), one health care support worker other ($14.80), and one health care practitioners and technician other ($21.61). For patient interviews and surveys, median U.S. hourly wage was used.

Estimated Annual Costs to the Federal Government

The total cost of this study is $799,929 over a 36-month time period for an annualized cost of $266,643. Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST *

Cost component	Total cost	Annualized cost
Development of Research Plan	$32,520	$10,840
Development of Analysis Plan	24,028	8,009
Compliance with PRA Requirements	21,252	7,084
Conduct Research Study	271,916	90,639
Conduct Data Analysis	279,009	93,003
Develop Final Report of Findings	62,237	20,746
Develop Presentation of Findings	28,670	9,557
Project Administration	58,976	19,659
Coordination with Other AHRQ Offices and Contractors	15,195	5,065
Ensure High Quality 508 Compliant Deliverables	6,125	2,042
Total	799,929	266,643

* Costs are fully loaded including overhead and G&A.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 20, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–31591 Filed 1–4–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Pilot Test of the Proposed Value and Efficiency Surveys and Communicating About Value Checklist.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 8, 2013.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Pilot Test of the Proposed Value and Efficiency Surveys and Communicating About Value Checklist

Maximizing value within the American health care system is an important priority. Value is often viewed as a combination of high quality, high efficiency care, and there is general agreement by consumers, policy makers, payers, and providers that it is lacking in the U.S. A recent report by the Institute of Medicine estimated that 20 to 30 percent ($765 billion a year) of U.S. healthcare spending was inefficient and could be reduced without lowering quality.

Multiple overlapping initiatives are currently seeking to improve value using a variety of approaches. Public reporting efforts led by the Centers for Medicare and Medicaid Services (CMS), other payers and consumer groups seek to enable consumers to make more informed choices about the quality, and in some cases, the costs of their care. A variety of demonstration projects and payment reforms initiated by CMS and private insurers are attempting to more closely link care quality with payments to incent higher value care. And national improvement initiatives led by AHRQ (comprehensive unit-based safety programs [CUSP] for central line-associated blood stream infection [CLABSI], catheter-associated urinary tract infections [CUTI], and surgical units [SUSP]) and CMS (hospital engagement networks, QI0 scopes of work) are seeking to raise care quality and reduce readmissions. Results from the CUSP–CLABSI project have demonstrated that central line infections can be reduced and unnecessary costs can be removed from the health care system by concerted, unit-based improvement efforts.

As a systems level example, Denver Health, with initial funding from AHRQ, has taken major steps towards redesigning clinical and administrative processes so as to reduce staff time, patient waiting, and unnecessary costs. These improvements occurred without harm to quality and in some instances actually improved quality.

In many cases, improving quality improves efficiency naturally. Reducing the number of hospital errors for example will reduce costs associated with longer length of stay or error-triggered readmissions. It is more cost-effective to do things right the first time. But higher value is more likely if organizations doing quality improvement link efforts to improve care quality with efforts to reduce unnecessary costs. Ignoring the financial implications of quality improvement efforts will fail in the real world where many providers face acute financial challenges and where costs are leading to consumer bankruptcies and increased insurance costs. AHRQ understands that many of the root causes of inefficiencies that drive up costs are closely linked to root causes of inefficiencies that lead to poor quality, uncoordinated care where redundancies and system failures place patients at risk. Adding value within healthcare requires understanding the contribution that organizational culture makes to value and working to foster a culture where high value is a cultural norm. AHRQ's development of the Hospital Survey on Patient Safety Culture (HSOPS) has contributed greatly to efforts to promote the important role culture plays in providing safe care. HSOPS is used extensively in national improvement campaigns and many hospitals and health systems now regularly assess their safety cultures and use culture scores on organizational dashboards and as parts of variable compensation programs.

If organizations lack cultures committed to value then discrete efforts to raise dimensions of value are likely to yield limited and unsustainable results. And if organizational leaders have no plausible way to know whether their organizational culture is committed to value, then their ability to make value a higher organizational priority will be very limited. Thus, developing value and efficiency survey instruments for hospitals and medical offices fills an important need for many ongoing and planned efforts to foster greater value within American health care.

Given the widespread impact of cost and waste in health care, AHRQ will develop the Value and Efficiency (VE) Surveys for hospitals and medical offices. These surveys will measure staff perceptions about what is important in their organization and what attitudes and behaviors related to value and efficiency are supported, rewarded, and expected. The surveys will help hospitals and medical offices to identify and discuss strengths and weaknesses within their individual organizations. They can then use that knowledge to develop appropriate action plans to improve their value and efficiency. To develop these tools AHRQ will recruit medical staff from 42 hospitals and 96 medical offices to participate in cognitive testing and pretesting.

In addition to the YE surveys, AHRQ also intends to develop a Communicating About Value Checklist (CV checklist). The objective of the CV checklist is to aid clinicians in having conversations with patients about value. Since the proper goal for any health care delivery system is to improve the value delivered to patients, such a tool will address the important aspects of health care that are of value to patients. Value in health care is typically measured in terms of the patient outcomes achieved per dollar expended. But a good outcome must be defined in terms of what is meaningful and valuable to the individual patient.

Better identification of patients' preferences is not only the right ethical thing to do but it also can reduce the cost of healthcare. Studies indicate that engaged and informed patients often choose to have less intensive care and become more careful about having lots of procedures. In addition, participatory decision making can reduce medication non-adherence which has been directly linked to increased morbidity, mortality and potentially avoidable healthcare

costs totaling $290 billion annually in the U.S.

The CV checklist will address three major topics: who should talk with patients about value issues (e.g., nurses, physicians, etc.), when should these conversations occur (e.g., when patients may incur costs, when they express financial concerns, etc.), and how can clinicians prepare for and effectively facilitate such discussions.

This research has the following goals:

(1) Develop, cognitively test and modify as necessary the VE surveys (one for hospitals and one for medical offices);

(2) Pretest the VE surveys in hospitals and medical offices and modify as necessary based on the results;

(3) Develop, cognitively test and modify as necessary the CV checklist;

(4) Pretest the CV checklist in hospitals and medical offices and modify as necessary based on the results;

(5) Make the final VE surveys and CV checklist available for use by the public.

This study is being conducted by AHRQ through its contractor, Health Research & Educational Trust (HRET), and subcontractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve these goals the following activities and data collections will be implemented:

(1) Cognitive interviews for the VE surveys. One round of interviews on the VE surveys will be conducted by telephone with 9 respondents from hospitals and 9 respondents from medical offices. The purpose of these interviews is to understand the cognitive processes the respondent engages in when answering a question on the VE survey and to refine the survey's items and composites. These interviews will be conducted with a mix of senior leaders and clinical staff (i.e., unit/department managers, practitioners, nurses, technicians, and medical assistants) from hospitals and medical offices throughout the U.S. with varying characteristics (e.g., size, geographic location, type of medical office practice/hospital, and possibly extent of experience with waste-reduction efforts).

(2) Pretest for the VE surveys. The surveys will be pretested with senior leaders and clinical staff from 42 hospitals and 96 medical offices. The purpose of the pretest is to collect data for an assessment of the reliability and construct validity of the surveys' items and composites, allowing for their further refinement. A site-level point-of-contact (POC) will be recruited in each medical office and hospital to manage the data collection at that organization (compiles sample information, distribute surveys, promote survey response, etc.). Exhibit 1 includes a burden estimate for the POC's time to manage the data collection.

(3) Medical office information form. This form will be completed by the medical office manager in each of the 96 medical office pretest sites to provide background characteristics, such as type of specialty(s) and majority ownership. A hospital information form will not be needed because characteristics on pretest hospitals will be obtained from the American Hospital Association's (AHA) data set based on a hospital's AHA ID number.

(4) Survey to identify items for CV checklist. In order to identify items to put on the checklist, a survey will be developed and sent to 160 representative participants (40 Physicians, 40 Registered Nurses, 20 Social Workers, 20 Health Educators, and 40 Patients). Once the survey responses have been collected, responses will be analyzed to help inform the development of the CV checklist. Checklist items will be chosen based on what is learned. For example, if clinicians strongly believe that it is inappropriate to discuss costs and value with patients, the checklist may require different items than if clinicians recognize the importance of such conversations but believe they lack required information to facilitate them.

(5) Cognitive Interviews for the CV checklist. Once checklist items have been identified, cognitive interviews will be conducted with 9 respondents in hospitals and 9 respondents in medical offices to understand the cognitive processes the respondent engages in when using the CV checklist. Cognitive interviewing will allow checklist developers to identify and classify difficulties respondents may have regarding checklist items. To get different perspectives, interviews will be conducted with a mix of physicians, nurses, social workers, health educators, and patients in hospitals and medical offices.

(6) Pretest the CV checklist. The checklist will then be pretested to solicit feedback from 50 physicians in hospitals and 50 physicians in medical offices. The pilot testing process will help identify areas where users of the checklist have trouble understanding, learning, and using the checklist. It also provides the opportunity to identify issues that can prevent successful deployment of the checklist.

(7) Dissemination activities. The final VE Surveys and CV checklist will be made available to the public through the AHRQ Web site. This activity does not impose a burden on the public and is therefore not included in the burden estimates in Section 12.

The information collected will be used to test and improve the draft survey items in the VE Surveys and CV checklist.

The final VE instruments will be made available to the public for use in hospitals and medical offices to assess value and efficiency from the perspectives of their staff. The survey can be used by hospitals and medical offices to identify areas for improvement. Researchers are also likely to use the surveys to assess the impact of hospitals' and medical offices' value and efficiency improvement initiatives.

The final CV checklist will be made available to hospital and medical office clinicians to aid in having conversations with patients about value.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Cognitive interviews for the Hospital VE survey will be conducted with 9 hospital staff (approximately 3 managers, 3 nurses, and 3 technicians) and will take about one hour and 30 minutes to complete. Cognitive interviews for the Medical Office VE survey will be conducted with 9 medical office staff (approximately 4 physicians and 5 medical assistants) and will take about one hour and 30 minutes to complete. The Hospital VE survey will be administered to about 4,032 individuals from 42 hospitals (about 96 surveys per hospital) and requires 15 minutes to complete. A site-level POC will spend approximately 16 hours administering the Hospital VE survey. The Medical Office VE survey will be administered to about 504 individuals from 96 medical offices (about 5 surveys per medical office) and requires 15 minutes to complete. A site-level POC will spend approximately 6 hours administering the Medical Office YE survey. The medical office information form survey will be completed by a medical office manager at each of the 96 medical offices participating in the pretest and takes 10 minutes to complete.

One-hundred and sixty individuals (40 physicians, 40 nurses, 20 social workers, 20 health educators, and 40 patients) will participate in the survey to identify items for the CV checklist and will take 15 minutes to complete. Cognitive interviews for the CV checklist will be conducted with 18 individuals (9 in hospitals and 9 in medical offices, consisting of approximately 4 physicians, 4 nurses, 2 social workers, 2 health educators, and 6 patients) and will take about one hour to complete. One hundred physicians will participate in the pretest of the CV checklist (50 in hospitals and 50 in medical offices). The total burden is estimated to be 2,534 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $115,559 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Cognitive interviews for the Hospital VE survey	9	1	1.5	14
Cognitive interviews for the Medical Office VE survey	9	1	1.5	14
Pretest for the Hospital VE survey	4,032	1	15/60	1,008
Pretest for the Medical Office VE survey	504	1	15/60	126
POC Administration of the Hospital VE survey	42	1	16	672
POC Administration of the Medical Office VE survey	96	1	6	576
Medical office information form	96	1	10/60	16
Survey to identify items for CV checklist	160	1	15/60	40
Cognitive interviews for the CV checklist	18	1	1	18
Pretest for the CV checklist	100	1	30/60	50
Total	5,066	na	na	2,534

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Cognitive interviews for the Hospital VE survey	9	14	[a] $36.16	$506
Cognitive interviews for the Medical Office VE survey	9	14	[b] 46.87	656
Pretest for the Hospital VE survey	4,032	1,008	[c] 36.02	36,308
Pretest for the Medical Office VE survey	504	126	[d] 27.73	3,494
Administration of the Hospital VE survey	42	672	[e] 55.80	37,498
Administration of the Medical Office VE survey	96	576	[f] 50.98	29,364
Medical office information form	96	16	[f] 50.98	816
Survey to identify items for CV checklist	160	40	[g] 45.02	1,801
Cognitive interviews for the CV checklist	18	18	[h] 39.84	717
Pretest for the CV checklist	100	50	[i] 87.98	4,399
Total	5,066	2,534	na	115,559

[a] Based on the weighted average wages for 3 Registered Nurses (29–1111, $33.56), 3 Medical and Clinical Laboratory Technicians (29–2012, $19.11), and 3 General and Operational Managers (11–1021, $55.80) in the hospital setting;

[b] Based on the weighted average wages for 4 Family and General Practitioners (29–1062; $87.18) and 5 Medical Assistants (31–9092, $14.63) in the medical office setting;

[c] Based on the weighted average wages for 1,937 Registered Nurses, 1,131 Medical and Clinical Laboratory Technicians, 526 General and Operational Managers and 446 Physicians (29–1069; $66.23) in the hospital setting;

[d] Based on the weighted average wages for 91 Family and General Practitioners and 413 Medical Assistants in the medical office setting;

[e] Based on the average wages for General and Operational Managers in the hospital setting;

[f] Based on the average wages for General and Operational Managers in the medical office setting;

[g] Based on the weighted average wages for 40 Physician and Surgeons (29–10692; $88.78), 40 Registered Nurses (29–1111; $33.23), 20 Social Workers (21–1022; $24.28), 20 Health Educators (21–1091, $25.07), and 20 Patients (00–0000; $21.74);

[h] Based on the weighted average wages for 4 Physician and Surgeons, 4 Registered Nurses, 2 Social Workers, 2 Health Educators, and 6 Patients;

[i] Based on the weighted average wages for 50 Physician and Surgeons in the hospital setting and 50 Family and General Practitioners in the medical office setting;

* National Occupational Employment and Wage Estimates in the United States, May 2011, ''U.S. Department of Labor, Bureau of Labor Statistics'' (available at *http://www.bls.gov/oes/current/naics4_621100.htm* [for medical office setting] and *http://www.bls.gov/oes/current/naics4_622100.htm* [for hospital setting]).

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government for this data collection. Although data collection will last for less than one year, the entire project will take about 2 years. The total cost for the three surveys is approximately is $1,001,202.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$273,838	$136,919
Data Collection Activities	153,119	76,560
Data Processing and Analysis	171,764	85,882
Publication of Results	14,753	7,377
Project Management	10,032	5,016
Overhead	377,696	188,848
Total	1,001,202	500,601

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques, or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 20, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–31592 Filed 1–4–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Office for State, Tribal, Local and Territorial Support (OSTLTS)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009 and September 23, 2004, Consultation and Coordination with Indian Tribal Governments, CDC/Agency for Toxic Substances and Disease Registry (ATSDR), announces the following meeting and Tribal Consultation Session:

Name: Tribal Advisory Committee (TAC) Meeting and 10th Biannual Tribal Consultation Session.

Times and Dates:

8:00 a.m.–9:30 a.m., February 5, 2013 (TAC Meeting).

8:00 a.m.–5:00 p.m., February 6, 2013 (10th Biannual Tribal Consultation Session).

8:00 a.m.–4:00 p.m., February 7, 2013 (TAC Meeting).

Place: The TAC Meeting and Tribal Consultation Session will be held at CDC Headquarters, 1600 Clifton Road, NE., Global Communications Center, Auditorium B3, Atlanta, Georgia.

Status: All meetings are being hosted by CDC/ATSDR. Meetings on February 5, 6, and 7, 2013, are open to the public.

Purpose: In 2011–2012, CDC began revising its existing Tribal Consultation Policy (issued in 2005) with the primary purpose of providing guidance across the agency to work effectively with American Indian/Alaska Native (AI/AN) tribes, communities, and organizations to enhance AI/AN access to CDC resources and programs. Within the CDC Consultation Policy, it is stated that CDC will conduct government-to-government consultation with elected tribal officials or their authorized representatives before taking actions and/or making decisions that affect them. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. CDC believes that consultation is integral to a deliberative process that results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues. Although formal responsibility for the agency's overall government-to-government consultation activities rests within the CDC Office of the Director (OD), other CDC Center, Institute, and Office (CIO) leadership shall actively participate in TAC meetings and HHS-sponsored regional and national tribal consultation sessions as frequently as possible.

Matters To Be Discussed: The TAC will convene their advisory committee meeting with discussions and presentations from various CDC senior leaders on activities and areas identified by TAC members and other tribal leaders as priority public health issues. The following topics are scheduled for presentation and discussion during the TAC Meeting; however, discussion is not limited to these topics: substance abuse/mental health, community based participatory public health, success stories, and grant information and opportunities at CDC for Native participation.

The 10th Biannual Tribal Consultation Session will engage CDC senior leadership from the CDC OD and various CDC CIOs. Sessions that will be held during the Tribal Consultation include the following: a listening session with the director of CDC, roundtable discussions with CDC senior leadership and an opportunity for tribal testimony.

Additional opportunities will be provided during the Consultation Session for tribal testimony. Tribal Leaders are encouraged to submit written testimony by 12:00 a.m., EST on January 25, 2013, to Kimberly Cantrell, Deputy Associate Director for Tribal Support, OSTLTS, via mail to 4770 Buford Highway NE., MS E–70, Atlanta, Georgia 30341 or email to *klw6@cdc.gov.* Depending on the time available, it may be necessary to limit the time of each presenter.

The agenda is subject to change as priorities dictate.

Information about the TAC, CDC's Tribal Consultation Policy, and previous meetings may be referenced on the following web link: *http://www.cdc.gov/tribal.*

Contact Person For More Information: Kimberly Cantrell, Deputy Associate Director for Tribal Support, OSTLTS, via mail to 4770 Buford Highway NE., MS E–70, Atlanta, Georgia 30341 or email to *klw6@cdc.gov.*

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.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–00007 Filed 1–4–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0530]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Medical Devices: The Pre-Submission Program and Meetings With FDA Staff; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of notice.

SUMMARY: This document withdraws a Food and Drug Administration (FDA) notice that published in the **Federal Register** of December 11, 2012 (77 FR 73662).

DATES: This notice is withdrawn on January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA published a notice in the **Federal Register** of December 11, 2012 (77 FR 73662), informing interested parties that the proposed collection of information entitled ''Guidance on Medical Devices: The Pre-Submission Program and Meetings with FDA Staff'' had been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 and inviting the public to submit comments on the proposed study to OMB. As of the date of this notice, FDA has not finalized the policy document underlying this information collection request. Thus, FDA is withdrawing the proposed collection of information published on December 11, 2012, at this time.

Dated: December 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–00009 Filed 1–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2012–M–0712, FDA–2012–M–0713, FDA–2012–M–0734, FDA–2012–M–0735, FDA–2012–M–0814, FDA–2012–M–0833, FDA–2012–M–0893, FDA–2012–M–0965, FDA–2012–M–0968, FDA–2012–M–1011, and FDA–2012–M–1013]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the SUPPLEMENTARY INFORMATION section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with sections 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2012, through September 30, 2012. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JULY 1, 2012, THROUGH SEPTEMBER 30, 2012

PMA No., Docket No.	Applicant	Trade name	Approval date
P980022/S010, FDA–2012–M–0965.	Medtronic MiniMed, Inc	Guardian Telemetered Glucose Monitoring System (TGMS).	January 7, 2004.
P000008/S017, FDA–2012–M–1013.	Allergan, Inc	LAP–BAND ™ Adjustable Gastric Banding System	February 16, 2011.
P100049, FDA–2012–M–0893.	Torax Medical, Inc	LINX ™ Reflux Management System	March 22, 2012.
P010031/S232, FDA–2012–M–0814.	Medtronic, Inc	Concerto/Concerto II; Consulta; Maximo II; and Protecta/Protecta XT Families of CRT–Ds.	April 4, 2012.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JULY 1, 2012, THROUGH SEPTEMBER 30, 2012—Continued

PMA No., Docket No.	Applicant	Trade name	Approval date
P080030, FDA–2012–M–0712.	Glaukos Corp	Glaukos iStent® Trabecular Micro-Bypass Stent and Inserter.	June 25, 2012.
P110007, FDA–2012–M–0734.	Abbott Medical Optics, Inc	Healon® EndoCoat OpViscosurgical Ophthalmic Device (OVD) (3% Sodium Hyaluronate).	July 2, 2012.
P110037, FDA–2012–M–0713.	Roche Molecular Systems, Inc.	COBAS® AmpliPrep/COBAS® TaqMan® CMV Test	July 5, 2012.
P110030, FDA–2012–M–0735.	QIAGEN Manchester, Ltd	*therascreen*® KRAS RGQ PCR Kit	July 6, 2012.
P110043, FDA–2012–M–0833.	Abbott Vascular	Omnilink Elite Vascular Balloon-Expandable Stent System.	July 31, 2012.
P040024/S056, FDA–2012–M–0968.	Medicis Aesthetics Holdings, Inc.	Restylane L Injectable Gel	August 30, 2012.
P110006, FDA–2012–M–1011.	U-Systems, Inc	somo-v® Automated Breast Ultrasound System (ABUS).	September 18, 2012

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm.*

Dated: December 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–00004 Filed 1–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1205]

Accessible Medical Device Labeling in a Standard Content and Format Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Accessible Standardized Medical Device Labeling.'' The purpose of this public workshop is to discuss the growing need for medical device labeling to be delivered in a clear, concise, and readily accessible format so that patients, caregivers, and healthcare providers may access and utilize device labeling as efficiently and effectively as possible. This public workshop aims to engage stakeholders in active discussion with FDA and to encourage public comments regarding standard content and format for medical device labeling and the use of a repository containing medical device labeling.

DATES: The public workshop will be held on April 29, 2013, from 8 a.m. to 5 p.m. and April 30, 2013, from 8 a.m. to 4 p.m.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503A), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Mary Weick-Brady, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5426, 301–796–6089, FAX: 301–847–8510, email: *Mary.Brady@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by April 5, 2013. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7 a.m.

If you need special accommodations due to a disability, please contact Joyce Raines by email: *Joyce.Raines@fda.hhs.gov* or phone: 301–796–5709 at least 7 days prior to the public workshop.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* Select this public workshop from the posted events list. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Mary Weick-Brady to register (see **FOR FURTHER INFORMATION CONTACT**). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by April 5, 2013, 5 p.m. EST. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after April 5, 2013. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

Requests for Oral Presentations: This public workshop includes a public comment session and topic-focused sessions. During online registration, you may indicate if you wish to present during a public comment session and which topics you want to address. All topic-focused sessions will be held

during the general session. Standard content and format of full labeling and a shortened version of labeling will be addressed on the first day. The labeling repository will be discussed in a focused session on the second day. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by April 12, 2013. All requests to make oral presentations must be received by the close of registration on April 5, 2013, at 5 p.m. If selected for presentation, any presentation materials must be emailed to Mary Weick-Brady (see **FOR FURTHER INFORMATION CONTACT**) no later than March 29, 2013. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Comments: FDA is holding this public workshop to obtain information on medical device labeling. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is April 12, 2013.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments to *http://www.regulations.gov* or written comments regarding this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

I. Background

Currently, there are no regulations that explicitly define and describe a standard content and format for medical device labeling. FDA is concerned that the lack of standard content and format may translate into an increased risk of medical device error. Also, there is no single available source of medical device labeling for people to view, search, and download for devices that are used in clinical and non-clinical environments. FDA is aware of and concerned with the risk of medical errors that result from lost or inaccessible labeling.

FDA conducted a two-phase research study with Research Triangle Institute (RTI) focusing on healthcare professionals and their experiences with medical device labeling, and what they would want in a standard version of device labeling. Key findings from the survey helped create an outline for standard content and format for medical device labeling identifying the most relevant sections. Participants also expressed the need for a condensed version of labeling to act as a quick reference for safe and effective use of devices. Participants indicated that having a ''quick guide'' describing proper device operation and use would be more convenient and effective with the option of referring to a more comprehensive form of labeling should it be required.

FDA also conducted a survey with the National Family Caregivers Association (NFCA) on medical device labeling to elicit home caregivers' experiences with medical device labeling for devices that are used in the home. Respondents indicated what sections of medical device labeling they believed would be most important when operating or troubleshooting a device in the home care environment. Respondents also stated they would like a standard content and format of labeling with access to a ''quick guide'' for proper instructions for use. The majority of respondents stated they would make use of a searchable Web site that contained labeling for medical devices.

Accessible labeling has been a growing problem for healthcare professionals who operate medical devices, lay caregivers, and patients themselves. As more medical devices migrate out of clinical care environments and into patients' homes, the assurance that devices are being used properly and safely no longer resides with a healthcare professional; rather, the responsibility is with the patient, spouse, sibling, or even children. When medical devices are sent home with patients or are moved from one location to another, the labeling often becomes misplaced, lost, damaged, or discarded, which may result in adverse events or other complications due to misinterpretations and absence of proper labeling.

FDA is holding this public workshop to address these growing concerns and to solicit responses from the medical devices industry, healthcare practitioners, caregivers, and patients regarding a standard content and format of medical device labeling and methods to make medical device labeling accessible and searchable while keeping patient safety a priority.

II. Topics for Discussion at the Public Workshop

The workshop sessions will focus on the following general topics:

A. Summary of FDA Work on Labeling

1. RTI two-phase research study of healthcare professionals regarding device labeling.
2. NFCA survey of consumers on medical device labeling.
3. Cooperative Research and Development Agreement with Kwikpoint for the development of visual language for device labeling.
4. The Center for Drug Evaluation and Research measures of success with standard labeling and the use of a drug repository.

B. Standard Content and Format of Device Labeling

1. Review the outline for a draft standard content and format of medical device labeling.
2. Current thinking on a standard content and format of medical device labeling.
3. Use of symbols in medical device labeling.
4. Discuss a shortened version of standard medical device labeling.

C. Repository of Medical Device Labeling for Home Use Devices

1. Online access to device labeling.

2. Panel discussions on using an online device labeling site.

3. Discuss the types of devices whose labeling should be on the site.

Dated: December 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–00003 Filed 1–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice.

Summary: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Bureau of Health Professions (BHPr) Performance Data Collection (OMB No. 0915–0061)—Revision

Abstract: Over 40 BHPr programs award grants to health professions schools and training programs across the United States to develop, expand, and enhance training, and to strengthen the distribution of the health workforce. Many of these programs are governed by the Public Health Service Act (42 U.S.C. 201 *et seq.*), specifically Titles III, VII, and VIII. Performance information is collected in the HRSA Performance Report for Grants and Cooperative Agreements (PRGCA). Data collection activities at application, progress, and annual performance satisfy statutory and programmatic requirements for performance measurement and evaluation (including specific Title III, VII, and VIII requirements), as well as Government Performance and Results Act (GPRA) requirements. The Affordable Care Act impacted a broad range of health workforce programs administered by BHPr. It reauthorized many of these programs and, in some cases, expanded eligibility, modified program activities, and/or established new requirements. The Affordable Care Act also created new health professions programs. Therefore, it was necessary to reexamine BHPr's existing performance measures to ensure that they address these changes, meet evolving program management needs, and respond to emerging workforce concerns.

The purpose of the proposed revised data collection is to enhance analysis and reporting of grantee training activities and education, identify intended practice locations, and report outcomes of funded initiatives. Data collected from these grant programs will also provide a description of the program activities of more than 1,600 reporting grantees to better inform policymakers on the barriers, opportunities, and outcomes involved in health care workforce development. The proposed measures focus on five key outcomes: (1) Increasing the workforce supply of diverse well-educated practitioners, (2) influencing the distribution of practitioners to practice in underserved and rural areas, (3) enhancing the quality of education, (4) diversifying the pipeline for new health professionals, and (5) supporting educational infrastructure to increase the capacity to train more health professionals.

Revisions to the current reporting will require the collection of baseline data at the grant application and award stages and will include improved performance reporting at three levels of measurement: individual-level, program-specific, and program cluster-level.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application	2,500	1	2,500	8	20,000
Program Aggregate Data Collection *	500	1	500	10	5,000
Individual-level Data Collection	800	1	800	5	4,000
Total					29,000

* Program aggregate data collection will only be required for programs that do not provide direct financial support to students.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: December 26, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–00033 Filed 1–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice.

Summary: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Analyzing Title V Programs in the Context of the Affordable Care Act (OMB No. 0915-xxxx)—[New]

Abstract: The Affordable Care Act (ACA) will make affordable health coverage available to all legal U.S. residents, as well as guide transformation in the delivery of medicine and public health services. For children, expanded coverage has come about gradually over the past two decades, and implementation of major coverage provisions of the ACA in 2014 will result in some shifts in child health coverage.

The Title V Maternal and Child Health (MCH) Block Grant, administered by the Health Resources and Services Administration's Maternal and Child Health Bureau, provides a foundation for ensuring the health of the nation's mothers, women, children, and youth, including children and youth with special health care needs, and their families. Many ACA provisions, like State Medicaid expansions and mandatory health insurance, will change the face of health insurance demand and services provided. In response, State Title V programs will focus on increasing access, equality, and health equity.

A proposed data collection form has been developed to collect health care services budget information from Title V MCH Block Grant recipients to better understand the types of direct services currently provided by Title V MCH programs. This form will request information on medical services and program support services in addition to data on the individuals served.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Title V Health Care Services Budget Survey	59	1	59	8	472
Total	59		59		472

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this ICR must be received within 60 days of this notice.

Dated: December 26, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–00030 Filed 1–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Health Resources and Services Administration (HRSA) will submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office at (301) 443–1984.

Information Collection Request Title: HRSA Environmental Information and Documentation (EID) (OMB No. 0915–0324)—Revision

Abstract: HRSA is requesting an extension of the approval for the Environmental Information and Documentation (EID) checklist, which consists of information that the agency is required to obtain to comply with the National Environmental Policy Act of 1969 (NEPA). NEPA establishes the federal government's national policy for protection of the environment. HRSA has developed the EID for applicants of funding that would potentially impact the environment and to ensure that their decision-making processes are consistent with NEPA. Applicants must provide information and assurance of compliance with NEPA on the EID checklist. The estimated annual burden is as follows:

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NEPA EID Checklist	1,847	1	1,847	.75	1,385.25
Total	1,847	1	1,847	.75	1,385.25

ADDRESSES: Submit your comments to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Deadline: Comments on this ICR should be received within 30 days of this notice.

Dated: December 28, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–00029 Filed 1–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Secretary's Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, codified at 5 U.S.C. App. 2), notice is hereby given of the following meeting:

Name: Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (SACHDNC).

Dates and Times: January 31, 2013, 9:30 a.m. to 5:00 p.m., February 1, 2013, 9:30 a.m. to 1:15 p.m.

Place: Virtual via Webinar.

Status: The meeting is open to the public. For more information on registration and webinar details, please visit the SACHDNC Web site: *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Purpose: The Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (SACHDNC), as authorized by Public Law 106–310, which added section 1111 of the Public Health Service Act, codified at 42 U.S.C. 300b–10, was established by Congress to advise the Secretary of the Department of Health and Human Services regarding the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. The SACHDNC's recommendations regarding additional conditions/inherited disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP) that constitutes part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings included in the comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (i.e., policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening. The SACHDNC also provides advice and recommendations concerning grants and projects authorized under section 1109 of the Public Health Service Act (42 U.S.C. 300b–8).

Agenda: The meeting will include: (1) Updates on state implementation of newborn screening for Critical Congenital Heart Disease (CCHD) and Severe Combined Immunodeficiency Disorder (SCID); (2) update on the Pompe Condition Nomination; (3) update on application of the SACHDNC Condition Review Matrix; (4) updates on priority projects from the Advisory Committee's subcommittees on Laboratory Standards and Procedures, Follow-up and Treatment, and Education and Training; (5) a presentation on the Duchenne Muscular Dystrophy Newborn Screening Symposium; (6) a final workgroup report on carrier screening; and (7) a presentation on the National Institutes of Health's Genomic Sequencing and Newborn Screening Disorders Initiative.

Tentatively, the SACHDNC is expected to vote on: (1) A finalized report regarding genetic carrier screening (i.e., testing to identify individuals who may be at increased risk of carrying one or more gene mutations that could result in having children affected with an inherited genetic disorder); and (2) application of the Condition Review Decision Matrix.

Proposed agenda items are subject to change as priorities dictate. The agenda, webinar information, Committee Roster, Charter, presentations, and meeting materials are located on the Advisory Committee's Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public can submit written comments and/or register to present oral comments during the public comment period of the meeting. All comments, whether oral or written, are part of the official Committee record and will be available for public inspection and copying. Advanced registration is required to present oral comments or submit written comments. Individuals who wish to make public comments are required to email Lisa Vasquez (*lvasquez@hrsa.gov*) by Thursday, January 17, 2013. The public comment period is scheduled for the morning of January 31, 2013.

Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (i.e., parent, researcher, clinician, public health, etc.), and the topic/subject matter of comment. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have

similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted.

Contact Person: Anyone interested in obtaining other relevant information should contact Patrick Stephens, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–1080; email: *pstephens@hrsa.gov.*

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Dated: December 28, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–00028 Filed 1–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration (HRSA) is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Section 100.2 of the VICP's implementing regulation (42 CFR Part 100) states that the revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published periodically in a notice in the **Federal Register** and filed with the United States Court of Federal Claims (the Court). This figure is calculated using the most recent Medical Expenditure Panel Survey-Insurance Component (MEPS–IC) data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation and Health Research and Educational Trust (KFF/HRET) Employer Health Benefits survey or other authoritative source that may be more accurate or appropriate.

In 2012, MEPS–IC, available at *www.meps.ahrq.gov,* published the annual 2011 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The annual figure published was $5,222. This figure is divided by 12 months to determine the cost per month of $435.17. The $435.17 shall be increased or decreased by the percentage change reported by the most recent KFF/HRET, available at *www.kff.org.* The percentage increase was published at 3 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy for a 12 month period is $448.23.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $448.23 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the Court. Such notice was delivered to the Court on November 30, 2012.

Dated: December 26, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–00027 Filed 1–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 77 FR 65694–65698 dated October 30, 2012).

This notice reflects organizational changes to the Health Resources and Services Administration. This notice updates the functional statements for the Office of Management (RB4) and Office of Information Technology (RB5). Specifically, this notice: (1) Transfers the records management function from the Office of Management (RB4) to the Office of Information Technology (RB5); (2) updates the functional statement for the Office of Management (RB4) and the Office of the Director and Chief Information Officer, Office of Information Technology; and (3) establishes the Division of Information Technology (IT) Security and Records Management (RBR) within the Office of Information Technology (RB5).

Chapter RB4—Office of Management

Section RB4–20, Functions

(1) Delete the functional statement for the Office of Management (RB4) and replace in its entirety.

Office of Management (RB4)

Provides HRSA-wide leadership, program direction, and coordination of all phases of administrative management. Specifically, the Office of Management: (1) Provides management expertise, staff advice, and support to the Administrator in program and policy formulation and execution; (2) provides administrative management services including human resources, property management, space planning, safety, physical security, and general administrative services; (3) conducts HRSA-wide workforce analysis studies and surveys; (4) plans, directs, and coordinates HRSA's activities in the areas of human resources management, including labor relations, personnel security, and performance; (5) coordinates the development of administrative policies and regulations; (6) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (7) directs and coordinates HRSA's organizations, functions, and delegations of authority programs; (8) administers the Agency's Executive Secretariat and committee management functions; (9) provides staff support to the Agency Chief Travel Official; (10) provides staff support to the Deputy Ethics Counselor; and (11) directs, coordinates, and conducts workforce development activities for HRSA.

Chapter RB5—Office of Information Technology

Section RB5–10, Organization

Delete in its entirety and replace with the following:

The Office of Information Technology (RB5) is headed by the Director and Chief Information Officer within the Office of Operations, Health Resources and Services Administration, who reports directly to the Chief Operating Officer. The Office of Information Technology includes the following components:

(1) Office of the Director and Chief Information Officer (RB5);

(2) Division of Capital Planning, Architecture and Project Management (RB52);

(3) Division of Data and Information Services (RB55);

(4) Division of Enterprise Solutions and Applications Management (RB56);

(5) Division of IT Management Support Services (RB57);

(6) Division of IT Operational Support Services (RB58);

(7) Division of Web Support and Collaboration Services (RB59); and

(8) Division of IT Security and Records Management (RBR).

Section RB5–20, Functions

(1) Delete the functional statement for the Office of the Director and Chief Information Officer (RB5) and replace in its entirety; and (2) establish the functional statement for the Division of IT Security and Records Management (RBR).

Office of the Director and Chief Information Officer (RB5)

The Chief Information Officer is responsible for the organization, management, and administrative functions necessary to carry out the responsibilities of the Chief Information Officer including: (1) Provides organizational development, investment control, budget formulation and execution, policy development, strategic and tactical planning, and performance monitoring; (2) provides leadership in the development, review, and implementation of policies and procedures to promote improved information technology management capabilities and best practices throughout HRSA; and (3) coordinates IT workforce issues and works closely with the Office of Management on IT recruitment and training issues.

Division of IT Security and Records Management (RBR)

The Chief Information Security Officer, reporting to the Chief Information Officer, provides leadership for, and collaborates with, agency staff to oversee the implementation of security and privacy policy in the management of their IT systems, and plans all activities associated with Federal Information Security Management Act or other agency security and privacy initiatives including: (1) Implements, coordinates, and administers security and privacy programs to protect the information resources of HRSA in compliance with legislation, Executive Orders, directives of the Office of Management and Budget, or other mandated requirements, e.g., Presidential Decision Directive 63, Office of Management and Budget Circular A–130, and the Privacy Act; (2) executes agency's Risk Management Program and evaluates and assists with the implementation of safeguards to protect major information systems and IT infrastructure; (3) manages the development, implementation, and evaluation of the HRSA information technology security and privacy training program to meet requirements mandated by Office of Management and Budget Circular A–130, the Computer Security Act, and the Privacy Act; (4) implements, coordinates, and administers the records management program for HRSA; and (5) is responsible for establishing agency records management policy, HRSA records schedules, and training, in compliance with National Archives and Records Administration standards.

Section RB5–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: December 26, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–00032 Filed 1–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–REGS–11500; PPWOVPAU0–PPMPSPD1Y.M0000]

60-Day Notice of Intention to Request Clearance of Collection of Information; Special Park Use Applications

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on June 30, 2013. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure we are able to consider your comments, we must receive them on or before March 8, 2013.

ADDRESSES: Please send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1201 I Street NW., MS 1237, Washington, DC 20005 (mail); or madonna_baucum@nps.gov (email). Please reference ''OMB Control Number 1024–0026, Special Park Use Applications'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses National Manager, 1849 C St., NW (2465), Washington, DC 20240; via fax at (202) 371–1710; or via email at *lee_dickinson@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 16 U.S.C. 1 (National Park Service Act Organic Act), we must preserve America's natural wonders unimpaired for future generations, while also making them available for the enjoyment of the visitor. Meeting this mandate requires that we balance preservation with use. Maintaining a good balance requires both information and limits. In accordance with regulations at 36 CFR parts 1–7, 13, 20, and 34, we issue permits for special park uses. Special park uses cover a wide range of activities including, but not limited to, special events, First Amendment activities, grazing and agricultural use, commercial filming, still photography, construction, and vehicle access.

We currently use Forms 10–930 (Application for Special Use Permit), 10–931 (Application for Commercial Filming/Still Photography Permit (short form)), and 10–932 (Application for Commercial Filming/Still Photography Permit (long form)) to collect information for special use permits. In order to reduce paperwork burden on the public, we are proposing two additional forms, which will require less information than the existing forms:

- Form 10–930S (Application for Special Use Permit (short form)). The short form will reduce the burden on applicants for smaller, less complicated activities, such as small picnics, gatherings, weddings, etc.
- Form 10–933 (Application for Vehicle Use). This new form applies specifically to vehicle access, such as off-road, over-sand, or commercial vehicle access. We will only request information specific to the activity eliminating unneeded information.

The information we collect in the special use applications allows park managers to determine if the requested use is consistent with the laws and NPS regulations referenced above and with the public interest. The park manager must also determine that the requested activity will not cause unacceptable impacts to park resources and values.

II. Data

OMB Control Number: 1024–0026.

Title: Special Park Use Applications (Portions of 36 CFR 1—7, 13, 20, 34).

Form Numbers: 10–930, 10–930S, 10–931, 10–932, and 10–933.

Type of Request: Revision of a currently approved collection of information.

Description of Respondents: Individuals or households; not-for-profit entities; businesses or other for-profit entities; and Federal, State, local and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hour)	Total annual burden hours
10–930	10,000	10,000	.5	5,000
10–930S	5,000	5,000	.25	1,250
10–931	2,500	2,500	.5	1,250
10–932	1,150	1,150	.75	863
10–933	1,000	1,000	.25 hour	250
Totals	19,650	19,650		8,613

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 31, 2012.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–00006 Filed 1–4–13; 8:45 am]

BILLING CODE 4312–EH–P

INTERNATIONAL TRADE COMMISSION

[DN 2929]

Certain Wireless Devices With 3G and/or 4G Capabilities and Components Thereof Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof,* DN 2929; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of InterDigital Communications, Inc., InterDigital Technology Corporation, IPR Licensing, Inc. and InterDigital Holdings, Inc. on January 2, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (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 wireless devices with 3g and/or 4g capabilities and components thereof. The complaint names as respondents Samsung Electronics Co., Ltd. of Korea; Samsung Electronics America, Inc. of NJ; Samsung Telecommunications America, LLC of TX; Nokia Corporation of Finland; Nokia Inc. of NY; ZTE Corporation of China; ZTE (USA) Inc. of TX; Huawei Technologies Co., Ltd of China; Huawei Device USA, Inc. of TX; and FutureWei Technologies, Inc. (d/b/a/Huawei Technologies (USA)) of TX.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2929'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 2, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–00036 Filed 1–4–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–365–366 and 731–TA–734–735 (Third Review)]

Certain Pasta From Italy and Turkey; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders and revocation of the antidumping duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATED: *: Effective Date:* December 10, 2012.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (220–708–2427), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On December 10, 2012, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (77 FR 53909, September 4, 2012) was adequate and that the respondent interested party group response with respect to Turkey was adequate, and decided to conduct full reviews of the countervailing duty order and antidumping duty order on imports of certain pasta from Turkey. The Commission found that the respondent interested party group response with respect to Italy was inadequate. Notwithstanding the Commission's adequacy determination regarding Italy, the Commission determined to conduct full reviews of the countervailing duty order and antidumping duty order on imports of certain pasta from Italy to promote administrative efficiency in light of its decision to conduct full reviews with respect to Turkey. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and on the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 2, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–00048 Filed 1–4–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0094]

Agency Information Collection Activities: Existing Collection; Comments Requested: Extension of a Currently Approved Collection; Annual Survey of Jails

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Justice Statistics, 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 March 8, 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 Todd D. Minton, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–305–9630).

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 Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—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, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revisions of a currently approved collection.

(2) *Title of the Form/Collection:* The Annual Survey of Jails (ASJ). The collection includes the forms: Annual Survey of Jails (ASJ), which includes the regular form and the certainty jurisdiction form; and the Survey of Jails in Indian Country (SJIC) regular form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form numbers include:

- *Annual Survey of Jails:* This collection consists of four forms:
  - CJ–5 and CJ–5A, the ASJ regular forms: These forms go to jail jurisdictions in the ASJ sample that are not selected with certainty. The CJ–5 form goes to jail jurisdictions operated by the county or city and the CJ–5A goes to privately owned or operated confinement facilities;
  - CJ–5D and CJ–5DA, the ASJ certainty jurisdiction forms: The forms go to jail jurisdictions in the ASJ sample that are selected with certainty. The CJ–5D and CJ–5DA request additional information about the distribution of time served, staffing, and inmate misconduct that are not requested on the CJ–5 and CJ–5A. The CJ–5D goes to jurisdictions operated by the county or city; the CJ–5DA goes to confinement facilities administered by two or more governments and privately owned or operated confinement facilities.
- Survey of Jails in Indian Country (SJIC): All respondents receive the CJ–5B (the SJIC regular form).

The applicable component of the Department of Justice sponsoring the collection is the Bureau of Justice Statistics, which is within the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public that will be asked to respond include approximately 1,000 county, city, and Tribal jail authorities (929 respondents to the ASJ and 82 to the SJIC). As community institutions that book an estimated 12 million inmates per year, local jails are an integral part of the justice system, operating at the front end (that is, following arrest or referral) as well as the back end (discharging inmates and holding those sentenced to jail). Their broad functions include handling inmates who are awaiting trial or sentencing, holding inmates for other authorities, detaining inmates with special needs such as mental health holds or alcohol detoxifications, transferring inmates to court appearances and bringing them back to detention, discharging inmates at the behest of the court or other entities, and holding inmates who have been sentenced to terms in jail. The set of collections in this package provides BJS with the capacity to track and analyze changes in the jail inmate population that might signal changes in the kinds of cases coming into or leaving the criminal justice system, and to analyze how the volatility of jail inmate populations affects the workload of jails and their capacities to provide services. The parallel structure of the SJIC collection provides BJS with this capacity for Indian country jails.

In its entirety, this collection is the only national effort devoted to describing and understanding annual changes in jail populations as well as assessing programs and capacities to provide services. The collection enables BJS, other federal agencies, and state, local, and Tribal corrections authorities and administrators, as well as legislators, researchers, and jail planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographics and supervision status of jail population and the prevalence of crowding.

The forms and information content for this collection are outlined next in the following order: First, the components of the Annual Survey of Jails (ASJ), which include the CJ–5, CJ–5A, CJ–5D, and CJ–5DA. Second, the Survey of Jails in Indian Country (SJIC) includes the CJ–5B.

The two components of the Annual Survey of Jails include the CJ–5/5A and CJ–5D/5DA forms. The CJ–5/5A forms are to be administered to ASJ sample elements that are selected with a probability of less than 1. The CJ–5D/5DA forms are to be administered to ASJ sample elements selected with certainty.

CJ–5 and CJ–5A

For these forms, 555 respondents from sampled county and city jails will be asked to provide information for the following categories:

(a) At midyear (last weekday in the month of June), the number of inmates confined in jail facilities including; male and female adult and juvenile inmates; persons under age 18 held as adults; race categories; held for Federal authorities, State prison authorities and other local jail jurisdictions.

(b) At midyear, the number of convicted inmates that are unsentenced or sentenced and the number of unconvicted inmates awaiting trial/arraignment, or transfers/holds for other authorities.

(c) At midyear, the number of persons under jail supervision who were not U.S. citizens.

(d) Whether the jail facilities has a weekend incarceration program prior to midyear and the number of inmates participating.

(e) The number of new admissions into and final discharges from jail facilities during the last week in June.

(f) The date and count for the greatest number of confined inmates during the 30-day period in June.

(g) The average daily population of jail facilities from July 1 of the previous

year to June 30 of the current collection year.

(h) Jail capacity, measured three ways: rated capacity, operating capacity, and design capacity.

(i) At midyear, the number of persons under jail supervision but not confined (e.g., electronic monitoring, day reporting, etc.).

CJ–5D and CJ–5DA

These forms will be administered to the certainty jurisdictions in the ASJ sample; in addition to the information collected in the regular ASJ forms (the CJ–5/5A), the 374 respondents that are included with certainty in the ASJ sample survey will be asked to provide additional information on the flow of inmates going through jails and the distribution of time served, staff characteristics and assaults on staff resulting in death, and inmate misconduct. More specifically, these include:

(a) The distribution of time served by inmates discharged during the final week of June, broken out by whether the inmates were convicted or unconvicted.

(b) At midyear, the number of correctional officers and other staff employed by jail facilities;

(c) From July 1 of the previous year to June 30 of the current collection year: the number of inmate-inflicted physical assaults (and counts) on correctional officers and other staff and the number of staff deaths as a result.

(d) From July 1 of the previous year to June 30 of the current collection year: the number of inmates, by category, who were written up or found guilty of a rule violation.

CJ–5B

The Survey of Jails in Indian Country is collected from Indian country correctional facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA) (currently there are 82) will be asked to provide information for the following categories:

(a) At midyear (last weekday in the month of June), the number of inmates confined in jail facilities including; male and female adult and juvenile inmates; persons under age 18 held as adults; convicted and unconvicted males and females; persons held for a felony, misdemeanor; their most serious offense (e.g., domestic violence offense, aggravated or simple assault, burglary, public intoxication, driving while intoxicated, etc.)

(b) The average daily population during the 30-day period in June;

(c) The date and count for the greatest number of confined inmates during the 30-day period in June;

(d) The number of new admissions into and final discharges during the month of June;

(e) From July 1 of the previous year to June 30 of the current collection year: the number of inmate deaths while confined and the number of deaths attributed to suicide and the number of confined inmates that attempted suicide;

(f) At midyear, the total rated capacity of jail facilities;

(g) At midyear, the number correctional staff employed by the facility and their occupation (e.g., administration, jail operations, educational staff, etc.);

(h) At midyear, how many jail operations employees had received the basic detention officer certification and how many had received 40 hours of in-service training;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Six hundred and thirty-seven respondents each taking an average 75 minutes to respond for collection forms CJ–5 and CJ–5A, and CJ–5B. Three hundred and seventy-four respondents each taking 120 minutes to respond for collection forms CJ–5D and CJ–5DA.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1,544 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: January 2, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–00040 Filed 1–4–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities: Proposed New Collection; Comments Requested: Enhancing Community Policing Through Community Mediation Surveys

ACTION: 60-Day notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until March 8, 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 Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

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.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed new collection; comments requested.

(2) *Title of the Form/Collection:* Enhancing Community Policing Through Community Mediation Surveys.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public who will be asked to respond are both law enforcement agencies and their civilian communities to gage both groups' satisfaction with a police-mediation referral program. The purpose of this project is to assess the effectiveness of mediation on police operations (cost, benefits, impact), the level of police and citizen satisfaction with mediation as a traditional police response alternative, and its role in advancing community policing. These surveys will be used to assess the level of police and citizen satisfaction with mediation as a traditional police response alternative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 180 respondents annually will complete the form within .83 hours (50 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 150 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: January 2, 2013.

Jerri Murray,

Department Clearance Officer for PRA, Department of Justice.

[FR Doc. 2013–00041 Filed 1–4–13; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 10:30 p.m., Tuesday, January 9, 2013.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on seven original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: January 3, 2013.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2013–00112 Filed 1–3–13; 4:15 pm]

BILLING CODE 4410–31–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Agency Information Collection Activities

AGENCY: Office of the Director of National Intelligence (ODNI).

ACTION: Notice.

SUMMARY: In December 2011, the ODNI accepted responsibility from the Information Security Oversight Office for the maintenance of Standard Form 312: Classified Information Nondisclosure Agreement; Standard Form 713: Consent For Access to Records; and Standard Form 714: Financial Disclosure Report, which are directly related to responsibilities assigned to the Director of National Intelligence (DNI) as Security Executive Agent. Accordingly, ODNI is giving public notice regarding its acceptance of responsibility of the aforementioned forms. Also, section 10 of the Standard Form 312 is being updated as described in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. John Hackett, Office of the Chief Information Officer, Information and Data Management Group, Office of the Director of National Intelligence, Washington, DC 20511.

SUPPLEMENTARY INFORMATION: Section 10 of Standard Form 312 is being updated to include the following three statutory changes required pursuant to § 715 of Public Law 112–74:

1. Striking ''Executive Order No. 12958'' and inserting ''Executive order No. 13526 (75 FR 707), or any successor thereto'';

2. After ''the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 *et seq.*) (governing disclosures that could expose confidential Government agents);'' inserting ''sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community, and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403–3h–(g)(3) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(5) and 403q(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress);''; and

3. After ''Subversive Activities'' inserting ''Control''.

Abstract: The National Security Act of 1947, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004, and Executive Order13467, ''Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information,'' authorizes the DNI as the Security Executive Agent to develop standard forms that promote uniformity and consistency in the implementation of the Government's security clearance program.

Dated: November 30, 2012.

Mark W. Ewing,

Chief Management Officer.

[FR Doc. 2012–31541 Filed 1–4–13; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of January 7, 14, 21, 28, February 4, 11, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 7, 2013

Tuesday, January 8, 2013

9:00 a.m. Briefing on Fort Calhoun (Public Meeting) (Contact: Michael Hay, 817–200–1527)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, January 9, 2013

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

Honeywell International Inc. (Metropolis Works Uranium Conversion Facility), Docket No. 40–3392, Petition for Review of LBP–12–6 (Mar. 22, 2012) (Tentative)

This meeting will be webcast live at the Web address—*www.nrc.gov*

9:00 a.m. Briefing on Venting Systems for Mark I and Mark II Containments (Public Meeting) (Contact: William Reckley, 301–415–7490)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of January 14, 2013—Tentative

There are no meetings scheduled for the week of January 14, 2013.

Week of January 21, 2013—Tentative

There are no meetings scheduled for the week of January 21, 2013.

Week of January 28, 2013—Tentative

Thursday, January 31, 2013

9:00 a.m. Briefing on Public Participation in NRC Regulatory Decision-Making (Public Meeting) (Contact: Lance Rakovan, 301–415–2589)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Friday, February 1, 2013

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting) (Contact: Sandra Talley, 301–415–8059)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of February 4, 2013—Tentative

Thursday, February 7, 2013

1:00 p.m. Briefing on Steam Generator Tube Degradation (Public Meeting) (Contact: Ken Karwoski, 301–415–2752)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of February 11, 2013—Tentative

There are no meetings scheduled for the week of February 11, 2013.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: January 2, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–00099 Filed 1–3–13; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–27 and CP2013–35; Order No. 1601]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services—Non-Published Rates 4 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are Due:* January 8, 2013.

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. Notice of Filing
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* and Order No. 630, the Postal Service filed a formal request and associated supporting information to add Global Expedited Package Services—Non-Published Rates 4 (GEPS–NPR 4) to the competitive product list.[1] The Postal Service states that the addition is necessary due to changes in the non-discounted published postage for Express Mail International (EMI), Priority Mail International (PMI), and Global Express Guaranteed (GXG), as well as the creation of a new GEPS–NPR 4 model contract and accompanying financial model that differ from the GEPS–NPR 3 model contract and financial model. Request at 2–3. The Request has been assigned Docket No. MC2013–27.

The Postal Service contemporaneously filed a redacted version of the GEPS–NPR 4 model contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment 4. The instant contract has been assigned Docket No. CP2013–35.

Request. To support its Request, the Postal Service filed the following attachments:

- Attachment 1—an application for non-public treatment of materials filed under seal;
- Attachment 2A—a redacted version of Governors' Decision No. 11–6;
- Attachment 2B—a revised version of MCS 2510.8 GEPS–NPR;
- Attachment 2C—a redacted version of Management's Analysis of the Prices and Methodology for Determining Prices For Negotiated Service Agreements Under Global Expedited Package Services—Non-Published Rates 4;
- Attachment 2D—a list of Maximum and Minimum Prices for EMI, PMI, and GXG under GEPS–NPR 4 Contracts;
- Attachment 2E—a certified statement concerning prices for applicable negotiated service agreements under GEPS–NPR 4 rates, as required by 39 CFR 3015(c)(2);
- Attachment 3—a Statement of Supporting Justification similar to the Statement of Supporting Justification used to support the classification of GEPS–NPR 1, and as required by 39 CFR 3020.32;
- Attachment 4—a redacted version of the GEPS–NPR 4 model contract.

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that the product is designed to increase the efficiency of the Postal Service's process, as well as enhance its ability to compete in the marketplace. *Id.* Attachment 3 at 1. Mr. Cebello states that the product is also designed to enable the Postal Service's Global Business sales force to rapidly establish, based on various factors, whether a GEPS-type agreement will be profitable

[1] Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 4 (GEPS–NPR 4) to the Competitive Products List and Notice of Filing GEPS–NPR 4 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, December 21, 2012 (Request).

enough to justify establishing an incentive-based mailing plan with the customer for EMI, PMI, and GXG (if the customer uses Global Shipping Software). *Id.* Attachment 3 at 2. In order to accomplish this, the GEPS–NPR 4 product revises the product designs for GEPS–NPR 1, GEPS–NPR 2, and GEPS–NPR 3 to include actual rates that will cover their costs, and will eliminate the need for each customer agreement to be added to the competitive product list individually. *Id.* Attachment 3 at 2, 5. Mr. Cebello contends that the financial modeling in support of the GEPS–NPR 4 product demonstrates that the product will cover its attributable costs, make a positive contribution to covering institutional costs, as well as not be subsidized by market dominant products. *Id.* Attachment 3 at 3.

Related model contract. The Postal Service included a redacted version of the related model contract with the Request. *Id.* Attachment 4. The Postal Service will notify each customer of the contract's effective date no later than 30 days after receiving the signed agreement from the customer. *Id.* at 7. Each contract will expire 1 year from the effective date unless terminated sooner. *Id.* The Postal Service filed much of the supporting materials, including the related model contract, under seal. *Id.* Attachment 1. It maintains that the redacted portions of the materials should remain confidential as sensitive business information. *Id.* at 4. This information includes sensitive commercial information concerning the incentive discounts and their formulation, applicable cost coverage, non-published rates, as well as some customer-identifying information. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure for 10 years after the date of filing with the Commission, unless an order is entered to extend the duration of that status. *Id.* at 9.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–27 and CP2013–35 to consider the Request pertaining to the proposed GEPS–NPR 4 product.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 8, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–27 and CP2013–35 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than January 8, 2013.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–00008 Filed 1–4–13; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30332]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 28, 2012.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2012. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 22, 2013, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

Yacktman Fund Inc. [File No. 811–6628]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant transferred its assets to a series of Managers AMG Funds, and on June 29, 2012, made a final distribution to its shareholders based on net asset value. Expenses of $2,889,552 incurred in connection with the reorganization were paid by Yacktman Asset Management Co., applicant's investment adviser, and Managers Investment Group LLC, the surviving fund's investment adviser.

Filing Dates: The application was filed on October 4, 2012 and amended on December 11, 2012.

Applicant's Address: 6300 Bridgepoint Pkwy., Building One, Suite 320, Austin, TX 78730.

Dreyfus BASIC U.S. Government Money Market Fund [File No. 811–6606]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 11, 2012, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $608 incurred in connection with the liquidation were paid by the Dreyfus Corporation, applicant's investment adviser.

Filing Dates: The application was filed on October 12, 2012 and amended on December 6, 2012.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Build America Bond Portfolio [File No. 811–22351]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 16, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on November 30, 2012.

Applicant's Address: Two International Place, Boston, MA 02110.

Global Growth Portfolio [File No. 811–7303]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant transferred its assets to Multi-Cap Growth Portfolio and, on November 2, 2010, made a final distribution to its shareholders based on net asset value. Expenses of approximately $47,771 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on November 30, 2012.

Applicant's Address: Two International Place, Boston, MA 02110.

Multi-Sector Portfolio [File No. 811–22295]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 17, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on November 30, 2012.

Applicant's Address: Two International Place, Boston, MA 02110.

Eaton Vance National Municipal Income Trust [File No. 811–9143]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Income Trust and, on May 28, 2009, made a final distribution to its shareholders based on net asset value. Expenses of approximately $155,907 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on November 30, 2012.

Applicant's Address: Two International Place, Boston, MA 02110.

Cash Management Portfolio [File No. 811–8390]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 16, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on November 30, 2012.

Applicant's Address: Two International Place, Boston, MA 02110.

Bhirud Funds Inc. [File No. 811–6680]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 14, 2012, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $3,098 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on November 27, 2012.

Applicant's Address: c/o Bhirud Associates, Inc., 6 Thorndal Circle, Suite 205, Darien, CT 06820.

Tax Managed Mid Cap Core Portfolio [File No. 811–10597]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 16, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on November 30, 2012.

Applicant's Address: Two International Place, Boston, MA 02110.

Special Equities Portfolio [File No. 811–8594]

Small-Cap Portfolio [File No. 811–9915]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On June 8, 2012, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on November 30, 2012.

Applicants' Address: Two International Place, Boston, MA 02110.

Elite Group of Mutual Funds [File No. 811–4804]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to corresponding series of Cutler Trust and, on September 28, 2012, made a final distribution to shareholders based on net asset value. Expenses of $66,843 incurred in connection with the reorganization were paid by applicant and McCormick Capital Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 6, 2012.

Applicant's Address: 1325 4th Ave., Suite 1744, Seattle, WA 98101.

Delaware Investments Arizona Municipal Income Fund, Inc. [File No. 811–7412]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Delaware Investments National Municipal Income Fund, and on July 1, 2011, applicant made a final distribution to its shareholders based on net asset value. Expenses of approximately $85,850 incurred in connection with the reorganization were paid by applicant, the acquiring fund and Delaware Management Company, applicant's investment adviser.

Filing Date: The application was filed on November 20, 2012.

Applicant's Address: 2005 Market St., Philadelphia, PA 19103–7094.

Delaware Group Tax Free Money Fund [File No. 811–3120]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 13, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on November 20, 2012.

Applicant's Address: 2005 Market St., Philadelphia, PA 19103–7094.

Washington National Variable Annuity Fund A [File No. 811–1661]

Summary: Applicant, Washington National Variable Annuity Fund A, a unit investment trust registered under the Investment Company Act of 1940 (the ''Act''), seeks an order declaring that it has ceased to be an investment company. Washington National Insurance Company (''Company''), of which Applicant is a separate account, terminated the offering of Applicant's variable annuity contracts (''Contracts'') in 1978 and has not engaged in any solicitation or marketing activities with respect to the Contracts for 34 years. Since 1978, the number of outstanding Contracts declined as a result of surrenders by owners of the Contracts and deaths of owners or annuitants under their Contracts. As a result, Applicant currently has only 18 beneficial owners of such Contracts. Applicant is not making and does not presently propose to make a public offering of the Contracts. After the deregistration order requested by the Applicant issues, securityholders under the Contracts will be promptly notified that certain legal protections afforded to securityholders of an investment company registered under the Act will no longer apply to such Fund A securityholders. However, after issuance of the order, the Company will continue to be responsible for satisfying all the obligations to securityholders under the Contracts.

Filing Dates: The application was filed on September 7, 2012.

Applicant's Address: 11815 N. Pennsylvania Street, Carmel, IN 46032.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31753 Filed 1–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 10, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 10, 2013 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and litigation matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 3, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–00126 Filed 1–3–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68554; File No. SR–EDGX–2012–48]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

December 31, 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 26, 2012 the EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to lower the default [4] rebate at the top of its fee schedule for adding liquidity in securities at or above $1.00 on EDGX from a rebate of $0.0023 per share to a rebate of $0.0021 per share. This change will also be reflected in the following added liquidity flags: Flags B, V, Y, 3, and 4. The Exchange notes that Members will still qualify for all tiered rebates, as discussed in Footnotes 1, 2, or 13 on the Exchange's fee schedule.[5]

The Exchange proposes to increase the default rate for removing liquidity from EDGX in securities priced below $1 from 0.10% of the dollar value of the transaction to 0.30% of the dollar value of the transaction.[6] As a result of the increase in rate, all flags that remove liquidity from the EDGX Book in securities priced less than $1.00 would be assessed a fee of 0.30% of the dollar value of the transaction. These include Flags N, W, 6, BB, MT, PI, PR, and ZR.[7]

For customer internalization, which occurs when two orders presented to the Exchange from the same Member (i.e., MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another,[8] the Exchange currently charges $0.00035 per share per side of an execution (for adding liquidity and for removing liquidity) for Flags EA, ER, and 5. This charge occurs in lieu of the standard or tiered rebate/removal rates. Therefore, Members currently incur a total transaction cost of $0.0007 per share for both sides of an execution for customer internalization.

In SR–EDGX–2011–13,[9] the Exchange represented that it ''will work promptly to ensure that the internalization fee is

[4] ''Default'' refers to the standard rebated provided to Members for orders that add liquidity to the Exchange absent Members qualifying for additional volume tiered pricing. The Exchange notes that Members may qualify for a higher rebate than the default rebate if they satisfy the volume tier requirements outlined in Footnotes 1, 2, or 13.

[5] References herein to ''Footnotes'' refer only to footnotes on the Exchange's fee schedule and not to footnotes within the current filing.

[6] This fee is consistent with the limitations of Regulation NMS, SEC Rule 610(c), for securities with a price of less than $1.00.

[7] The Exchange notes that the rates in the table of flags on its fee schedule all apply to orders in securities priced $1 and over and therefore, no amendment is necessary to the rates displayed on this table at this time.

[8] Members are advised to consult Rule 12.2 respecting fictitious trading.

[9] *See* Securities Exchange Release No. 64452 (May 10, 2011), 76 FR 28110, 28111 (May 13, 2011) (SR–EDGX–2011–13).

no more favorable than each prevailing maker/taker spread.'' In order to ensure that the internalization fee is no more favorable than the proposed maker/taker spread of $0.0009 for the standard add rate (proposed rebate of $0.0021) and standard removal rate ($0.0030 charge per share), the Exchange is proposing to charge $0.00045 per side for customer internalization (flags EA, ER and 5). However, if a Member posts 10,000,000 shares or more of average daily volume (''ADV'') to EDGX, then the Member would get the current rate of $0.0001 per share per side for customer internalization.[10] If this occurs, then the Member's rate for inadvertently matching with itself decreases to $0.0001 per share per side, as reflected in Footnote 11, as the Member has met the least restrictive criteria to satisfy a tier. In each case (both tiered and standard rates), the charge for Members inadvertently matching with themselves is no more favorable than each maker/taker spread. The applicable rate for customer internalization thus allows the Exchange to discourage potential wash sales.

Similarly, as a result of the change in the default rate for removing liquidity in securities priced below $1, the Exchange proposes to place the rate of 0.15% of the dollar value of the transaction per share per side for customer internalization in securities priced below $1 in footnote 11, which is appended to Flags EA, ER, and 5.[11] As a result, customers who internalize would be charged 0.15% of the dollar value of the transaction instead of the applicable add or remove rate for securities priced below $1.00. This proposed internalization fee is no more favorable than the proposed maker/taker spread.

The Exchange also provides, in part, in Footnote 11 that for flags EA/ER (internalization), if a Member internalizes more than 4% of their ADV on EDGX (added, removed, and routed liquidity) and the Member, at a minimum, meets the criteria for the Mega Tier rebate of $0.0032 per share in Footnote 1, then the Member receives the applicable rebate in Footnote 1 for adding liquidity, or is charged the applicable removal rate in Footnote 1. The Exchange also proposes to eliminate this rebate. The Exchange notes that Members can still qualify for an internalization rate of $0.0001 per share per side if they meet the other criteria outlined in Footnote 11 of the fee schedule.

The Exchange also proposes to eliminate one method to achieve the Mega Tier rebate on its fee schedule. In Footnote 1, Members can qualify for the Mega Tier rebate and be provided a $0.0032 rebate per share for liquidity added on EDGX in either of two ways: (i) if the Member on a daily basis, measured monthly, posts 0.75% of the Total Consolidated Volume (''TCV'') in ADV; or (ii) if the Member on a daily basis, measured monthly, posts 0.12% of the TCV in ADV more than their February 2011 ADV added to EDGX. TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month prior to the month in which the fees are calculated. The Exchange proposes to delete the method provided in clause (i) of qualifying for the Mega Tier. Members can still qualify for the Mega Tier rebate by meeting the criteria in clause (ii), as outlined above.

Retail Order Ports

In SR–EDGX–2012–47,[12] the Exchange provided that Members were be able to designate their orders as ''Retail Orders'' that add/remove liquidity using the FIX order entry protocol (FIX) but not the HP–API order entry protocol (HP–API) in order to qualify for the rates on Flags ZA and ZR. The Exchange defined a Retail Order in Footnote 4 to mean ''(i) an agency order that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.'' The Exchange also provided that Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a Retail Order complies with the above requirements.

Currently, Retail Orders may be submitted by Members on an order-by-order basis via FIX in order to qualify for the rates on Flags ZA (rebate of $0.0032 per share) and ZR (fee of $0.0030 per share). The Exchange proposes to amend the language in Footnote 4 on its fee schedule to allow Members to designate certain of their FIX ports at the Exchange as ''Retail Order Ports'' in order to qualify for the rates on Flags ZA and ZR. The attestation requirement, as described above and in SR–EDGX–2012–47,[13] will continue to apply to all Members who submit Retail Orders, whether on an order-by-order basis or via Retail Order Ports. Members are not required to designate orders as Retail Orders.

The Exchange proposes to implement these amendments to its fee schedule on January 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to lower the rebate from $0.0023 per share to $0.0021 per share is an equitable allocation of reasonable dues, fees and other charges as it will enable the Exchange to retain additional funds to offset increased administrative, regulatory, and other infrastructure costs associated with operating an exchange. The rate is reasonable in that it is comparable to rebates for adding liquidity offered by NYSE Arca, Inc. (rebates of 0.0021 per share for Tapes A/C securities, $0.0022 per share for Tape B securities)[16] and on NASDAQ Stock Market LLC[17] (rebate of $0.0020 per share). The Exchange believes that the proposed rebate is non-discriminatory in that it applies uniformly to all Members.

[10] EDGX has a variety of tiered rebates ranging from $0.0028–$0.0035 per share, which makes its maker/taker spreads range from $0.0002 (standard removal rate—Super Tier or 0.65% TCV step-up tier rebate), 0 (standard removal rate—Step-Up Take tier or Investor Tier), −$0.0001 (standard removal rate—Ultra Tier rebate), −$0.0002 (standard removal rate—Mega Tier rebate of $0.0032), −$0.0003 (standard removal rate—Market Depth Tier rebate of $0.0033 per share), and −$0.0005 (standard removal rate—Mega Tier rebate of $0.0035 per share). As a result of the customer internalization charge, Members who internalized would be charged $0.0001 per share per side of an execution (total of $0.0002 per share) instead of capturing the maker/taker spreads resulting from achieving the tiered rebates.

[11] This rate is derived from calculating the spread between adding and removing liquidity in securities below $1 and assuming a security is priced at $0.99 and dividing that result by two (2) to account for each side of the transaction. (0.30% × 1 share × $0.99) –(rebate of $0.00003 per share) = $0.00294/2 =$.00147 per share/$0.99 × 100 = approx. 0.15% of the dollar value of the transaction.

[12] *See* Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47).

[13] *Id.*

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] NYSE Arca, Inc., NYSE Arca Equities Trading Fees, *http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees.*

[17] NASDAQ Stock Market LLC, Price List—Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

In addition, the Exchange believes that its proposal to increase the default removal rate in securities priced below $1.00 from 0.10% of the dollar value of the transaction to 0.30% of the dollar value of the transaction is an equitable allocation of reasonable dues, fees and other charges as it will enable the Exchange to retain additional funds to offset increased administrative, regulatory, and other infrastructure costs associated with operating an exchange. The rate is reasonable in that it is comparable to fees for removing liquidity in securities priced below $1.00 offered by New York Stock Exchange LLC [18] and NASDAQ Stock Market LLC [19] (each exchange assesses fees of 0.30% of the dollar value of the transaction).

The Exchange believes that the increased fee for customer internalization from $0.00035 to $0.00045 per share per side of an execution for Flags EA, ER (regular trading session) and 5 (pre and post market) represents an equitable allocation of reasonable dues, fees, and other charges as it is designed to discourage Members from inadvertently matching with one another, thereby discouraging potential wash sales. The increased fee also allows the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. Finally, the fee is equitable in that it is consistent [20] with the EDGX fee structure that has a proposed maker/taker spread of $0.0009 per share (where the standard rebate to add liquidity on EDGX is proposed to be $0.0021 per share and the standard fee to remove liquidity is $0.0030 per share).

This increased fee per side of an execution on Flags EA, ER, and 5 ($0.00045 per side instead of $0.00035 per side per share), yields a total cost of $0.0009, thus making the internalization fee consistent with the current maker/taker spreads.[21] The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange's fee for customer internalization for securities priced below $1.00 of 0.15% of the dollar value of the transaction, as represented in footnote 11 appended to flags EA, ER, and 5, represents an equitable allocation of reasonable dues, fees, and other charges as it is designed to discourage Members from inadvertently matching with one another, thereby discouraging potential wash sales. The fee also allows the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. Finally, the fee is equitable in that it is consistent [22] with the EDGX fee structure that has a proposed maker/taker spread of 0.15% of dollar value of the transaction per share per side, where the standard rebate to add liquidity on EDGX in securities priced below $1.00 is a rebate of $0.00003 per share and the proposed standard fee to remove liquidity is 0.30% of the dollar value of the transaction. The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The deletion of the clause (i) in Footnote 1 as a method to qualify for the Mega Tier rebate of $0.0032 is equitable and reasonable as the rebate did not have the intended effect of incentivizing Members to add liquidity to EDGX by posting 0.75% of the TCV in ADV to EDGX. The Exchange also notes that with the deletion of this method of qualifying for the Mega Tier rebate of $0.0032, Members will continue to be subject to the other fees and tiers listed on the Exchange's fee schedule and can continue to achieve the rebate of $0.0032 per share through alternative criteria (posting 0.12% of the TCV in ADV more than the Member's February 2011 ADV added to EDGX). The Exchange also notes that the tier's elimination will have a minimal impact on its Members as only one Member qualified for such rebate in the past three months. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Similarly, the proposed elimination of Footnote 11's rebate is equitable and reasonable in that Members also were not incentivized to add, remove, and route liquidity to EDGX. As a result of the internalization rebate, Members who internalized and met the criteria to satisfy the Mega Tier and the volume threshold of 4% of their ADV on EDGX would be rebated $0.00032 per share per side of an execution (the applicable rebate in Footnote 1 for adding liquidity) and be charged $0.0030 per share per side of an execution (the applicable removal rate in Footnote 1, in this case). As a result of the elimination of this tier in Footnote 11, Members will continue to be subject to the other fees and tiers listed on the Exchange's fee schedule. The Exchange also notes that the tier's elimination will have a minimal impact on its Members as only one Member qualified for such rebate in the past three months. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Finally, the Exchange's proposal to expand the ability to use Retail Orders to those Members who prefer to designate certain of their FIX ports on the Exchange as ''Retail Order Ports'' represents an additional, voluntary choice that the Exchange provides to its Members in order to utilize Retail Orders. The additional option thus allows Members an alternative method through which Retail Orders can be designated, while ensuring that Members are required to have written policies and procedures designed to assure that they will only designate orders as Retail Orders if all requirements of a Retail Order are met.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it provides a second method for Retail Order designation and allows each Member to choose the designation method most convenient to it, recognizing that individual firms have different internal system configurations. By providing alternative avenues for Members to designate orders as Retail Orders, the Exchange believes that Members will choose the designation method that is most operationally efficient, potentially reducing transaction costs. The proposal is also non-discriminatory in that it applies uniformly to all Members equally.

The Exchange also expects that this alternative way to designate orders as Retail Orders would incentivize more Members to utilize Retail Orders. The Exchange also notes that NYSE Arca currently supports Retail Order Ports.[23] In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by

[18] New York Stock Exchange Price List 2012, *http://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_price_list_11_09_12.pdf.*

[19] NASDAQ Stock Market LLC, Price List—Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[20] In each case, the internalization fee is no more favorable to the Member than each prevailing maker/taker spread.

[21] The Exchange will continue to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.

[22] In each case, the internalization fee is no more favorable to the Member than each prevailing maker/taker spread.

[23] *See* Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77).

deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Moreover, the proposed use of Retail Orders, which are available for all Members that utilize FIX, is equitable and not unfairly discriminatory because FIX is available for all Members on an equal and non-discriminatory basis, as all Members can sign up for new logical ports using FIX or HP–API at a cost of $500/month (the first five DIRECT logical ports being provided free). The Exchange also notes that all Members that it expects will send Retail Orders either on an order-by-order basis or via designated Retail Order Ports currently maintain logical ports that utilize FIX. The Exchange also notes that the Members that only utilize HP–API are generally those that are more concerned with latency, as they trade for their own accounts where their order flow typically would not qualify as retail order flow. Finally, all order entry protocols on the Exchange do not necessarily support all Exchange functions and are designed differently in order to support the Member base most likely to utilize them.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and rebates remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Proposing to allow Members to designate Retail Order Ports increases competition with exchanges such as NYSE Arca that currently allow such practice [24] and does not impose any burden on intramarket competition as all Members have an additional way to designate Retail Orders.

The Exchange believes that its proposals to lower the rebate from $0.0023 per share to $0.0021 per share will also assist in increasing competition in that its proposed rebate is comparable to rebates for adding liquidity offered by NYSE Arca, Inc. (rebates of $0.0021 per share for adding liquidity in Tapes A/C securities and $0.0022 per share for adding liquidity in Tape B securities) [25] and on NASDAQ Stock Market LLC [26] (rebate of $0.0020 per share). Similarly, the Exchange believes that its increase in its default removal rate in securities priced less than $1.00 from 0.10% of the dollar value of the transaction to 0.30% of the dollar value of the transaction will also assist in increasing competition as its proposed fee is comparable to fees on NYSE and NASDAQ for removing liquidity in securities priced below $1.00. The Exchange believes that both proposals will have no burden on intramarket competition as the rates apply uniformly to all Members that place orders in securities priced at or above $1.00 or below $1.00.

The Exchange believes that its proposal to eliminate one method to achieve the Mega Tier on its fee schedule and eliminate its rebate for internalization in Footnote 11 will have no burden on intermarket or intramarket competition as Members are able to qualify for other tiered rebates and discounts at the Exchange or move their order flow to competing exchanges. Finally, the Exchange believes that its internalization rates for all securities (priced $1.00 and above and below $1.00) will also not burden intermarket or intramarket competition as the proposed rates in both cases are no more favorable than Members achieving the maker/taker spreads between the default add and remove rates on EDGX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [27] and Rule 19b–4(f)(2) [28] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2012–48 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–EDGX–2012–48. 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;

[24] *Id.*

[25] NYSE Arca, Inc., NYSE Arca Equities Trading Fees, *http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees.*

[26] NASDAQ Stock Market LLC, Price List—Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 19b–4(f)(2).

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–EDGX–2012–48 and should be submitted on or before January 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31752 Filed 1–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68553; File No. SR–FICC–2012–10]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove the Fee Related to the DTCC GCF Repo Index® From the Fee Structure of the Government Securities Division

December 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on December 21, 2012 Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed change as described in Items I and II below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC proposes to remove the fee related to the DTCC GCF Repo Index® from the Fee Structure of the Government Securities Division. The text of the proposed rule change was filed with the Commission as Exhibit 5 to the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to discontinue the $250.00 monthly fee that GCF Repo® participants are required to pay in connection with the DTCC GCF Repo Index®.

On October 18, 2010, FICC filed SR–FICC 2010–07[4] which permitted FICC to charge a monthly fee of $250 to all GCF Repo® participants. This fee covered the development and maintenance costs of the DTCC GCF Repo Index®. Because DTCC and NYSE Liffe have entered into an agreement whereby NYSE Liffe agrees to list futures based on the DTCC GCF Repo Index®, it is no longer necessary for FICC to charge a monthly fee to the GCF Repo® participants. As a result, the fee will be discontinued as of January 2, 2013 and the GSD Fee Structure will be revised to reflect this change.

FICC believes that the proposed rule is consistent with the Act and the rules and regulations promulgated thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by helping ensures that participants are not charged unnecessary fees.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change have not been solicited or received. FICC will notify the Commission of any other written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because they constitute a change a due, fee, or other charge applicable only to a member. 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.[7]

Electronic Comments

- Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or Send an email to *rule-comments@sec.gov*. Please include File Number SR–FICC–2012–10 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–FICC–2012–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/SR-FICC-2012-10.pdf*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] *See* Securities Exchange Act Release No. 34–63215 (October 29, 2010); 75 FR 213 (November 4, 2010) (SR–FICC–2010–07).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 15 U.S.C. 78s(b)(3)(C).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2012–10 and should be submitted on or before January 28, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31751 Filed 1–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68550; File No. SR–CBOE–2012–127]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange Penny Pilot Program

December 31, 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 21, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Penny Pilot Program. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [July 1, 2012] *January 1, 2013.* The Penny Pilot shall expire on [December 31, 2012] *June 30, 2013.*

(4) No change.

* * * *Interpretations and Policies:*

.01–.03 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on December 31, 2012. CBOE proposes to extend the Pilot Program until June 30, 2013. CBOE believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, CBOE proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[4] and would be added on the second trading day following January 1, 2013. CBOE will employ the same parameters to prospective replacement classes as approved and applicable in determining the existing classes in the Pilot Program, including excluding high-priced underlying securities.[5] CBOE will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.* December) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following January 1, 2013 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2012 through November 30, 2012.

[5] *See* Securities Exchange Act Release No. 60864 (October 22, 2009) (SR–CBOE–2009–76).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] 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 [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b–4(f)(6)(iii),[14] 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 because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[15] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–127. 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–CBOE–2012–127 and should be submitted on or before January 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31748 Filed 1–4–13; 8:45 am]

BILLING CODE 8011–01–P

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 5.

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68551; File No. SR–MIAX–2012–04]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 31, 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 21, 2012, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 510, Interpretations and Policies .01 to extend the pilot program for the quoting and trading of certain options in pennies (the ''Penny Pilot Program'') and to adopt a procedure for replacing in the Penny Pilot Program option classes that have been delisted.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is a participant in an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the ''Penny Pilot Program'' or ''Program''). Specifically, the Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of $0.01 for all series in such option classes with a price of less than $3.00; and in minimum increments of $0.05 for all series in such option classes with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007 and currently includes more than 300 of the most active option classes. The Penny Pilot Program is currently scheduled to expire on December 31, 2012. The purpose of the proposed rule change is to extend the Penny Pilot Program in its current format through June 30, 2013.

In addition, the Exchange proposes to amend Rule 510, Interpretations and Policies .01 to describe the process by which Penny Pilot Program option classes that have been delisted can be replaced. The process, which is currently in place at other option exchanges participating in the Penny Pilot Program, provides a date on which an option class in the Penny Pilot Program that has been delisted will be replaced by the next most actively traded, multiply-listed option class that is not yet in the Penny Pilot Program. The replacement classes will be added to the Penny Pilot Program on the second trading day following January 1, 2013. Determination of the next most actively traded option class will be based on trading activity in the previous six months excluding the month immediately prior to the replacement date. Thus, replacement issues will be selected based on trading activity for the six month period beginning June 1, 2012, and ending November 30, 2012. All classes currently participating in the Penny Pilot Program will remain the same and all minimum increments will remain unchanged. The Exchange believes its participation in the Penny Pilot Program will benefit public customers and other market participants in that they will be able to express their true prices to buy and sell options in those classes that are part of the Program.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. In addition, the adoption of a process by which Penny Pilot Program option classes that have been delisted can be replaced, allows the Program to continue to provide for the quoting and trading of the most active option classes in pennies. It also provides an organized process, which is uniform across the options exchanges, for the introduction of new option classes into the Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Further, by extending the Penny Pilot Program for six months, MIAX, as a new entrant to the market, is able to participate in the Penny Pilot Program as it begins to roll-out trading in those active option classes that are part of the Program. MIAX's overall participation in the Penny Pilot Program enhances competition in that it provides another venue for trading active option classes expressed by market participants at their true prices.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] 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[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] 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 because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[12] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[13]

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–MIAX–2012–04 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–MIAX–2012–04. 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–MIAX–2012–04 and should be submitted on or before January 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31749 Filed 1–4–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68552; File No. SR–C2–2012–045]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange Penny Pilot Program

December 31, 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 21, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Penny Pilot Program. The text of the proposed rule change is provided below.

[(additions are *italicized;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Rule 6.4. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum quoting increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of this Rule within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [July 1, 2012] *January 1, 2013.* The Penny Pilot shall expire on [December 31, 2012] *June 30, 2013.* Also, for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, may be $0.01 for all option series quoting less than $3 (including LEAPS), and $0.05 for all option series quoting at $3 or higher (including LEAPS).

(4) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on December 31, 2012. C2 proposes to extend the Pilot Program until June 30, 2013. C2 believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, C2 proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[4] and would be added on the second trading day following January 1, 2013. C2 will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

C2 is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii)

[4] The month immediately preceding a replacement class's addition to the Pilot Program (i.e. December) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following January 1, 2013 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2012 through November 30, 2012.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

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[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] 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 because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2012–045 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–C2–2012–045. 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–C2–2012–045 and should be submitted on or before January 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31750 Filed 1–4–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8141]

Notice of Meeting of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee February 27–March 1, 2013, at the Department of State, Annex 5, 2200 C Street NW., Washington, DC. Portions of this meeting will be closed to the public, as discussed below.

During the closed portion of the meeting, the Committee will review the proposal to extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Archaeological Material from Cambodia from the Bronze Age Through the Khmer Era* (MOU) [Docket No. DOS–2012–0063]. An open session to receive oral public comment on this proposal will be held on Wednesday, February 27, 2013, beginning at 1:30 p.m. ET.

Also during the closed portion of the meeting, the Committee will conduct an interim review of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras.* Public comment, oral and written, will be invited at a time in the future should this Memorandum of Understanding be proposed for extension.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The text of the Act and Memoranda of Understanding, as well as related information, may be found at *http://culturalheritage.state.gov.*

If you wish to attend the open session on February 27, 2013, you should notify the Cultural Heritage Center of the Department of State at (202) 632–6301 no later than 5:00 p.m. (ET) February 6, 2013, to arrange for admission. Seating

is limited. When calling, please specify if you have special accommodation needs. The open session will be held at 2200 C St. NW., Washington, DC 20037. Please plan to arrive 15 minutes before the beginning of the open session.

If you wish to make an oral presentation at the open session, you must request to be scheduled and must submit a written text of your oral comments, ensuring that it is received no later than February 6, 2013, at 11:59 p.m. (ET), via the eRulemaking Portal (see below), to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to allow time for questions from members of the Committee. All oral and written comments must relate specifically to the determinations under 19 U.S.C. 2602 of the Convention on Cultural Property Implementation Act, pursuant to which the Committee must make findings. This statute can be found at the Web site noted above.

If you do not wish to make oral comment, but still wish to make your views known, you may send written comments for the Committee to consider. Again, your comments must relate specifically to the determinations under 19 U.S.C. 2602) of the Convention on Cultural Property Implementation Act. Submit all written materials electronically through the eRulemaking Portal (see below), ensuring that they are received no later than February 6, 2013 at 11:59 p.m. (ET). Our adoption of this procedure facilitates public participation, implements Section 206 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2915, and supports the Department of State's ''Greening Diplomacy'' initiative which aims to reduce the State Department's environmental footprint and reduce costs.

Confidential written comments: If you wish to submit information that is privileged or confidential in your comments, pursuant to 19 U.S.C. § 2605(i)(1), do so via regular mail, commercial delivery, or hand delivery. Only confidential comments will be accepted via those methods.

As a general reminder, comments submitted by fax or email are not accepted. In the past, twenty copies of texts over five pages in length were requested. Please note that this is no longer necessary; all comments, other than confidential comments, should now be submitted via the eRulemaking Portal only.

Please submit comments only once.

• *Electronic Delivery.* To submit comments electronically, go to the Federal eRulemaking Portal (*http://www.regulations.gov*), enter the Docket No. DOS–2012–0063 for Cambodia, and follow the prompts to submit a comment.

• Comments submitted in confidence only: *Regular Mail or Commercial Delivery.* Cultural Heritage Center (ECA/P/C), SA–5, Fifth Floor, Department of State, Washington, DC 20522–0505. *Hand Delivery.* Cultural Heritage Center (ECA/P/C), Department of State, 2200 C Street NW., Washington, DC 20522–0505.

Are Comments Private? No. Comments submitted in electronic form will be posted on the site *http://www.regulations.gov*. Because the comments cannot be edited to remove any identifying or contact information, the Department of State cautions against including any information in an electronic submission that one does not want publicly disclosed (including trade secrets and commercial or financial information that is privileged or confidential pursuant to 19 U.S.C. 2605(i)(1).

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

On Closed Meetings: As noted above, portions of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that ''The provisions of the Federal Advisory Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements of subsections (a) and (b) of section 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the government's negotiation objectives or bargaining positions on the negotiations of any agreement authorized by this title.'' Pursuant to law, executive order, and delegation of authority, I have made such a determination.

Dated: December 19, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–00047 Filed 1–4–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8140]

Notice of Proposal To Extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Archaeological Material From Cambodia From the Bronze Age Through the Khmer Era

The Government of the Kingdom of Cambodia has informed the Government of the United States of America of its interest in an extension of the Memorandum of Understanding between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Archaeological Material from Cambodia from the Bronze Age Through the Khmer Era (MOU).

Pursuant to the authority vested in the Assistant Secretary for Educational and Cultural Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this MOU is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of the MOU, the Designated List of restricted categories of material, and related information can be found at the following Web site: *http://culturalheritage.state.gov.*

Dated: December 19, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–00045 Filed 1–4–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Public Availability of the Department of Transportation FY 2012 Service Contract Inventory

AGENCY: Department of Transportation.

ACTION: Notice of Public Availability of FY 2012 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, Department of Transportation is publishing this notice to advise the public of the availability of the FY 2012 Service Contract Inventory. This inventory provides information on service contract actions over $25,000

that were made in FY 2012. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* Department of Transportation has posted its inventory and a summary of the inventory and the Service Contract Inventory Analysis Report on the Department of Transportation's homepage at the following link: *https://dotgov.prod.acquia-sites.com/assistant-secretary-administration/procurement/service-contract-inventory.* Questions regarding the service contract inventory should be directed to Ames Owens in the Senior Procurement Executive office at 202–366–9614 or *ames.owens@dot.gov.*

Dated: December 31, 2012.

Ames Owens,

Associate Director of Commercial Services Management.

[FR Doc. 2013–00059 Filed 1–4–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–58]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 28, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2010–0287 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 31, 2012.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0287.

Petitioner: Bombardier Inc.

Section of 14 CFR Affected: § 25.981(a)(3).

Description of Relief Sought: Petitioner seeks an amendment to Exemption No. 10175 to enable additional time beyond December 17, 2012, to demonstrate compliance with fuel tank ignition prevention requirements for its Bombardier Model CL–600–2E25 airplanes.

[FR Doc. 2013–00037 Filed 1–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–62]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 28, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0361 using any of the following methods:

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

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket

web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 2, 2012.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–0361.

Petitioner: BaySys Technologies.

Section of 14 CFR Affected: §§ 25.785(d), 25.807(c)(1), 25.807(c)(5), 25.809(f)(1), 25.813(b), 25.813(e), 25.857(e), and 25.1447(c)(1).

Description of Relief Sought: Permit relief to allow carriage of 15 non-crewmembers (commonly referred to as supernumeraries) in a compartment behind the flight deck on Boeing Model 747–400F airplanes.

[FR Doc. 2013–00038 Filed 1–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–61]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 28, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–1324 using any of the following methods:

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

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Theresa White, ANM–113, Standardization Branch, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; email *theresa.j.white@FAA.gov;* (425) 227–2956; fax: 425–227–1320; Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

Issued in Washington, DC, on December 31, 2012.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–1324.

Petitioner: The Boeing Company.

Sections of 14 CFR Affected: 14 CFR 25.901(c) and 25.981(a)(3).

Description of Relief Sought: The petitioner seeks exemption from the provisions of 14 CFR 25.901(c)[25–126] and 25.981(a)(3)[25–125] at the system level as they apply to the fuel quantity indication system (FQIS) installed on the 747–400/–400D/–400F airplanes for the fuel quantity processor unit (FQPU) parts obsolescence modification.

[FR Doc. 2013–00039 Filed 1–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0056]

Petition for Positive Train Control Safety Plan Approval and System Certification of the Electronic Train Management System

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 5, 2012, BNSF Railway (BNSF) has petitioned the Federal Railroad Administration (FRA) for Positive Train Control (PTC) Safety Plan (PTCSP) approval and system certification of the Electronic Train Management System (ETMS) as required by 49 U.S.C. 20157(h) and in accordance with 49 CFR 236.1015(a). FRA assigned the petition Docket Number FRA–2010–0056.

Applicant: Mr. David J. Galassi, Assistant Vice President–Network Control Systems, BNSF Railway, P.O. Box 961034, Fort Worth, TX 76161.

BNSF seeks PTCSP approval and system certification of ETMS Version 7.0, for use over the entire BNSF railroad network. ETMS Version 7.0 is a non-vital processor-based train control system safety overlay designed to protect against the consequences of train-to-train collisions, enforce compliance with civil and temporary speed limits, provide for the safety of

roadway workers operating within the limits of their authority, and to protect against the movement of trains through switches not properly lined for the intended movement.

ETMS Version 7.0 is the technical successor to earlier versions of ETMS, approved by FRA under the provisions of 49 CFR Part 236, Subpart H–Standards for Processor-Based Signal and Train Control Systems (Docket Number FRA–2006–23687). BNSF asserts that the PTCSP contains the information required by 49 CFR 236.1015(d) and that the PTCSP:

1. Demonstrates that ETMS Version 7.0 reliably executes the functions set forth in 49 CFR 236.1005.

2. Demonstrates that the use of ETMS Version 7.0 obtains at least an 80-percent reduction of the risk associated with accidents preventable by the functions set forth in 49 CFR 236.1005, when all effects of the change associated with the PTC system are taken into account.

BNSF believes that approval and certification of ETMS Version 7.0 will enhance railroad safety by allowing the deployment and use in revenue service of ETMS to prevent or mitigate the consequences of a loss of situational awareness by train crews, or other conditions, that could otherwise result in catastrophic consequences to the train crew and the general public.

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 6, 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 January 2, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–00095 Filed 1–4–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0112]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ANAA B; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 6, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2012–0112. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel ANAA B is:

Intended Commercial Use of Vessel: Sailboat charters.

Geographic Region: Texas, Louisiana, Mississippi, Alabama, Florida.

The complete application is given in DOT docket MARAD–2012–0112 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 18, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–30932 Filed 1–4–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Renewal of a Currently Approved Collection; and Comment Request for Reports of Suspicious Activity

AGENCY: Office of the Comptroller of the Currency (OCC).

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The OCC is soliciting comments concerning the currently approved Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program information collection. The Minimum Security Devices and Procedures and Bank Secrecy Act Compliance Program portion of the information collection is being extended without change. The OCC is proposing to extend, with revision, the interagency suspicious activity report (SAR–DI) portion of the collection and is inviting comments on this revision.

As the Bank Secrecy Act (BSA) administrator, the Financial Crimes Enforcement Network (FinCEN) in the U.S. Department of Treasury is changing from a system originally designed for collecting industry-specific paper forms to a modernized information technology environment centered on electronic reporting. Based on financial institution type, depository institutions, broker-dealers in securities, futures commission merchants and introducing brokers in commodities, insurance companies, mutual funds, money services businesses, and casinos file reports on four separate forms. FinCEN's new approach is to have one electronically filed interactive BSA SAR that will be used by all filing institutions to report suspicious activity as of April 1, 2013.

There are no proposed changes to the suspicious activity report regulation. National banks and federal savings associations supervised by the OCC will continue to follow the regulation, interagency guidance, and filing instructions to determine when a report should be filed and what information should be included in the report.

The interactive BSA SAR has several new data fields and introduces data fields from the SARs of other industries. On March 29, 2012, FinCEN released guidance titled, ''Filing FinCEN's New Currency Transaction Report and Suspicious Activity Report'' (FIN–2012–G002). The guidance notes that FinCEN is making available additional and more specific data elements (that is, characterizations of suspicious activity and types of financial services) as a more efficient way to bring information about suspicious activity to the attention of FinCEN and law enforcement. The guidance clarified the addition of new and expanded data elements does not create an expectation that financial institutions will revise internal programs, or develop new programs, to capture information that reflects the expanded data elements. Data elements designated as ''critical fields (questions for which an answer must be provided) in the BSA SAR are identified by the asterisk preceding the data element number.

DATES: Written comments should be received on or before April 8, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the OCC. All comments should refer to the Office of Management and Budget (OMB) control numbers. Direct all written comments as follows:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 6W–11, Attention: 1557–0180, Washington, DC 20219. In addition, comments may be sent by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC's Public Information Room, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0180, by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–7265 or (202) 649–6301, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is soliciting comments concerning the currently approved collections covered under the information collection titled ''Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance.'' The Minimum Security Devices and Procedures and Bank Secrecy Act Compliance Program information collection is being extended without change. The OCC is proposing to extend, with revision, the suspicious activity report (SAR–DI) portion of the collection and is inviting comments on the interactive BSA SAR that will be used to report suspicious activity as of April 1, 2013.

Title: Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance program.

OMB Control No.: 1557–0180.

Form Numbers: 8010–1/8010–9.

Abstract: In 1985, the bank supervisory agencies (Agencies),[1] issued procedures to be used by banks and certain other financial institutions operating in the United States to report known or suspected criminal activities to the appropriate law enforcement and banking supervisory agencies. Beginning in 1994, the Agencies and FinCEN redesigned the reporting process and developed the suspicious activity report, which became effective in April 1996. The report is authorized by the following regulations: 31 CFR 103.18 (FinCEN); 12 CFR 21.11 and 12 CFR 163.180 (OCC); 12 CFR 208.62(c), 211.5(k), 211.24(f), and 225.4(f) (Board); 12 CFR 353.3 (FDIC); 12 CFR 748.1 (NCUA). The regulations were issued under the authority contained in the following statutes: 31 U.S.C. 5318(g) (FinCEN); 12 U.S.C. 93a, 1463, 1464, 1818, 1881–84, 3401–22, 31 U.S.C. 5318 (OCC); 12 U.S.C. 248(a)(1), 625, 1818, 1844(c), 3105(c)(2) and 3106(a) (Board); 12 U.S.C1818–1820 (FDIC); 12 U.S.C. 1766(a), 1789(a) (NCUA).

Prior to the suspicious activity report effective date of April 1996, the OCC,

[1] The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

the other agencies, and FinCEN each issued new and nearly identical rules mandating the use of the interagency SAR–DI for reporting suspicious activities. In separate actions, FinCEN also enacted regulations requiring other types of financial institutions, such as brokers or dealers in securities and futures, money services businesses (money transmitters, issuers and sellers of money orders and travelers' checks, check cashers, and dealers in foreign exchange), casinos and card clubs, and insurance companies to file reports on suspicious activities.

In January 2003, check boxes were added to Part III of the SAR–DI to note terrorist financing and identity theft as suspicious activities and the safe harbor language in the instructions was updated to reflect changes made by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. In 2006, the SAR–DI form was revised to support a new joint filing initiative aimed at reducing the total number of duplicate reports filed for a single suspicious transaction. On May 1, 2007, FinCEN published a **Federal Register** notice (72 FR 23891) [2] announcing the delayed implementation of these revisions, which ultimately were never implemented.

On October 15, 2010, FinCEN issued a 60-day notice titled ''Proposed Collection; Comment Request; Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields.'' The notice sought input on technical matters as FinCEN transitions from a system originally designed for collecting paper forms to a modernized information technology environment for electronic reporting. Thereafter, a notice was issued on May 6, 2011 by the Treasury Department's Office of Information Management advising the public of a new collection by FinCEN and stating that FinCEN was submitting the BSA SAR comments to OMB for review. The notice stated, ''FinCEN is fielding a new system of record to support the collection and dissemination of BSA data to law enforcement and other regulatory agencies. The BSA SAR is a new dynamic information collection tool that will serve as the principle [sic] collection instrument to be used by financial institutions to record and report suspicious activity.'' On July 15, 2011, FinCEN received final approval of the BSA–SAR [3] from the Office of Management and Budget, which concluded FinCEN's October 15, 2010, request for comment.

On May 11, 2012, the OCC published a final **Federal Register** notice (77 FR 27858) announcing the extension for three years, without revision, of the ''Reports of Suspicious Activities'' data collection. OCC renewal was necessary because the current SAR–DI form is expiring and will continue to be accepted by FinCEN until March 31, 2013. The OCC is now seeking industry comment on the interactive BSA SAR that will be used to report suspicious activity as of April 1, 2013. Comments will be summarized and/or included in the request for Office of Management and Budget approval.

Proposed Revisions

The revised BSA SAR would integrate four institution-specific SARs into one universal data collection. The previous five parts of the SAR–DI remain with changes to their titles and placement in order of completion.

The proposed BSA–SAR is described below by form part. Fields from other industry SARs that may be new to depository institutions as well as specific data fields that are new to all types of industry filers have been identified. In the description provided below, questions for which answers must be provided (referred to as ''critical fields'') are identified with the * symbol in front of the data element number.

Type of Filing

Field 1 is the Type of Filing and requires the filer to designate the category that best describes the filing from a set of choices:

*1. Check all that apply—a. Initial report; b. Correct/amend prior report; c. Continuing activity report; d. Joint report; e. Prior report document control/file number if 1b or 1c are checked.

On the current SAR–DI there is only one choice in data field 1 for those reports that corrected a prior report.

Part I: Subject Information

Part I is titled ''Subject Information'' and it requires the filer to provide information for each subject involved in the suspicious activity. Subject Information is titled ''Suspect Information'' on the current SAR–DI. As with the current SAR–DI, multiple subjects may be included in Part I.

Each of the critical fields (*) in this part has a new check box that may be used if the information is unknown. If that box is checked, the filer would not need to enter any information in that field.

In Part I, with the exception of the check box to indicate if the requested information is unknown, these data fields remain the same, with no additions or changes from the SAR–DI:

*3. Individual's last name or entity's legal name—a. (check if) unknown
*4. First name—a. (check if) unknown
5. Middle initial (middle name for electronic filers)
7. Occupation or type of business
*8. Address—a. (check if) unknown
*9. City—a. (check if) unknown
*10. State—a. (check if) unknown
*11. ZIP/Postal Code—a. (check if) unknown
*12. Country Code—a. (check if) unknown
*13. TIN—a. (check if) unknown
*16. Date of birth mm/dd/yyyy—a. (check if) unknown

Listed below are the remaining data fields in Part I that would be considered new data fields or data fields that would be modified.

2. Check—a. If entity; b. If all critical (*) subject information is unavailable (If 2b is checked this part may be left blank)
5a. Gender—b. (Check if) Male; c. (Check if) Female; d. (Check if) Unknown
6. Alternate name, e.g. AKA for an Individual or DBA for an Entity
7a. NAICS Code (North American Industry Classification system code that corresponds to 7)
14. TIN type (* if 13 is completed)—a. EIN; b. SSN–ITIN; c. Foreign
*15. Form of identification for subject—a. (check if) unknown (or not obtained); b. (check if) Driver's license/state ID; c. (check if) Passport; d. (check if) Alien registration; e. Number; f. Issuing state; g. Issuing country; z. (check if) Other
17. Phone number type—a. (check if) Home; b. (check if) Work; c. (check if) Mobile; d. (check if) Fax
18. Phone number—a. Extension (if any)
19. Email address (if available)
19 a.Web site (URL) address (if available)
20. Corroborative statement to filer?—a. (check if) Yes; b. (check if) No (This was Admission/Confession on the SAR–DI)
21. Relationship of the subject to the filing institution (check all that apply)—a. Institution TIN; b. Accountant; c. Agent; d. Appraiser; e. Attorney; f. Borrower; g. Customer; h. Director; i. Employee; j. No relationship to institution; k. Officer; l. Owner or Controlling Shareholder; z. Other

[2] *http://www.fincen.gov/statutes_regs/frn/pdf/sar_fr_notice.pdf*

[3] *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201104-1506-002.*

22. If item 21h, 21i, 21j, or 21k is checked, indicate status of relationship—a. (check if) Relationship continues; b. (check if) Terminated; c. (check if) Suspended/barred; d. (check if) Resigned
23. Action date if 22 b, c, or d is checked
*24. Financial Institution EIN and account number(s) affected that are related to subject, if any—a. (check if) No known account involved; b. (check if) Non-US Financial Institution; c. TIN; d. Account number; e. (check if) Closed;
25. Subject's role in suspicious activity (if applicable); a. (check if) Purchaser/Sender; b. (check if) Payee/Receiver; c. (check if) Both a and b

Part II—Suspicious Activity Information

Part II, ''Suspicious Activity Information,'' would require the filer to describe the suspicious activity that occurred.

Part II items would cover all filer institution types so all filers would see field options that may not pertain to their report (such as casino activities). Filers would only be required to complete those items that apply to their institution and pertain to the report being filed.

In Part II, with the exception of the ''unknown check box'' these data fields would remain the same as the current SAR–DI:

*27. Date or date range of suspicious activity for this report—a. From: mm/dd/yyyy; b. To: mm/dd/yyyy

The remaining data fields in this Part, specifically the characterizations of suspicious activity, would be modified and expanded when compared to the current SAR–DI. There are now 10 general categories and each category would be further broken down to specific types of suspicious activity.

*26. Amount involved in this report—a. (check if) Amount unknown; b. (check if) No amount involved.
28. Cumulative amount only if box 1c (continuing activity report) is checked
29. Structuring—a. Alters transaction to avoid BSA recordkeeping requirement; b. Alters transactions to avoid CTR requirement; c. Customer cancels transaction to avoid BSA reporting and recordkeeping requirements; d. Multiple transactions below BSA recordkeeping threshold; e. Multiple transactions below CTR threshold; f. Suspicious inquiry by customer regarding BSA reporting or recordkeeping requirements; z. Other (specify type of suspicious activity in space provided)
30. Terrorist Financing—a. Known or suspected terrorist/terrorist organization; z. Other (specify type of suspicious activity in space provided)
31. Fraud (Type)—a. ACH; b. Business loan; c. Check; d. Consumer loan; e. Credit/Debit card; f. Healthcare; g. Mail; h. Mass-marketing; i. Pyramid scheme; j. Wire; z. Other (specify type of suspicious activity in space provided)
32. Casinos—a. Inquiry about end of business day; b. Minimal gaming with large transactions; c. Suspicious intra-casino funds transfers; d. Suspicious use of counter checks or markers; z. Other (specify type of suspicious activity in space provided)
33. Money laundering—a. Exchanges small bills for large bills or vice versa; b. Suspicion concerning the physical condition of funds; c. Suspicion concerning the source of funds; d. Suspicious designation of beneficiaries, assignees or joint owners; e. Suspicious EFT/wire transfers; f. Suspicious exchange of currencies; g. Suspicious receipt of government payments/benefits; h. Suspicious use of multiple accounts; i. Suspicious use of noncash monetary instruments; j. Suspicious use of third-party transactors (straw-man); k. Trade Based Money Laundering/Black Market Peso Exchange; l. Transaction out of pattern for customer(s); z. Other (specify type of suspicious activity in space provided)
34. Identification/Documentation—a. Changes spelling or arrangement of name; b. Multiple individuals with same or similar identities; c. Provided questionable or false documentation; d. Refused or avoided request for documentation; e. Single individual with multiple identities; z. Other
35. Other suspicious activities—a. Account takeover; b. Bribery or gratuity; c. Counterfeit instruments; d. Elder financial exploitation; e. Embezzlement/theft/disappearance of funds; f. Forgeries; g. Identity theft; h. Little or no concern for product performance penalties, fees, or tax consequences; i. Misuse of ''free look''/cooling off/right of rescission; j. Misuse of position or self-dealing; k. Suspected public/private corruption (domestic); l. Suspected public/private corruption (foreign); m. suspicious use of informal value transfer system; n. Suspicious use of multiple transaction locations; o. Transaction with no apparent economic, business, or lawful purpose; p. Two or more individuals working together; q. Unauthorized electronic intrusion; r. Unlicensed or unregistered MSB; z. Other (specify type of suspicious activity in space provided)
36. Insurance—a. Excessive insurance; b. Excessive or unusual cash borrowing against policy/annuity; c. Proceeds sent to or received unrelated third party; d. Suspicious life settlement sales insurance (e.g. STOLI's, Viaticals); e. Suspicious termination of policy or contract; f. Unclear or no insurable interest; z. Other (specify type of suspicious activity in space provided)
37. Securities/Futures/Options—a. Insider trading; b. Market manipulation/wash trading; c. Misappropriation; d. Unauthorized pooling; z. Other (specify type of suspicious activity in space provided)
38. Mortgage fraud—a. Appraisal fraud; b. Foreclosure fraud; c. Loan modification fraud; d. Reverse mortgage fraud; z. Other
39. Were any of the following instrument/product type(s) involved in the suspicious activity? Check all that apply: a. Bonds/Notes; b. Commercial mortgage; c. Commercial paper; d. Credit card; e. Debit card; f. Forex transactions; g. Futures/Options on futures; h. Hedge fund; i. Home equity loan; j. Home equity line of credit; k. Insurance/Annuity products; l. Mutual fund; m. Options on securities; n. Penny stocks/Microcap securities; o. Prepaid access; p. Residential mortgage; q. Security futures products; r. Stocks; s. Swap, hybrid or other derivative; z. Other (specify type in space provided)
40. Were any of the following instrument type(s)/payment mechanism(s) involved in the suspicious activity? Check all that apply—a. Bank/Cashier's check; b. Foreign currency; c. Funds transfer; d. Gaming instruments; e. Government payment; f. Money orders; g. Personal/Business check; h. Travelers check; i. U.S. Currency; z. Other (specify type in space provided)
41. Commodity type (if applicable)
42. Product/Instrument description (if needed)
43. Market where traded (list of codes will be provided—dropdown menu for electronic filers)
44. IP Address (if available) (multiple entries allowed for electronic filers)
45. CUSIP number (multiple entries allowed for electronic filers)
46. CUSIP number (multiple entries allowed for electronic filers)

Part III—Information About Financial Institution Where Activity Occurred

Part III information would be about the financial institution(s) where the suspicious activity occurred. A separate Part III record would be completed on each financial institution involved in

the suspicious activity. The data fields in Part III would be modified and expanded when compared to the current SAR–DI.

*47. Type of financial institution (check only one)—a. Casino/Card club; b. Depository institution; c. Insurance company; d. MSB; e. Securities/Futures; z. Other (specify type of institution in space provided)
*48. Primary Federal Regulator—A = Commodities Futures Trading Commission (CFTC); B = Federal Reserve Board (FRB); C = Federal Deposit Insurance Corporation (FDIC); D = Internal Revenue Service (IRS); E = National Credit Union Administration (NCUA); F = Office of the Comptroller of the Currency (OCC); G = Securities and Exchange Commission (SEC); Z = Not Applicable
49. If item 47a is checked indicate type (Check only one)—a. State licensed casino; b. Tribal authorized casino; c. Card club; d. Other (specify)
50. If item 47e is checked, indicate type of Securities and Futures institution or individual where activity occurred—check box(es) for functions that apply to this report—a. Clearing broker-securities; b. Futures Commission Merchant; c. Holding company; d. Introducing broker-commodities; e. Introducing broker-securities; f. Investment Advisor; g. Investment company; h. Retail foreign exchange dealer; i. Subsidiary of financial/bank holding company; z. Other (specify type of institution or individual in space provided)
51. Financial institution identification number (Check one box to indicate type)—a. (check if) CRD number; b. (check if) IARD number; c. (check if) NFA number; d. (check if) RSSD number; e. (check if) SEC number; f. Identification number
52. Financial institution's role in transaction (if applicable)—a. (check if) Selling location; b. (check if) Paying location; (check if) Both a & b
*53. Legal name of financial institution—a. (check if) unknown
54. Alternate name, e.g., AKA—individual or trade name, DBA—entity
*55. TIN—a. (check if) unknown
56. TIN type (* if 55 is completed)—a. EIN; b. SSN–ITIN; c. Foreign
*57. Address—a. (check if) unknown
*58. City—a. (check if) unknown
59. State
*60 ZIP/Postal Code—a. (check if) unknown
*61. Country
62. Internal control/file number
63. Loss to financial institution (if applicable)
64. Branch's role in transaction (if applicable)—a. (check if) Selling location; b. (check if) Paying location; c. (check if) Both a and b
*65. Address of branch or office where activity occurred—a. (if no branch activity involved, check box a)
66. RSSD number (of the branch)
67. City
68. State
69. ZIP/Postal Code
70. Country (2 letter code—list provided)

Part IV—Filing Institution Contact Information

Part IV information would be about the lead financial institution or holding company that is filing the BSA SAR. There would be only one Part IV record for each filing. Part IV would take fields previously contained in Part I, Part III, and Part IV on the SAR–DI as well as added new fields.

*78. Primary Federal Regulator—A = Commodities Futures Trading Commission (CFTC); B = Federal Reserve Board (FRB); C = Federal Deposit Insurance Corporation (FDIC); D = Internal Revenue Service (IRS); E = National Credit Union Administration (NCUA); F = Office of the Comptroller of the Currency (OCC); G = Securities and Exchange Commission (SEC); Z = Not Applicable
*79. Filer name (Holding company, lead financial institution)
*80. TIN
*81. TIN type—a. EIN; b. SSN/ITIN; c. Foreign
*82. Type of financial institution (check only one)—a. Casino/Card club; b. Depository institution; c. Insurance company; d. MSB; e. Securities/Futures; z. Other (specify type of institution in space provided)
83. Type of Securities and Futures institution or individual filing this report-check box(es) for function(s) that apply to this report—a. Clearing broker—securities; b. CPO/CTA; c. Futures Commission Merchant; d. Holding company; e. Introducing broker—commodities; f. Introducing broker—securities; g. Investment Adviser; h. Investment company; i. Retail foreign exchange dealer; j. SRO Futures; k. SRO Securities; l. Subsidiary of financial/bank holding company; z. Other (specify type of institution or individual in space provided)
84. Filing institution identification number (Check one box to indicate type)—a. (check if) CRD number; b. (check if) IARD number; c. (check if) NFA number; d. (check if) RSSD number; e. (check if) SEC number; f. Identification number
*85. Address
*86. City
87. State
*88. ZIP/Postal Code
*89. Country
90. Alternate name, e.g., AKA—individual or trade name, DBA—entity
91. Internal control/file number
92. LE contact agency
93. LE contact name
94. LE contact phone number—a. Extension (if any)
95. LE contact date
*96. Designated contact office
*97. Designated contact office phone number including area code—a. Extension (if any)
*98. Date filed

Part V—Suspicious Activity Information Explanation/Description

Part V would require the filer to provide a chronological and complete narrative account of the activity, including what is unusual, irregular, or suspicious about the activity. In the BSA–SAR this part would be a text file that is limited to 17,000 characters (approximately six pages). Institutions may, but are not required to, attach an MS Excel-compatible file (no larger than 1 MB) providing details in tabular form of transactions subject to the suspicious activity discussed in the text file.

Type of Review: Regular.

Affected Public: Business, for-profit institutions, and non-profit institutions.

Estimated Number of Respondents: 2,021.

Estimated Total Annual Responses: 424,410.

Estimated Burden per Response: 2.5 hours (includes 1.5 hours burden per response and one hour recordkeeping).

Estimated Total Annual Burden: 1,061,025 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget control number. Records required to be retained under the Bank Secrecy Act and these regulations issued by the Banking Supervisory Agencies must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 2, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–00043 Filed 1–4–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Submission for OMB Review; Comment Request

ACTION: Notice; correction.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** on January 2, 2013, inviting the general public and other Federal agencies to comment on continuing information collections to reduce paperwork and respondent burden. This document contained incorrect references.

Correction: In the **Federal Register** of January 2, 2013, in FR Doc. 2012–31534, make the following corrections:

- Page 149, in the second column, replace OMB Number: ''1535–0089'' with OMB Number: ''1535–0114''.

Dated: January 2, 2013.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2013–00005 Filed 1–4–13; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 4 January 7, 2013

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, *et al.*

Hazardous Materials: Harmonization with International Standards (RRR), Harmonization with the United Nations, and Transportation of Lithium Batteries; Final Rules and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176, 177, and 178

[Docket Nos. PHMSA–2012–0027 (HM–215L)]

RIN 2137–AE87

Hazardous Materials: Harmonization with International Standards (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the Hazardous Materials Regulations (HMR) with recent changes made to the International Maritime Dangerous Goods (IMDG) Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations) and address a petition for rulemaking.

DATES: *Effective Date:* January 1, 2013.

Voluntary compliance date: PHMSA is authorizing voluntary compliance beginning January 1, 2013.

Delayed compliance date: Unless otherwise specified, compliance with the amendments adopted in this final rule is required beginning January 1, 2014.

Incorporation by reference date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Vincent Babich or Shane Kelley, International Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Background
III. Comment Discussion
IV. Section-by-Section Review
V. Regulatory Analyses and Notices
A. Statutory/Legal Authority for the Rulemaking
B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures
F. Paperwork Reduction Act
G. Regulatory Identifier Number (RIN)
H. Unfunded Mandates Reform Act
I. Environment Assessment
J. Privacy Act
K. Executive Order 13609 and International Trade Analysis

I. Executive Summary

In this final rule, PHMSA is amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate changes adopted in the IMDG Code, the ICAO Technical Instructions, and the UN Model Regulations, effective January 1, 2013. These changes ensure the domestic hazard classification, hazard communication and packaging requirements are consistent with those employed throughout the world.

Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and encourages alignment of the HMR with international transport standards to the extent practicable while recognizing that deviations may at times be necessary to be consistent with the public interest (see 49 U.S.C. 5120). Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Harmonization has also become increasingly important as the volume of hazardous materials transported in international commerce grows. Safety is often enhanced by creating a uniform framework for compliance. PHMSA actively participates in relevant international standard-setting bodies and promotes the adoption of standards consistent with the high safety standards set by the HMR.

The foreign trade of chemicals is a large segment of the United States economy. In 2000, U.S. foreign trade in chemicals totaled $154 billion and generated a $6 billion positive trade balance. The consistency of regulations reduces regulatory compliance costs and helps to avoid costly frustrations of international shipments. PHMSA's continued leadership in maintaining consistency with international regulations enhances the hazardous materials safety program and assists in maintaining a favorable trade balance.

II. Background

PHMSA published a notice of proposed rulemaking (NPRM) under Docket HM–215L (77 FR 49167, August 15, 2012) to incorporate various amendments to harmonize the HMR with recent changes to the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions. When considering alignment of the HMR with international standards, we review and evaluate each amendment on its own merit, on the basis of its overall impact on transportation safety, and on the basis of the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated community.

Based on this review and evaluation, in this final rule, PHMSA is amending the HMR to incorporate changes from the 17th Revised Edition of the UN Model Regulations, Amendment 36–12 to the IMDG Code, and the 2013–2014 ICAO Technical Instructions, which become effective January 1, 2013 (The IMDG Code is effective January 1, 2013; however, the previous amendment may continue to be used until January 1, 2014). Notable amendments to the HMR in this final rule include the following:

- Update references to international regulations including the ICAO Technical Instructions, the International Convention for the Safety of Life at Sea, the IMDG Code, the UN Model Regulations, the UN Manual of Tests and Criteria the Canadian Transportation of Dangerous Goods Regulations and various technical standards.
- Add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits from the Hazardous Materials Table (HMT).
- Adopt new HMT entries for chemical under pressure and specify acceptable bulk and non-bulk packagings, filling limits and appropriate segregation requirements.
- Adopt an exception for the transport of aircraft batteries aboard passenger aircraft in excess of the quantity limits specified in column 9A of the HMT.

• Revise the vessel stowage provisions in column 10 of the § 172.101 Hazardous Materials Table (HMT).
• Adopt minimum size requirements for the ''UN'' or ''NA'' markings specified in § 172.301.
• Adopt changes throughout Part 173 (packaging requirements) to: (1) authorize the use of wood as a material of package construction for certain explosives; (2) authorize the use of metals other than steel or aluminum for drums and boxes; and (3) where appropriate, permit the use of non-removable head drums in those instances where removable head drums are otherwise authorized.
• Adopt a new packaging definition, operational controls, performance-oriented standards, and testing requirements for Flexible Bulk Containers (FBCs).

III. Comment Discussion

In response to PHMSA's August 15, 2012 NPRM (77 FR 49167), PHMSA received comments from the following organizations and individuals:
• 3M Company (3M)
• Airline Pilots Association, International (ALPA)
• Caterpillar Inc. (Caterpillar)
• Chemically Speaking LLC (Chemically Speaking)
• Council on Safe Transport of Hazardous Articles (COSTHA)
• Dangerous Goods Advisory Council (DGAC)
• Dow Chemical Company (Dow)
• Fuel Cell & Hydrogen Energy Association (FCHEA)
• Healthcare Waste Institute (HWI)
• Horizon Lines (Horizon)
• International Vessel Operators Dangerous Goods Association (IVODGA)
• Jamie Lee Guzman
• Mercotac Inc.
• Nora
• Nucon International Inc. (Nucon)
• PRBA-The Rechargeable Battery Association (PRBA)
• Saft America (Saft)
• Sporting Arms and Ammunition Manufacturing Institute (SAAMI)
• Stericycle, Inc. (Stericycle)
• United Airlines (United)
• United Parcel Service (UPS)
• VaporLok Products, LLC (Vaporlok)
• Veolia ES Technical Solutions, L.L.C. (Veolia)

Below is a listing of major amendments to the international transportation regulations that we proposed for adoption into the HMR, a brief synopsis of the comments we received regarding those proposals and PHMSA's position regarding the comments. Additional comments are addressed in the section-by-section analysis section.

Incorporation by Reference

In the NPRM, PHMSA proposed to incorporate by reference the latest editions of various international transport standards including the 2013–2014 ICAO Technical Instructions, Amendment 36–12 of the IMDG Code, the 17th Revised Edition of the UN Model Regulations, and the Canadian Transportation of Dangerous Goods Regulations to include Amendments 8, 9, and 10. Finally, PHMSA proposed the incorporation by reference of new and updated standards published by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). PHMSA received general support from the commenters on the principle of harmonizing the U.S. regulations with international transport and technical standards. We did not receive any comments that opposed our proposals to incorporate these standards and will adopt them in this final rule.

Chemical Under Pressure

In the NPRM, PHMSA proposed to amend the HMT to include individual entries for chemical under pressure and incorporate other safety requirements including, but not limited to, quantity and filling limits and packaging and segregation requirements. PHMSA received one comment on this proposal from 3M in support of the proposals to add entries for chemical under pressure. 3M requested we authorize the use of non-refillable cylinders larger than 1.25 liters containing flammable gas consistent with the UN Model Regulations. PHMSA's intent regarding the chemical under pressure entry was to comprehensively align the requirements of this entry with international standards. In this final rule we are revising the packaging requirements for chemical under pressure to authorize the use of non-refillable cylinders larger than 1.25 liters for chemical under pressure.

Aircraft Batteries

In the NPRM, PHMSA proposed to revise the HMR to permit the transport of wet cell aircraft batteries and lithium ion aircraft batteries aboard passenger aircraft in excess of the quantity limited specified in column 9A of the HMR. PHMSA received comments from Saft and PRBA in support of these proposed amendments because these changes would further harmonize the HMR with the ICAO Technical Instructions. Both Saft and PRBA cite a requirement in the ''FAA Modernization and Reform Act of 2012'' (§ 828, Pub. L 112–95; 126 Stat. 133 (Feb 14, 2012)) (FAA Modernization and Reform Act of 2012) that states the Secretary of Transportation, including a designee of the Secretary, may not issue or enforce any regulation or other requirement regarding the transportation by aircraft of lithium metal cells or batteries or lithium ion cells or batteries, whether transported separately or packed with or contained in equipment, if the requirement is more stringent than the requirements of the ICAO Technical Instructions, and state that the NPRM proposal would be more restrictive than requirements in the ICAO Technical Instructions. The commenters noted that as proposed in the NPRM, the exception would only apply when an air carrier was transporting its own replacement items, whereas the 2013–2014 ICAO Technical Instructions does not impose this restriction. In this final rule PHMSA has revised this exception to ensure full alignment with the ICAO Technical Instructions and FAA Modernization and Reform Act of 2012 statutory requirements.

Vessel Stowage Requirements

In the NPRM, we proposed to revise the vessel stowage location requirements for explosives and reduce the number of explosive stowage categories from 15 to 5 in column (10A) of the HMT. IVODGA and SAAMI supported the proposed assignment of vessel stowage requirements for certain small arms cartridges consistent with the IMDG Code.

Size Requirements for ''UN'' or ''NA'' Markings

The HMR details the general marking requirements for non-bulk packages in § 172.301 including the proper shipping name, the ''UN'' or ''NA'' number technical names as applicable and the consignee or consignor's name and address. In the NPRM, we proposed to adopt minimum size requirements for the ''UN'' or ''NA'' markings and provide a one year transition period. This action was consistent with recent changes adopted in the UN Model Regulations, the IMDG Code and the ICAO Technical Instructions.

PHMSA received comments from the DGAC, Dow, HWI, Stericycle, and Veolia. DGAC and Dow requested an effective date of no earlier than January 1, 2017 for this requirement to allow for the depletion of finished products and labels and preprinted packaging stock. Veolia suggested the character size limit should only apply to international hazardous materials shipments. HWI and Stericycle note that the proposed

change would impose an unnecessary economic burden since they employ reusable packaging permanently marked with the UN number or pre-printed shipping labels that may not meet proposed minimum size marking. In response to these comments, we will delay the effective date of this requirement until January 1, 2017 and permit packages permanently marked prior to this date to remain in use until the end of their useful life. This will minimize the economic impact of this requirement and provide a suitable period to permit the depletion of preprinted packages.

Flexible Bulk Containers

In the NPRM, PHMSA proposed to adopt a new packaging definition, operational controls, performance-oriented standards, and testing requirements for Flexible Bulk Containers (FBCs). The proposed FBC requirements are modeled after the FBC requirements adopted into the 17th revised edition of the UN model Regulations. IVODGA and DGAC support the introduction of FBCs and since we received no adverse comments to these proposals, we will adopt these requirements as proposed.

Amendments Proposed in the NPRM But Not Adopted in the Final Rule

In this section, PHMSA discusses changes not adopted in the final rule as a result of comments in response to the August 15, 2012 Notice of Proposed Rulemaking (NPRM).

Used Medical Devices

The UN Model Regulations have been amended to exempt medical devices or equipment potentially contaminated with or containing infectious substances which are drained of free liquids from all other requirements of the UN Model Regulations. In the August 15, 2012 NPRM, PHMSA proposed to amend § 173.134, ''Class 6, Division 6.2-Definitions and Exceptions'' to adopt additional exemptions for medical devices and equipment. PHMSA received one comment from COSTHA opposing our adoption of these changes to the HMR. COSTHA noted that the ICAO Dangerous Goods Panel (DGP) has reviewed and has chosen not to adopt the provisions for transportation by aircraft. COSTHA also noted that changes to the HMR before ICAO has adopted the change would lead to confusion and disharmony. COSTHA further noted that papers will be presented to both the UN and ICAO in an attempt to alter the current exceptions for used medical devices.

The HMR has long standing provisions for the transport of potentially contaminated medical devices, some tied to provisions in 29 CFR, concerning the domestic shipment of such goods. Pending further UN changes and consultation with the Centers for Disease Control, PHMSA will not adopt the proposed changes to § 173.134 in this final rule.

Fuel in Machinery

Prior to the publication of the 17th Revised Edition of the UN Model Regulations, the transport of large amounts of fuel in machinery was not specifically addressed in international transport regulations. In the most recent biennium of the UNSCOE, some experts expressed concerns about the transport of large amounts of fuel in machinery. This concern led the international community to adopt in the 17th Revised Edition of the UN Model Regulations a special provision associated with fuel-related Class 3 entries.

Special Provision 363, as adopted in the UN Model Regulations, requires an article that contains fuel in excess of the limited quantity authorized amount and is ineligible to be described as Dangerous Goods in Machinery or Apparatus, UN3363, to conform to several general provisions to avoid being subject to the remainder of the HMR. In the August 15, 2012 NPRM, PHMSA proposed the addition of SP 363 for transportation by vessel to various Class 3 fuels modeled on the corresponding special provision adopted in the UN Model Regulations. PHMSA received three comments (Caterpillar, DGAC, & IVODGA) concerning our proposed adoption of special provision 363.

Both DGAC and Caterpillar were opposed to PHMSA's adoption of special provision 363. Caterpillar stated that PHMSA's proposed addition of special provision 363 was not based on sufficient data demonstrating the revision would improve transport safety. Caterpillar also stated that the change would introduce conflicting requirements and regulatory uncertainty and would be excessively burdensome. DGAC stated that the adoption of special provision 363 would introduce conflicting requirements and regulatory uncertainty, and highlighted a proposal they will present to the UN to clarify special provision 363.

Caterpillar noted that the proposal in the August 15, 2012 NPRM does not demonstrate through data obtained via scientific methodology any connection between the proposed revision and enhanced reductions in risks to people and the environment for all affected shipments. Caterpillar and DGAC noted that the adoption of the changes proposed in the NPRM creates conflicting requirements under the HMR for shipments of generators and machinery.

Caterpillar also commented that proposed special provision 363 is excessively burdensome and would result in millions of dollars of expenditures for unnecessary transport related costs that would ultimately raise the consumer price of affected shipments.

IVODGA supported the adoption of special provision 363, stating concern that many fuel storage components within such machinery may not meet UN Performance Oriented Packaging or bulk tank specifications. IVODGA recommended PHMSA adopt special provision 363 as proposed to help prevent frustrated shipments at ports of discharge and loading in the United States.

PHMSA will not adopt special provision 363 in this final rule. This decision not to adopt special provision 363 is based on several factors. The first was a lack of concrete safety or incident data that indicated a need for increased regulation of domestic shipments of machinery and equipment containing fuel in amounts over the authorized limited quantity amount for that particular fuel. Also PHMSA believes that to adopt this special provision would require a review of existing requirements for UN3166, and possibly UN3366 that has yet to take place. PHMSA would like to note that even though we are not adopting special provision 363, shippers offering hazardous materials in accordance with Subpart C of Part 171 may utilize the IMDG Code, including special provision 363, if all or part of the movement is by vessel. PHMSA would also like to note that a shipper utilizing the IMDG Code to offer cargo to a vessel for transport must still comply with special provision 363 under the IMDG Code. PHMSA will likely revisit the need to incorporate special provision 363 after a determination is made at the UN on pending papers concerning the implementation of this special provision.

Requirements for Salvage Pressure Receptacles

The 17th Revised Edition of the UN Model Regulations adopted guidelines for Competent Authorities to use when issuing approvals for salvage pressure receptacles. These revisions are found in Chapter 1.2, 4.1, 5.4, and 6.2 of the UN Model Regulations. Specifically, these requirements address the

packaging, hazard communication, and safe transport of salvage pressure receptacles, also known as salvage cylinders in the United States.

The HMR currently address the packaging, hazard communication, and safe transport of salvage cylinders in § 173.3(d) and do not require approval of the Associate Administrator to do so. Accordingly, PHMSA did not propose adopting this provision in the August 15, 2012, NPRM. During the comment period, PHMSA was alerted that Chemically Speaking has filed a petition (P–1596) that requests PHMSA amend the HMR to add Class 4 and Class 5 hazardous materials to the hazard classes authorized in salvage cylinders. While this petition has merit, we did not receive it in time to address in this rulemaking. We will consider this petition in a future rulemaking.

Additional Clarification on the Requirements for Lithium Batteries

On August 15, 2012, PHMSA published an NPRM associated with this rulemaking (RIN 2137–AE87, 77 FR 49168). In the NPRM, no specific amendments were proposed regarding the requirements for the air transportation and handling of lithium batteries. However, in that NPRM, PHMSA did propose the incorporation by reference of the 2013–2014 Edition of the ICAO Technical Instructions which covers the air transportation of lithium batteries. This final rule adopts that provision and will incorporate the 2013–2014 Edition of the ICAO Technical Instructions by reference. Upon adoption of this provision, for purposes of the HMR a shipment of lithium batteries would be permitted to be transported by air in accordance with the 2013–2014 Edition of the ICAO Technical Instructions (with the exception of primary lithium batteries and cells aboard passenger carrying aircraft and unapproved prototype lithium batteries and cells aboard passenger carrying aircraft) or the applicable requirements currently specified in the HMR (see §§ 171.24(d)(1)(ii), and 171.24(d)(1)(iii)). Incorporation by reference of the 2013–2014 Edition of the ICAO Technical Instructions will allow shippers and carriers to choose which method of compliance is appropriate to the specific shipment. This Final Rule (RIN 2137–AE87; PHMSA–2012–0027) does not have any bearing on regulatory decisions associated with Docket HM–224F, (RIN 2137–AE44; PHMSA–2009–0095). PHMSA is requesting additional comment on various issues related to the air transportation and handling of lithium batteries in a separate Notice, under the Docket for that rulemaking (RIN AE44; PHMSA–2009–0095).

IV. Section-By-Section Review

The following is a section-by-section review of the amendments adopted in this final rule:

Part 171

Section 171.7

Section 171.7 provides a listing of all standards incorporated by reference into the HMR. For this rulemaking, we evaluated updated international consensus standards pertaining to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements and determined that the revised standards provide an enhanced level of safety without imposing significant compliance burdens. These standards have a well-established and documented safety history; their adoption will maintain the high safety standard currently achieved under the HMR. Therefore, we are adding and revising the incorporation by reference materials under the following organizations:

The *International Civil Aviation Organization (ICAO)* Technical Instructions for the Safe Transport of Dangerous Goods by Air, 2011–2012 Edition is revised to incorporate the 2013–2014 Edition.

The *International Convention for the Safety of Life at Sea* (SOLAS) Amendments 2002, Chapter II–2/Regulation 19, Consolidated Edition 2004 is revised to incorporate the 2009 Consolidated Edition.

The *International Electrotechnical Commission* (IEC) Fuel cell technologies—Part 6–1: Micro fuel cell power systems—Safety, IEC/PAS 62282–6–1:2006(E), First Edition 2006–02, with Corrigendum 1, First Edition 2007–04 is removed and replaced with Fuel cell technologies—Part 6–100: Micro fuel cell power systems—Safety, IEC 62282–6–100:2010, Edition 1.0, March 2010 and Amendment 1 to IEC 62282–6–100, October 12, 2012. FCHEA requested we incorporate the recently approved Amendment 1 to the International Electrotechnical Commission standard for micro-fuel cell cartridges as well as a request for a slight alteration in the way we reference the document. In this final rule we will incorporate by reference amendment 1 to the IEC international standard and change the wording used to reference the document.

The *International Maritime Organization* (IMO) International Maritime Dangerous Goods Code, 2010 Edition, Incorporating Amendment 35–10, English Edition, Volumes 1 and 2 is revised to incorporate the 2012 Edition, Amendment 36–12.

The *International Organization for Standardization (ISO)* entries for ''ISO 10156:1996, Gases and Gas Mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Second edition, February 1996 (E)'' and ''ISO 10156–2:2005, Gas cylinders—Gases and gas mixtures—Part 2: Determination of oxidizing ability of toxic and corrosive gases and gas mixtures, First edition, August 2005, (E)'' are removed and replaced with an entry for ''ISO 10156:2010: Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Third edition, March 2010.''

The entry ''ISO 4126–1: Safety valves—Part 1: General requirements, December 15, 1991, First edition'' is revised to the entry ''ISO 4126–1:2004(E): Safety devices for protection against excessive pressure—Part 1: Safety valves, Second edition 2004–02–15.'' The entry ''ISO 11117, Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders—Design, construction and tests, First edition, August 1998, (E)'' is revised to the entry ''ISO 11117:2008(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Second edition, 2008–09–01.'' The entry ''ISO 11117:2008/Cor.1:2009(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Technical Corrigendum 1, 2009–05–01'' is added.

The entries ''ISO 4126–7:2004(E): Safety devices for protection against excessive pressure—Part 7: Common data, First Edition 2004–02–15,'' ''ISO 4126–7:2004/Cor.1:2006(E): Safety devices for protection against excessive pressure—Part 7: Common data, Technical Corrigendum 1, 2006–11–01,'' and ''ISO 13340:2001(E) Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04–01'' are added.

The *Transport Canada* entry, Transportation of Dangerous Goods Regulations, including Clear Language Amendments 1 through 7 is revised to include Amendments 8, 9 and 10.

The *United Nations* Recommenda tions on the Transport of Dangerous Goods—Model Regulations, 16th Revised Edition (2009), Volumes I and II, is revised to incorporate the 17th

Revised Edition (2011), Volumes I and II.

The *United Nations* Recommendations on the Transport of Dangerous Goods—Manual of Tests and Criteria, Fifth Revised Edition (2009), is revised to incorporate Amendment 1 (2011). One commenter (DGAC) requested that we do not require compliance with the lithium battery testing requirements contained in Amendment 1 for lithium cells and batteries manufactured before January 1, 2014. Since PHMSA has specified a delayed compliance date of January 1, 2014 for this final rule, compliance with Amendment 1 will only be required for lithium cells and batteries manufactured on or after January 1, 2014.

In addition to the revisions and additions above, PHMSA is restructuring § 171.7 to comply with National Archives and Records Administration requirements for centralized IBR section formatting. This change is not intended to remove or change any IBR materials previously incorporated by reference, with the exception of those references mentioned above.

Section 171.8

This section defines terms generally used throughout the HMR that have broad or multi-modal applicability. PHMSA is adding the following defined terms:

Aircraft battery: This term means a battery designed in accordance with a recognized aircraft battery design standard (e.g. FAA technical standard order) that is capable of meeting all aircraft airworthiness requirements and operating regulations.

Currently the HMR does not define aircraft battery. The recent amendment of special provision A51 in the ICAO TI require PHMSA to define this term to ensure appropriate application of this special provision.

Flexible Bulk Container (FBC): This term means a flexible container with a capacity not exceeding 15 cubic meters and includes liners and attached handling devices and service equipment.

Currently the HMR do not prescribe requirements for the transport of FBCs. In this final rule, PHMSA is adopting various transportation and manufacturing requirements for FBCs. Prior to adoption of such standards, the term ''Flexible Bulk Container'' must be defined. Therefore we are adopting the above definition of an FBC based on the definition for FBC adopted in the IMDG Code and 17th Revised Edition of the UN Model Regulations.

Part 172

Section 172.101

Section 172.101 provides instructions for using the Hazardous Materials Table (HMT) and the HMT itself. In this final rule, PHMSA is revising the instructional text that precedes the HMT.

Paragraph (c) of § 172.101 describes the information indicated in column 2 of the HMT. Column 2 lists the hazardous materials descriptions and proper shipping names of materials designated as hazardous materials. Paragraph (c)(10) of § 172.101 prescribes how mixtures or solutions not identified specifically by name are described.

PHMSA is revising § 172.101(c)(10) to incorporate language adopted in the 17th Revised Edition of the UN Model Regulations that states mixtures and solutions must meet the definition of one or more hazard classes to be classified as a hazardous material. This change will clarify that for a mixture or solution composed of one or more components that are classified as a hazardous material, the resulting mixture or solution must meet the definition of one or more hazard classes to be classified as a hazardous material.

Paragraph (k) of § 172.101explains the purpose of column (10) of the HMT and prescribes the vessel stowage and segregation requirements for specific entries in the HMT. Column (10) is divided into two columns: column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels and column (10B) [Other provisions] specifies special stowage and segregation provisions.

We are modifying these instructions by revising the vessel stowage location requirements for explosives and reducing the number of explosive stowage categories from 15 to 5. Specifically, the explosive stowage categories 6 through 15 will be eliminated and stowage categories 1 through 5 will be modified. Changes to the explosive stowage categories are necessary because, as part of this final rule, PHMSA is removing magazine stowage Types ''A,'' ''C,'' and special stowage from Part 176 with the consolidation of authorized explosive stowage categories. The authorized explosive stowage categories will be replaced with a new term of art ''Closed cargo transport units for Class 1 (explosives).'' Included in this definition are freight containers or transport vehicles that are structurally serviceable in accordance with§ 176.172, portable magazines conforming to § 176.137, and small vessel compartments (i.e., mast lockers and deck house). These changes will require Class 1 materials to be shipped in closed cargo transport units as defined above when stowed on deck.

Hazardous Materials Table (HMT)

In this final rule, PHMSA is amending the HMT. Readers should review all changes for a complete understanding of the amendments. For purposes of the Government Printing Office's typesetting procedures, changes to the HMT appear under three sections of the Table, ''remove,'' ''add,'' and ''revise.'' Certain entries in the HMT, such as those with revisions to the proper shipping names, appear as a ''remove'' and ''add.'' Amendments to the HMT include the following:

New HMT Entries.

UN3497 Krill meal

This new HMT entry is created because krill meal has a chemical composition that is significantly different from that of fish meal. It contains a natural stabilizing substance (ethoxyquin) and the fat content of krill meal is higher than that of fish meal. The UN numbers established for fish meal are restricted to maximum fat contents, which makes these UN numbers not applicable to krill meal.

UN3498 Iodine monochloride, liquid

This new HMT entry is a result of the division of the proper shipping name Iodine monochloride into two authorized proper shipping names; one for the liquid state of the commodity and another for the solid state. Solid shipments of Iodine monochloride remain assigned to UN1792.

UN3499 Capacitor, electric double layer (with an energy storage capacity greater than 0.3 Wh)

This new HMT entry covers capacitors with an energy storage capacity greater than 0.3 Wh. Capacitors are assigned as a Class 9 miscellaneous hazardous material and measures required to prevent short circuit are provided in special provision 361.

UN3500 Chemical under pressure, n.o.s.

UN3501 Chemical under pressure, flammable, n.o.s.

UN3502 Chemical under pressure, toxic, n.o.s.

UN3503 Chemical under pressure, corrosive, n.o.s.

UN3504 Chemical under pressure, flammable, toxic, n.o.s.

UN3505 Chemical under pressure, flammable, corrosive, n.o.s.

The ''Chemical under pressure. n.o.s.'' HMT entries are added to address shipments of liquids or solids (e.g.,

adhesives, coatings, and cleaners) combined with a gas or gas mixtures utilized to expel the contents from pressure vessels. The primary hazard class for these shipments is determined by the hazard presented by the propellant and any subsidiary risk is determined by the properties of the liquid or solid under pressure. Toxic gases are not permitted as propellants.

UN3506 Mercury contained in manufactured articles

This new entry was created to separately address manufactured articles containing mercury. The international community provided an exception from regulation for instruments and articles containing not more than 1 kg of mercury, when transported by means other than aircraft. PHMSA is unable to adopt a comparable exception as the reportable quantity for mercury is 0.454 kg (1.00 lbs.), but is revising the current exception authorized in § 173.164(e) for shipments containing less than 0.454 kg (1.00 pound) to include transportation by vessel.

UN1950 Aerosols, corrosive, Packing Group II or III (each not exceeding 1 L capacity).

This new entry was inadvertently removed from the HMT due to an incorrect amendatory instruction in a September 13, 2011 final rule (76 FR 56304; HM–244D). The entry is being placed back into the HMT.

Removed HMT Entries

UN3492 Toxic by inhalation liquid, corrosive, flammable, n.o.s. with an inhalation toxicity lower than or equal to 200 ml/m3 and saturated vapor concentration greater than or equal to 500 LC50

UN3493 Toxic by inhalation liquid, corrosive, flammable, n.o.s. with an inhalation toxicity lower than or equal to 1000 ml/m3 and saturated vapor concentration greater than or equal to 10 LC50

These entries are removed from the HMT due to their similarity to UN3488 and UN3489 respectively. The sole difference between these entries is the order of subsidiary risks, which does not affect the classification and transport conditions applied to shipments of these substances. As a result, PHMSA is removing identification numbers UN3492 and UN3493 to avoid confusing shippers in determining which identification numbers to use.

Amendments to the Column (1) Symbols

Section 172.101(b) describes column (1) of the HMT and the associated symbols that may be indicated in the column. In accordance with § 172.101(b), the symbol ''G'' identifies proper shipping names for which one or more technical names of the hazardous material must be entered in parentheses in association with the basic description on a shipping paper. In this final rule, PHMSA is adding a ''G'' to column (1) for ''UN1707, Thallium compounds, n.o.s.'' The addition of a ''G'' to this entry will provide notification of the technical name of this toxic material and thus aid emergency responders with providing an appropriate response.

Amendments to the Column (2) Hazardous Materials Descriptions and Proper Shipping Names

Section 172.101(c) describes column (2) of the HMT and the requirements for hazardous materials descriptions and proper shipping names. Among other requirements, in accordance with § 172.101(c)(1), proper shipping names indicated in column (2) of the HMT may be used in the singular or the plural form interchangeably. Regardless, in this final rule, PHMSA is revising several entries in the HMT to remove the plural ending letter ''s'' to provide continuity with the internationally accepted proper shipping names. Specifically, PHMSA is removing the letter ''s'' from: UN1107, Amyl chlorides; UN1111, Amyl mercaptans; UN1113, Amyl nitrites; and, UN2347, Butyl Mercaptans.

Generally the physical state (solid or liquid) appears before the hazard characteristics (toxic, flammable, etc.) in the sequence of wording used in proper shipping names specified in column (2) of the HMT. In some instances, the hazard characteristics are indicated before the physical state. In this final rule, PHMSA is revising several proper shipping names to indicate the physical state before the hazard characteristics for consistency in formatting.

Current proper shipping names:

UN No.	Proper shipping name
3276	Nitriles, toxic, liquid, n.o.s.
3278	Organophosphorus compound, toxic, liquid, n.o.s.
3282	Organometallic compound, toxic, liquid, n.o.s.
3439	Nitriles, toxic, solid, n.o.s.
3464	Organophosphorus compound, toxic, solid, n.o.s.
3467	Organometallic compound, toxic, solid, n.o.s.

Revised proper shipping names:

UN No.	Proper shipping name
3276	Nitriles, liquid, toxic, n.o.s.
3278	Organophosphorus compound, liquid, toxic, n.o.s.
3282	Oranometallic compound, liquid, toxic, n.o.s.
3439	Nitriles, solid, toxic, n.o.s.
3464	Organophosphorus compound, solid, toxic, n.o.s.
3467	Organometallic compound, solid, toxic, n.o.s.

A new proper shipping name ''Cartridges for tools, blank'' is assigned to identification number UN0014. This proper shipping name more appropriately describes industrial blank cartridges currently described as ''UN0323, Cartridges, power device'' or ''ORM–D or ORM–D–AIR, Cartridges, power device (*used to project fastening devices*).'' In the NPRM, PHMSA proposed to remove the ''ORM–D'' entry for ''Cartridges, power device (*used to project fastening devices*)'' because the proper shipping name for such articles is now ''Cartridges for tools, blank'' under identification number UN0014. Subsequent changes were proposed to § 173.63 and the § 172.102(c)(1) special provision 347 to replace any references to ''ORM–D or ORM–D–AIR, Cartridges, power device (*used to project fastening devices*)'' with the new description ''UN0014, Cartridges for tools, blank (*used to project fastening devices*).'' Additionally, such articles are not subject to the UN Test Series 6(d) previously required under special provision 347. The description ''UN0323, Cartridges, power device'' will remain subject to special provision 347.

PHMSA received one comment from SAAMI noting that the proposed domestic only entry for Cartridges for tools, blank (*used to project fastening devices*) was unnecessary and should be deleted. SAAMI also asked for the retention of the ORM–D entry for Cartridges, power device until the end of the transition period for its use. SAAMI raised concerns over packaging manufactured and marked to meet current HMR requirements. SAAMI stated that existing packaging inventory will be depleted during 2013, but industry will not be ready to stop using

the old markings for ORM–D ''Cartridges, power device'' on January 1, 2013, and that HM–215K provided a deadline of December 31, 2013 to accomplish this transition. PHMSA agrees and is retaining the entry Cartridges power device (*used to project fastening devices*) and will not be adopting a domestic only entry for Cartridges for tools, blank.

The proper shipping name for ''UN1305, Vinyltrichlorosilane, stabilized'' is amended by removing the term ''stabilized'' for consistency with the Dangerous Goods Lists of the various international standards and the HMT of the HMR. The revised proper shipping name for UN1305 is ''Vinyltrichlorosilane.''

The 17th Revised Edition of the UN Model Regulations amended the qualifying text (text in italics) for UN Nos. 3381–3390 and UN Nos. 3488–3491. The changes to these entries' qualifying or modifying text in italics would change the wording from ''with an inhalation toxicity lower than or equal to'' to ''with an LC50 lower than or equal to.'' This terminology change better identifies the criteria used to determine the proper classification of these substances.

Amendments to the Column (4) Identification Numbers

Section 172.101(e) describes Column (4) of the HMT and the designation of the identification number to each proper shipping name. With the addition of a separate identification number (UN3506) for the description ''Mercury contained in manufactured articles,'' PHMSA is removing the description that is currently assigned to ''UN2809, Mercury.''

Amendments to the Column (6) Label(s)

Section 172.101(g) describes Column (6) of the HMT and the labels required (primary and subsidiary) for specific entries in the HMT. Data presented to the UN Committee of Experts on the Transport of Dangerous Goods (UNCOE) in this last biennium indicated a need for the addition of subsidiary risk of Division 6.1 (toxic) to be assigned to ''UN2809, Mercury'' and to the new entry ''UN3506, Mercury contained in manufactured articles.'' We note that for air transport, Special provision A191 provides relief from the labeling and documentation requirements of this new subsidiary risk.

In addition to the changes above, data was also presented to the UNCOE that indicated the need for a subsidiary risk of Division 6.1 (toxic) to be assigned to UN2381 Dimethyl disulfide.

PHMSA is making appropriate amendments to the HMT to account for these revisions to the UN Model Regulations.

Amendments to the Column (7) Special Provisions

Section 172.101(h) describes Column (7) of the HMT and the § 172.102(c) Special provisions assigned to specific entries in the HMT. The particular modifications to the entries in the HMT are discussed below. See *Section 172.102 special provisions* for a detailed discussion of the additions, revisions, and deletions to the special provisions addressed in this final rule.

Several HMT entries are revised to include special provision B120. Special provision B120 indicates that the material, when offered in conformance with the applicable requirements of Part 178 and general packaging requirements in Part 173, may be offered for transportation in a Flexible Bulk Container. See *Section 172.102 special provisions* for a detailed discussion of special provision B120.

In this final rule, special provision B120 is assigned to the following entries:

Proper shipping name	UN No.
Naphthalene, crude *or* Naphthalene, refined	UN1334
Sulfur (domestic and international entries)	UN1350
Calcium nitrate	UN1454
Magnesium nitrate	UN1474
Potassium nitrate	UN1486
Sodium nitrate	UN1498
Sodium nitrate and potassium nitrate mixtures	UN1499
Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance*	UN1942
Ammonium nitrate based fertilizer	UN2067
Paraformaldehyde	UN2213
Environmentally hazardous substance, solid, n.o.s	UN3077
Sodium perborate monohydrate	UN3377
Sodium carbonate peroxyhydrate	UN3378

New special provision 222 is added to the ORM–D entries for Cartridges, small arms, and Cartridges power device (*used to project fastening devices*). See *Section 172.102 Special provisions* for a detailed discussion of the addition of special provision 222.

The entry for UN1008 Boron trifluoride is assigned new special provision 238. See *Section 172.102 Special provisions* for a detailed discussion of the addition of special provision 238.

Special provision A51 is added to authorize the transport of aircraft batteries consistent with the provisions of the 2013–2014 ICAO Technical Instructions.

The portable tank code assigned to ''UN 1203, Gasoline'' was inadvertently changed from T4 to T8 in a rulemaking under Docket Number PHMSA–2009–0151 (HM–218F) [76 FR 43510]. As this was an inadvertent, but consequential change, PHMSA is amending the entry for Gasoline to indicate T4 as the appropriate portable tank code.

With the addition of a Division 6.1 (toxic) subsidiary risk to ''UN2381, Dimethyl disulfide,'' the portable tank codes and portable tank provisions are revised as follows:

T4 is replaced by T7

TP1 is replaced by TP2, TP13, and TP39

See *Section 172.102 Special provisions* for a detailed discussion of our addition of special provision TP39.

Review of the ''Guiding Principles for the Development of the UN Model Regulations (Guiding Principles)'' indicates that in some cases, the portable tank instructions for the transport of Division 4.3 liquid materials are not consistent with the Guiding Principles, and, in other instances, relevant portable tank special provisions were missing or incorrectly assigned. The following are revisions with deletions indicated by a

strikethrough and additions or replacements shown in bold font.

UN No	PSN	Class	SR	PG	T	TP
2965	Boron Trifluoride Dimethyl Etherate	4.3	3 8	I	T10	TP2 TP7 **TP13**
3129	Water-reactive Liquid, Corrosive n.o.s.	4.3	8	I	T14	TP2 TP7 **TP13**
3129	Water-reactive Liquid, Corrosive n.o.s.	4.3	8	II	T11	TP2 **TP7**
3129	Water-reactive Liquid, Corrosive n.o.s.	4.3	8	III	T7	~~TP1~~**TP2** **TP7**
3148	Water-reactive Liquid, n.o.s.	4.3		I	~~T9~~ **T13**	TP2 TP7 TP41
3148	Water-reactive Liquid, n.o.s.	4.3		II	T7	TP2 **TP7**
3148	Water-reactive Liquid, n.o.s.	4.3		III	T7	~~TP1~~**TP2** **TP7**

See *Section 172.102 Special provisions* for a detailed discussion of the addition of special provision TP41.

Special provisions A100 and A103 are revised to clarify that the weight (mass) limitations specified are net and not gross amounts for secondary lithium batteries. See *Section 172.102 Special provisions* for a detailed discussion of the revision of special provisions A100 and A103.

Special provision A191 is added to note that regardless of the Division 6.1 (toxic) subsidiary risk indicated in the HMT, the toxic subsidiary risk label and an indication of the subsidiary risk on the shipping paper are not required for manufactured articles containing less than 5 kg (11 pounds) of mercury. This special provision is assigned to the entry ''UN3506, Mercury contained in manufactured articles.''

Special provision A200 is added to require that certain articles may not be transported by passengers or crewmembers, on their person or in their baggage and are to be shipped as cargo when transported via aircraft. Under certain circumstances, the articles affected by this special provision may be excepted from the requirements of the HMR. When these articles are not subject to the regulations, there is the potential for them to be inappropriately carried aboard an aircraft. In response to this safety concern, the ICAO Technical Instructions were revised to clarify that when transported by aircraft, these articles, regardless of whether they are otherwise excepted from the regulations, must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10, ''Exceptions for Passengers, Crewmembers, and Air Operators.'' Consistent with the revised ICAO Technical Instructions requirement, PHMSA is adopting the special provision restricting these items from being carried aboard an aircraft by passengers and crewmembers.

This special provision is assigned to the following entries: ''UN3166, Engines, internal combustion *or* Engines, fuel cell, *flammable gas powered''; ''*UN3166, Engines, internal combustion *or* Engines, fuel cell, *flammable liquid powered''; ''*UN3166, Vehicle, *flammable gas powered or* Vehicle, fuel cell, *flammable gas powered''; ''*UN3166, Vehicle, *flammable liquid powered or* Vehicle, fuel cell, *flammable liquid powered''; ''*UN0503, Air bag inflators *or* Air bag modules *or* Seat-belt pretensioners''; and ''UN3268, Air bag inflators *or* Air bag modules *or* Seat-belt pretensioners.''

Special provision W10 is assigned to ''UN3486, Calcium hypochlorite mixture, dry, corrosive *with more than 10% but not more than 39% available chlorine''* and to ''UN2208, Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine.''* Special provision W10 indicates that, when offered for transportation by vessel, these entries may not be offered in large packagings. See *Section 172.102 Special provisions* for a detailed discussion of the addition of special provision W10.

Amendments to the Column (8a) Packaging Exceptions

Column 8A contains exceptions from some of the requirements of this subchapter. The referenced exceptions are in addition to those specified in subpart A of part 173 and elsewhere in this subchapter. A ''None'' in this column means no packaging exceptions are authorized, except as may be provided by special provisions in Column 7. PHMSA received one comment from SAAMI noting that PHMSA, unlike the UN Model Regulations, IMDG Code and the European Road and Rail Regulations (ADR), did not propose a limited quantity exception for UN 0055 ''Cases, cartridge, empty with primer'' as a limited quantity. This was an inadvertent omission and PHMSA is adding 63 to column 8a of the HMT for the UN 0055 entry.

Amendments to the Column (9) Quantity Limitations

Section 172.101(j) describes Column (9) of the HMT and the quantity

limitations for specific entries in the HMT. Furthermore, Columns (9A) and (9B) specify the maximum quantities that may be offered for transportation in one package by passenger-carrying aircraft or passenger-carrying rail car (Column (9A)) or by cargo-only aircraft (Column (9B)). Unless otherwise indicated the quantity limitations shown in column (9) of the HMT are net. PHMSA is removing the gross weight indicator in columns (9A) (if authorized previously) and (9B) for the following battery entries. The quantity limit for these entries should be based on the weight of the battery or batteries and not the weight of the battery or batteries plus the packaging (i.e., the package).

UN3028 Batteries, dry, containing potassium hydroxide solid, *electric, storage*
UN2794 Batteries, wet, filled with acid, *electric storage*
UN2795 Batteries, wet, filled with alkali, *electric storage*
UN3468 Hydrogen in a metal hydride storage system *or* Hydrogen in a metal hydride storage system contained in equipment *or* Hydrogen in a metal hydride storage system packed with equipment
UN3090 Lithium battery
UN3091 Lithium batteries packed with equipment

PHMSA is revising column (9A) to forbid several entries previously authorized for shipment on passenger-carrying aircraft or passenger-carrying rail to harmonize with changes to the ICAO Technical Instructions. The following entries would now be forbidden on passenger-carrying aircraft or passenger-carrying rail.

UN1196 Ethyltrichlorosilane
UN1250 Methyltrichlorosilane
UN1298 Trimethylchlorosilane
UN1305 Vinyltrichlorosilane
UN2985 Chlorosilanes, flammable, corrosive, n.o.s.
UN3361 Chlorosilanes, toxic, corrosive, n.o.s.
UN3362 Chlorosilanes, toxic, corrosive, flammable, n.o.s.

Quantity limits of 450 L for ''UN3334, Aviation regulated liquid, n.o.s.'' and 400 kg for ''UN3335, Aviation regulated solid, n.o.s.'' are added for both columns (9A) and (9B). Previously, there was no limit to the amount authorized to be shipped in one package. These new quantity limits are consistent with authorized quantity limits found in the ICAO Technical Instructions.

Amendments to the Column (10) Vessel Stowage Requirements.

Vessel Stowage Location (10A)

Section 172.101(k) explains the purpose of column (10) of the HMT and prescribes the vessel stowage and segregation requirements for specific entries in the HMT. Column (10) is divided into two columns: column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels and column (10B) [Other provisions] specifies special stowage and segregation provisions.

One commenter (SAAMI) noted that limited quantity shipments are assigned the least restrictive stowage category and are excepted from additional stowage provisions in 3.4.3 of the IMDG Code and requested that PHMSA do the same. PHMSA agrees and is amending § 172.101(k) to ensure that shipments offered as limited quantities are allocated to stowage category A, and to note that such shipments are excepted from the other stowage provisions indicated by codes in column 10B of the HMT for the material being offered for transport as a limited quantity. PHMSA is simplifying the number of vessel stowage locations for shipments of Class 1 explosive materials to harmonize with recently adopted vessel explosive stowage categories in the IMDG Code. Currently, there are 15 possible stowage location codes available for assignment to column (10A) for explosive shipments. Recent changes in the IMDG Code have reduced the number of available explosive stowage location codes to five. This consolidation of codes was accomplished to reduce the complexity of the regulations without compromising safety.

The International Maritime Organization (IMO) determined that the term ''magazine'' was no longer necessary and the magazine concept could be incorporated into a broader definition for closed cargo transport units for Class 1 (explosives) material. In general, a magazine used to store and transport explosives is equivalent to a closed cargo transport unit with a wooden floor. A magazine type A has additional wooden walls, or walls covered with wooden pallets, and is currently only assigned to 7 entries in the HMT. A magazine type C is currently defined by a minimum distance to the ship's side of 2.4 m (8 feet). Requirements to load Class 1 closed cargo transport units a minimum distance of 2.4 m (8 feet) from the ship's side wall remove the need for specific stowage category references to magazine stowage type C. The IMO, taking into account the properties of various classes and divisions of explosives, has determined that only 1.4S, 1.4G, 1.4D, and 1.4C explosives are acceptable on passenger ships. PHMSA agrees and has removed the majority of Class 1 stowage location codes and revised the remaining codes. The codes for each Class 1 entry are grouped by stowage code (01, 02, 03, 04, or 05) as follows:

Explosive Stowage Category

01—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) and on a passenger vessel
02—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) and ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transport units on a passenger vessel
03—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel
04—means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transports on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel
05—means the material may be stowed ''on deck'' in closed cargo transport units on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel

Taking into account the properties of various classes and divisions of explosives, the IMO determined new stowage category assignments as follows:

Division	Stowage category	Division	Stowage category	Division	Stowage category
1.1A	05	1.1F	05	1.1L	05
1.1B	05	1.2F	05	1.2L	05
1.2B	05	1.3F	05	1.3L	05
1.4B	05	1.4F	05	1.6N	03
1.1C	04	1.1G	03	1.4S	01
1.2C	04	1.2G	03		
1.3C	04	1.3G	03		
1.4C	02	1.4G	02		
1.1D	04	1.2H	05		
1.2D	04	1.3H	05		
1.4D	02	1.1J	05		
1.5D	03	1.2J	05		
1.1E	04	1.3J	05		
1.2E	04	1.2K	05		
1.4E	03	1.3K	05		

PHMSA agrees with the assignments and, in particular, agrees that only 1.4S, 1.4G, 1.4D, and 1.4C explosives are acceptable on passenger ships.

Column (10A) in the HMT is revised to read Stowage Category 01 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	Un No.	Proper shipping name	Un No.
Articles, explosive, n.o.s.	UN0349	Fuse, safety	UN0105
Articles, pyrotechnic *for technical purposes*	UN0432	Fuzes, detonating	UN0367
Cartridges, power device	UN0323	Fuzes, igniting	UN0368
Cartridges, signal	UN0405	Grenades, practice, *hand or rifle*	UN0110
Cartridges for weapons, blank *or* Cartridges, small arms, blank *or* Cartridges for tools, blank.	UN0014	Igniters	UN0454
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	UN0012	Lighters, fuse	UN0131
Cases, cartridge, empty with primer	UN0055	Primers, cap type	UN0044
Charges, bursting, plastics bonded	UN0460	Primers, tubular	UN0376
Charges, explosive, commercial *without detonator*	UN0445	Projectiles, *inert with tracer*	UN0345
Charges, shaped, *without detonator*	UN0441	Release devices, explosive	UN0173
Components, explosive train, n.o.s.	UN0384	Rivets, explosive	UN0174
Cutters, cable, explosive	UN0070	Signal devices, hand	UN0373
Detonator assemblies, non-electric*, for blasting*	UN0500	Signals, distress, *ship*	UN0506
Detonators for ammunition	UN0366	Signals, railway track, explosive	UN0193
Detonators, electric *for blasting*	UN0456	Signals, smoke	UN0507
Detonators, non-electric *for blasting*	UN0455	Substances, explosive, n.o.s.	UN0481
Fireworks	UN0337	Toy Caps	NA0337
Flares, aerial	UN0404		

Column (10A) in the HMT is revised to read Stowage Category 02 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
5-Mercaptotetrazol-1-acetic acid	UN0448	Flares, aerial	UN0403
Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	UN0503	Fuse, igniter *tubular metal clad*	UN0103
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*.	UN0297	Fuzes, detonating, *with protective features*	UN0410
Ammunition, incendiary *with or without burster, expelling charge or propelling charge*.	UN0300	Fuzes, igniting	UN0317
Ammunition, practice	UN0362	Grenades practice, *hand or rifle*	UN0452
Ammunition, proof	UN0363	Igniters	UN0325
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0303	Jet perforating guns, charged *oil well, with detonator*	NA0494
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0301	Jet perforating guns, charged, *oil well, without detonator*	UN0494
Articles, explosive, n.o.s.	UN0351	Powder, smokeless	UN0509
Articles, explosive, n.o.s.	UN0352	Primers, tubular	UN0320
Articles, explosive, n.o.s.	UN0353	Projectiles, *inert, with tracer*	UN0425
Articles, explosive, n.o.s.	UN0354	Projectiles, *with burster or expelling charge*	UN0347
Articles, pyrotechnic *for technical purposes*	UN0431	Projectiles, *with burster or expelling charge*	UN0435
Cartridges for weapons, blank *or* Cartridges, small arms, blank.	UN0338	Projectiles, *with bursting charge*	UN0344
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	UN0339	Propellant, solid	UN0501
Cartridges, oil well	UN0278	Rockets, line-throwing	UN0453
Cartridges, power device	UN0276	Rockets, *with expelling charge*	UN0438
Cartridges, signal	UN0312	Rockets, *with inert head*	UN0502
Cases, cartridges, empty with primer	UN0379	Signal devices, hand	UN0191
Cases, combustible, empty, without primer	UN0446	Signals, distress, *ship*	UN0505

Proper shipping name	UN No.	Proper shipping name	UN No.
Charges, bursting, plastics bonded	UN0459	Signals, railway track, explosive	UN0493
Charges, explosive, commercial *without detonator*	UN0444	Signals, smoke	UN0197
Charges, propelling	UN0491	Substances, explosive, n.o.s.	UN0479
Charges, shaped, flexible, linear	UN0237	Substances, explosive, n.o.s.	UN0480
Charges, shaped, *without detonator*	UN0440	Substances, explosive, n.o.s.	UN0485
Cord, detonating, *flexible*	UN0289	Tetrazol-1-acetic acid	UN0407
Cord, detonating, mild effect *or* Fuse, detonating, mild effect *metal clad*.	UN0104	Tracers for ammunition	UN0306
Cord, igniter	UN0066	Warheads, rocket *with burster or expelling charge*	UN0370
Fireworks	UN0336		

Column (10A) in the HMT is revised to read Stowage Category 03 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammonium nitrate-fuel oil mixture *containing only prilled ammonium nitrate and fuel oil*.	NA0331	Flares, aerial	UN0421
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*.	UN0171	Flares, surface	UN0092
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*.	UN0254	Flares, surface	UN0418
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*.	UN0009	Flares, surface	UN0419
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*.	UN0010	Flash powder	UN0094
Ammunition, practice	UN0488	Flash powder	UN0305
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0015	Fuse, non-detonating *instantaneous or quickmatch*	UN0101
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0016	Fuzes, igniting	UN0316
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0018	Grenades, practice, *hand or rifle*	UN0318
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0019	Grenades, practice, *hand or rifle*	UN0372
Articles, explosive, extremely insensitive *or* Articles, EEI	UN0486	Igniters	UN0121
Articles, explosive, n.o.s.	UN0471	Igniters	UN0314
Articles, pyrotechnic *for technical purposes*	UN0428	Igniters	UN0315
Articles, pyrotechnic *for technical purposes*	UN0429	Primers, tubular	UN0319
Articles, pyrotechnic *for technical purposes*	UN0430	Projectiles, *inert, with tracer*	UN0424
Bombs, photo-flash	UN0039	Projectiles, *with burster or expelling charge*	UN0434
Bombs, photo-flash	UN0299	Rockets, line-throwing	UN0238
Cartridges for weapons, *with bursting charge*	UN0412	Rockets, line-throwing	UN0240
Cartridges, flash	UN0049	Signals, distress, *ship*	UN0194
Cartridges, flash	UN0050	Signals, distress, *ship*	UN0195
Cartridges, signal	UN0054	Signals, railway track, explosive	UN0192
Explosive, blasting, type B *or* Agent blasting, Type B	UN0331	Signals, railway track, explosive	UN0492
Explosive, blasting, type E *or* Agent blasting, Type E	UN0332	Signals, smoke	UN0196
Fireworks	UN0333	Signals, smoke	UN0313
Fireworks	UN0334	Signals, smoke	UN0487
Fireworks	UN0335	Substances, explosive, n.o.s.	UN0476
Flares, aerial	UN0093	Substances, explosive, n.o.s.	UN0478
Flares, aerial	UN0420	Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s..	UN0482
		Tracers for ammunition	UN0212

Column (10A) in the HMT is revised to read Stowage Category 04 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
1H-Tetrazole	UN0504	Hexolite, *or* Hexotol *dry or wetted with less than 15 percent water, by mass*.	UN0118
1-Hydroxybenzotriazole, anhydrous, *dry or wetted with less than 20 percent water, by mass*.	UN0508	Hexotonal	UN0393
5-Nitrobenzotriazol	UN0385	Jet perforating guns, charged *oil well, with detonator*	NA0124

Proper shipping name	UN No.
Ammonium nitrate, *with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	UN0222
Ammonium perchlorate	UN0402
Ammonium picrate, *dry or wetted with less than 10 percent water, by mass.*	UN0004
Articles, explosive, n.o.s.	UN0462
Articles, explosive, n.o.s.	UN0463
Articles, explosive, n.o.s.	UN0464
Articles, explosive, n.o.s.	UN0466
Articles, explosive, n.o.s.	UN0467
Articles, explosive, n.o.s.	UN0468
Articles, explosive, n.o.s.	UN0470
Black powder *or* Gunpowder, *granular or as a meal*	UN0027
Black powder, compressed *or* Gunpowder, compressed *or* Black powder, in pellets *or* Gunpowder, in pellets.	UN0028
Bombs, photo-flash	UN0038
Bombs, *with bursting charge*	UN0034
Bombs, *with bursting charge*	UN0035
Boosters, *without detonator*	UN0042
Boosters, *without detonator*	UN0283
Bursters, *explosive*	UN0043
Cartridges for weapons, blank	UN0326
Cartridges for weapons, blank	UN0413
Cartridges for weapons, blank *or* Cartridges, small arms, blank.	UN0327
Cartridges for weapons, inert projectile	UN0328
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	UN0417
Cartridges for weapons, *with bursting charge*	UN0006
Cartridges for weapons, *with bursting charge*	UN0321
Cartridges, oil well	UN0277
Cartridges, power device	UN0275
Cartridges, power device	UN0381
Cases, combustible, empty, without primer	UN0447
Charges, bursting, plastics bonded	UN0457
Charges, bursting, plastics bonded	UN0458
Charges, demolition	UN0048
Charges, depth	UN0056
Charges, explosive, commercial *without detonator*	UN0442
Charges, explosive, commercial *without detonator*	UN0443
Charges, propelling	UN0271
Charges, propelling	UN0272
Charges, propelling	UN0415
Charges, propelling, for cannon	UN0242
Charges, propelling, for cannon	UN0279
Charges, propelling, for cannon	UN0414
Charges, shaped, flexible, linear	UN0288

Proper shipping name	UN No.
Jet perforating guns, charged *oil well, without detonator*	UN0124
Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, or mixture of alcohol and water, by mass.*	UN0133
Mines *with bursting charge*	UN0137
Mines *with bursting charge*	UN0138
Nitro urea	UN0147
Nitrocellulose, *dry or wetted with less than 25 percent water (or alcohol), by mass.*	UN0340
Nitrocellulose, plasticized *with not less than 18 percent plasticizing substance, by mass.*	UN0343
Nitrocellulose, *unmodified or plasticized with less than 18 percent plasticizing substance, by mass.*	UN0341
Nitrocellulose, wetted *with not less than 25 percent alcohol, by mass.*	UN0342
Nitroglycerin, desensitized *with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass.*	UN0143
Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 10 percent nitrogylcerin.*	UN0144
Nitroguanidine *or* Picrite, *dry or wetted with less than 20 percent water, by mass.*	UN0282
Nitrostarch, *dry or wetted with less than 20 percent water, by mass.*	UN0146
Nitrotriazolone *or* NTO	UN0490
Octolite *or* Octol, *dry or wetted with less than 15 percent water, by mass.*	UN0266
Octonal	UN0496
Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, *with not less than 7 percent wax by mass.*	UN0411
Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass, or* Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass.*	UN0150
Pentolite, *dry or wetted with less than 15 percent water, by mass.*	UN0151
Powder cake, wetted *or* Powder paste, wetted *with not less than 17 percent alcohol by mass.*	UN0433
Powder cake, wetted *or* Powder paste, wetted *with not less than 25 percent water, by mass.*	UN0159
Powder, smokeless	UN0160
Powder, smokeless	UN0161
Projectiles, *with burster or expelling charge*	UN0346
Projectiles, *with bursting charge*	UN0168
Projectiles, *with bursting charge*	UN0169
Propellant, liquid	UN0495
Propellant, liquid	UN0497
Propellant, solid	UN0498
Propellant, solid	UN0499
RDX and HMX mixtures, wetted *with not less than 15 percent water by mass or* RDX and HMX mixtures, desensitized *with not less than 10 percent phlegmatizer by mass.*	UN0391
Rocket motors	UN0186
Rocket motors	UN0280
Rocket motors	UN0281
Rockets, *with bursting charge*	UN0181
Rockets, *with bursting charge*	UN0182
Rockets, *with expelling charge*	UN0436
Rockets, *with expelling charge*	UN0437
Rockets, *with inert head*	UN0183
Sodium dinitro-o-cresolate, *dry or wetted with less than 15 percent water, by mass.*	UN0234
Sodium picramate, *dry or wetted with less than 20 percent water, by mass.*	UN0235
Sounding devices, explosive	UN0374
Sounding devices, explosive	UN0375

Proper shipping name	UN No.	Proper shipping name	UN No.
Charges, shaped, *without detonator*	UN0059	Substances, explosive, n.o.s.	UN0474
Charges, shaped, *without detonator*	UN0439	Substances, explosive, n.o.s.	UN0475
Charges, supplementary explosive	UN0060	Substances, explosive, n.o.s.	UN0477
Cord detonating *or* Fuse detonating *metal clad*	UN0102	Tetranitroaniline	UN0207
Cord, detonating *or* Fuse, detonating *metal clad*	UN0290	Torpedoes *with bursting charge*	UN0329
Cord, detonating, *flexible*	UN0065	Torpedoes *with bursting charge*	UN0451
Cyclotetramethylenetetranitramine, desensitized *or* Octogen, desensitized *or* HMX, desensitized.	UN0484	Trinitroaniline *or* Picramide	UN0153
Cyclotetramethylenetetranitramine, wetted *or* HMX, wetted *or* Octogen, wetted *with not less than 15 percent water, by mass*.	UN0226	Trinitroanisole	UN0213
Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized *or* Hexogen, desensitized *or* RDX, desensitized.	UN0483	Trinitrobenzene, *dry or wetted with less than 30 percent water, by mass*.	UN0214
Cyclotrimethylenetrinitramine, wetted *or* Cyclonite, wetted *or* Hexogen, wetted *or* RDX, wetted *with not less than 15 percent water by mass*.	UN0072	Trinitrobenzenesulfonic acid	UN0386
Deflagrating metal salts of aromatic nitroderivatives, n.o.s.	UN0132	Trinitrobenzoic acid, *dry or wetted with less than 30 percent water, by mass*.	UN0215
Diethyleneglycol dinitrate, desensitized *with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass*.	UN0075	Trinitrochlorobenzene *or* Picryl chloride	UN0155
Dinitroglycoluril *or* Dingu	UN0489	Trinitrofluorenone	UN0387
Dinitrophenol, *dry or wetted with less than 15 percent water, by mass*.	UN0076	Trinitro-m-cresol	UN0216
Dinitrophenolates *alkali metals, dry or wetted with less than 15 percent water, by mass*.	UN0077	Trinitronaphthalene	UN0217
Dinitroresorcinol, *dry or wetted with less than 15 percent water, by mass*.	UN0078	Trinitrophenetole	UN0218
Dinitrosobenzene	UN0406	Trinitrophenol *or* Picric acid, *dry or wetted with less than 30 percent water, by mass*.	UN0154
Dipicryl sulfide, *dry or wetted with less than 10 percent water, by mass*.	UN0401	Trinitrophenylmethylnitramine *or* Tetryl	UN0208
Explosive, blasting, type A	UN0081	Trinitroresorcinol *or* Styphnic acid, *dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass*.	UN0219
Explosive, blasting, type B	UN0082	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass*.	UN0394
Explosive, blasting, type C	UN0083	Trinitrotoluene and Trinitrobenzene mixtures *or* TNT and trinitrobenzene mixtures *or* TNT and hexanitrostilbene mixtures *or* Trinitrotoluene and hexanitrostilnene mixtures.	UN0388
Explosive, blasting, type D	UN0084	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene *or* TNT mixtures containing trinitrobenzene and hexanitrostilbene.	UN0389
Explosive, blasting, type E	UN0241	Trinitrotoluene *or* TNT, *dry or wetted with less than 30 percent water, by mass*.	UN0209
Fracturing devices, explosive, *without detonators for oil wells*.	UN0099	Tritonal	UN0390
Fuzes, detonating, *with protective features*	UN0408	Urea nitrate, *dry or wetted with less than 20 percent water, by mass*.	UN0220
Fuzes, detonating, *with protective features*	UN0409	Warheads, rocket *with bursting charge*	UN0286
Grenades, *hand or rifle, with bursting charge*	UN0284	Warheads, rocket *with bursting charge*	UN0287
Grenades, *hand or rifle, with bursting charge*	UN0285	Warheads, torpedo *with bursting charge*	UN0221
Hexanitrodiphenylamine *or* Dipicrylamine *or* Hexyl	UN0079	Zirconium picramate, *dry or wetted with less than 20 percent water, by mass*.	UN0236
Hexanitrostilbene	UN0392		

Column (10A) in the HMT is revised to read Stowage Category 05 for the following proper shipping names and corresponding identification numbers:

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition smoke, white phosphorus with burster, expelling charge, or propelling charge.	UN0245	Diazodinitrophenol, wetted with not less than 40 percent water or mixture of alcohol and water, by mass.	UN0074
Ammunition, incendiary liquid or gel, with burster, expelling charge or propelling charge.	UN0247	Fuzes, detonating	UN0106
Ammunition, incendiary, white phosphorus, with burster, expelling charge or propelling charge.	UN0243	Fuzes, detonating	UN0107

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition, incendiary, white phosphorus, with burster, expelling charge or propelling charge.	UN0244	Fuzes, detonating	UN0257
Ammunition, smoke, white phosphorus with burster, expelling charge, or propelling charge.	UN0246	Grenades, hand or rifle, with bursting charge	UN0292
Ammunition, toxic with burster, expelling charge, or propelling charge.	UN0020	Grenades, hand or rifle, with bursting charge	UN0293
Ammunition, toxic with burster, expelling charge, or propelling charge.	UN0021	Guanyl nitrosaminoguanylidene hydrazine, wetted with not less than 30 percent water, by mass.	UN0113
Articles, explosive, n.o.s.	UN0350	Guanyl nitrosaminoguanyltetrazene, wetted or Tetrazene, wetted with not less than 30 percent water or mixture of alcohol and water, by mass.	UN0114
Articles, explosive, n.o.s.	UN0355	Lead azide, wetted with not less than 20 percent water or mixture of alcohol and water, by mass.	UN0129
Articles, explosive, n.o.s.	UN0356	Lead styphnate, wetted or Lead trinitroresorcinate, wetted with not less than 20 percent water or mixture of alcohol and water, by mass.	UN0130
Articles, explosive, n.o.s.	UN0465	Mercury fulminate, wetted with not less than 20 percent water, or mixture of alcohol and water, by mass.	UN0135
Articles, explosive, n.o.s.	UN0469	Mines with bursting charge	UN0136
Articles, explosive, n.o.s.	UN0472	Mines with bursting charge	UN0294
Articles, pyrophoric	UN0380	Primers, cap type	UN0377
Barium azide, dry or wetted with less than 50 percent water, by mass.	UN0224	Primers, cap type	UN0378
Bombs with flammable liquid, *with bursting charge*	UN0399	Projectiles, with burster or expelling charge	UN0426
Bombs with flammable liquid, *with bursting charge*	UN0400	Projectiles, with burster or expelling charge	UN0427
Bombs, photo-flash	UN0037	Projectiles, with bursting charge	UN0167
Bombs, *with bursting charge*	UN0033	Projectiles, with bursting charge	UN0324
Bombs, *with bursting charge*	UN0291	Rocket motors with hypergolic liquids with or without an expelling charge.	UN0250
Boosters with detonator	UN0225	Rocket motors with hypergolic liquids with or without an expelling charge.	UN0322
Boosters with detonator	UN0268	Rocket motors, liquid fueled	UN0395
Cartridges for weapons, with bursting charge	UN0005	Rocket motors, liquid fueled	UN0396
Cartridges for weapons, with bursting charge	UN0007	Rockets, liquid fueled with bursting charge	UN0397
Cartridges for weapons, with bursting charge	UN0348	Rockets, liquid fueled with bursting charge	UN0398
Components, explosive train, n.o.s.	UN0382	Rockets, with bursting charge	UN0180
Components, explosive train, n.o.s.	UN0383	Rockets, with bursting charge	UN0295
Components, explosive train, n.o.s.	UN0461	Samples, explosive, other than initiating explosives	UN0190
Contrivances, water-activated, with burster, expelling charge or propelling charge.	UN0248	Sounding devices, explosive	UN0204
Contrivances, water-activated, with burster, expelling charge or propelling charge.	UN0249	Sounding devices, explosive	UN0296
Detonator assemblies, non-electric for blasting	UN0360	Substances, explosive, n.o.s.	UN0357
Detonator assemblies, non-electric, for blasting	UN0361	Substances, explosive, n.o.s.	UN0358
Detonators for ammunition	UN0073	Substances, explosive, n.o.s.	UN0359
Detonators for ammunition	UN0364	Substances, explosive, n.o.s.	UN0473
Detonators for ammunition	UN0365	Torpedoes with bursting charge	UN0330
Detonators, electric, for blasting	UN0030	Torpedoes, liquid fueled, with inert head	UN0450
Detonators, electric, for blasting	UN0255	Torpedoes, liquid fueled, with or without bursting charge	UN0449
Detonators, non-electric, for blasting	UN0029	Warheads, rocket with burster or expelling charge	UN0371
Detonators, non-electric, for blasting	UN0267	Warheads, rocket with bursting charge	UN0369

Vessel Stowage Codes (10B)

Section 172.101(k) describes Column (10) of the HMT and the vessel stowage requirements for specific entries in the HMT. Furthermore, column (10B) [Other provisions] specifies codes for stowage requirements for specific hazardous materials. The meaning of each code in Column (10B) is set forth in § 176.84 of this subchapter.

Vessel shipments of Class 1 explosives are currently required to be stored away from all sources of heat including steam pipes, heating coils, sparks, and flame in accordance with § 176.116(a). In addition to this general provision in § 176.116, several vessel stowage codes in column (10B) make reference to shading or stowing away from heat. To harmonize with the IMDG Code, reduce the number of redundant vessel stowage codes, and incorporate the addition of a new definition for protected from sources of heat (see Section 176.2 of this final rule for definition) PHMSA is deleting vessel stowage codes 50 and 48 and replacing all references to these codes with stowage code 25. See *Section 176.84* for a detailed discussion of our revision to stowage code 25.

The following proper shipping names and corresponding identification numbers will have stowage code 48 replaced with stowage code 25 in Column (10B) in the HMT. If the commodity is currently assigned both stowage code 48 and 25 in Column (10B) in the HMT stowage code 48 will be deleted and stowage code 25 will remain.

Proper shipping name	UN No.	Proper shipping name	UN No.
Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity).*		Calcium hypochlorite mixture, dry, corrosive with more than 10% but not more than 39% available chlorine.	UN3486
Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity).*	UN1950	Calcium hypochlorite mixtures, dry, with more than 10 percent but not more than 39 percent available chlorine.	UN2208
Aerosols, *flammable, (each not exceeding 1 L capacity)*	UN1950	Copra	UN1363
Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*	UN1950	Dichlorophenyl isocyanates	UN2250
Aerosols, non-flammable, *(each not exceeding 1 L capacity).*	UN1950	Dicyclohexylammonium nitrite	UN2687
Aerosols, poison, *(each not exceeding 1 L capacity)*	UN1950	Gallium	UN2803
Ammonium nitrate based fertilizer	UN2067	Hypochlorites, inorganic, n.o.s	UN3212
Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, intermediate for blasting explosives.	UN3375	Isocyanates, toxic, flammable, n.o.s. *or* Isocyanate solutions, toxic, flammable, n.o.s., flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C.	UN3080
Ammonium nitrate, with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance.	UN1942	Isocyanates, toxic, n.o.s. *or* Isocyanate solutions, toxic, n.o.s., flash point more than 61 degrees C and boiling point less than 300 degrees C.	UN2206
Batteries, nickel-metal hydride *see* Batteries, dry, sealed, n.o.s. for nickel-metal hydride batteries transported by modes other than vessel.	UN3496	Isocyanatobenzotrifluorides	UN2285
Benzyldimethylamine	UN2619	Lithium hypochlorite, dry *or* Lithium hypochlorite mixture	UN1471
5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene	UN2956	Methacrylonitrile, stabilized	UN3079
Calcium hypochlorite, dry, corrosive *or* Calcium hypochlorite mixtures, dry, corrosive with more than 39% available chlorine (8.8% available oxygen).	UN3485	Phosphorous acid	UN2834
Calcium hypochlorite, dry *or* Calcium hypochlorite mixtures dry with more than 39 percent available chlorine (8.8 percent available oxygen).	UN1748	Propylene chlorohydrins	UN2611
Calcium hypochlorite, hydrated, corrosive *or* Calcium hypochlorite, hydrated mixture, corrosive with not less than 5.5% but not more than 16% water.	UN3487	Sodium carbonate peroxyhydrate	UN3378
Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, with not less than 5.5 percent but not more than 16 percent water.	UN2880	Sodium perborate monohydrate	UN3377

The following proper shipping names and corresponding identification numbers will have stowage code 19 replaced with stowage code 25 in Column (10B) in the HMT if stowage code 25 is not currently listed in Column (10B). If the proper shipping name already is currently assigned both stowage code 19 and 25, stowage code 19 will be deleted.

Proper shipping name	UN No.	Proper shipping name	UN No.
Copra	UN1363	Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*	UN3314
Polymeric beads, expandable *evolving flammable vapor*	UN2211	Sulfur	NA1350
Sulfur	UN1350		

We are also assigning stowage code 25 to every Class 1 explosive table entry to indicate these materials must be protected from sources of heat in accordance with the new definition of ''protected from sources of heat'' in § 176.2. See *Section 176.84* for a detailed discussion of our revision to stowage code 25 and § 176.2 for the definition of ''protected from sources of heat.''

Stowage code 50 is currently not assigned to any HMT entries and is being deleted.

PHMSA is revising stowage code 128 to account for a citation change in the IMDG Code. The new text of stowage code 128 is ''stow in accordance with the IMDG Code, Sub-section 7.6.2.7.2 (incorporated by reference; see § 171.7 of this subchapter).''

PHMSA is deleting stowage codes 7E, 8E, and 20E. The reduction in the number of vessel stowage categories in column (10A) makes these codes unnecessary and any applicable stowage requirements are covered by the requirements of the applied code in column (10A).

The following proper shipping names and corresponding identification numbers will have stowage code 7E removed from column (10B) of the HMT.

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	UN0303	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	UN0301

The following proper shipping names and corresponding identification numbers will have stowage code 8E removed from column (10B) of the HMT.

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition smoke, white phosphorus *with burster, expelling charge, or propelling charge*.	UN0245	Articles, explosive, n.o.s.	UN0354
Ammunition, smoke, white phosphorus *with burster, expelling charge, or propelling charge*.	UN0246	Articles, explosive, n.o.s.	UN0355
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0015	Articles, explosive, n.o.s.	UN0356
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0016	Articles, pyrophoric	UN0380
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0303	Contrivances, water-activated, *with burster, expelling charge or propelling charge*.	UN0248
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0018	Contrivances, water-activated, *with burster, expelling charge or propelling charge*.	UN0249
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0019	Rocket motors with hypergolic liquids *with or without an expelling charge*.	UN0250
Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0301	Rocket motors with hypergolic liquids *with or without an expelling charge*.	UN0322
Ammunition, toxic *with burster, expelling charge, or propelling charge*.	UN0020	Substances, explosive, n.o.s.	UN0357
Ammunition, toxic *with burster, expelling charge, or propelling charge*.	UN0021	Substances, explosive, n.o.s.	UN0358
		Substances, explosive, n.o.s.	UN0359

The following proper shipping names and corresponding identification numbers will have stowage code 20E removed from column (10B) of the HMT.

Proper shipping name	UN No.	Proper shipping name	UN No.
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0015	Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0018
Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	UN0016	Ammunition, tear-producing *with burster, expelling charge or propelling charge*.	UN0019

During review of the explosive stowage codes it was noted that stowage code 1E was assigned to UN0504 1H-Tetrazole and UN0502 Rockets, with inert head. Stowage code 1E was removed in a final rule published on June 21 2001, under Docket Number RSPA–2000–7702 (HM–215D) [66 FR 33316] entitled, ''Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions'' and, in this final rule, PHMSA is amending the listings for these two entries by removing these two codes whose requirements have been captured by other vessel stowage provisions.

Section 172.102 Special Provisions

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. PHMSA is revising § 172.102, Special provisions as follows:

Special Provision 47

Special provision 47 provides classification exceptions for mixtures of solids and flammable liquids. In this final rule, PHMSA is revising special provision 47 to clarify that the requirement that each packaging must correspond with a design type that has passed a leakproofness test at the Packing Group II level applies only to single packagings.

Special Provision 48

Special provision 48 provides classification exceptions for mixtures of solids and toxic liquids. In this final rule, PHMSA is revising special provision 48 to clarify that the requirement that each packaging must correspond with a design type that has passed a leakproofness test at the Packing Group II level applies only to single packagings.

Special Provision 49

Special provision 49 provides classification exceptions for mixtures of solids and corrosive liquids. In this final rule, PHMSA is revising special provision 49 to clarify that the requirement that each packaging must correspond with a design type that has passed a leakproofness test at the Packing Group II level applies only to single packagings.

Special Provision 101

In a NPRM published in the *Federal Register* on August 31, 2006 (71 FR 51895), we proposed to remove § 172.102(c)(1), Special provision 101. In the NPRM, we stated that with the introduction of the letter ''G'' in Column (1), which requires the n.o.s. and generic proper shipping names to be supplemented with the technical name of the hazardous material, special provision 101 became obsolete. Consequently, because we did not receive public comment, the amendment was adopted as proposed in a final rule published in the **Federal Register** on December 29, 2006 (71 FR 78596).

Consequences of the removal of § 172.102(c)(1) Special provision 101 in 2006 may have resulted in noncompliance for certain Department of Defense (DOD) explosive shipments.

DOD recently asserted the current provisions in §§ 171.8 and 172.203(k) of the HMR do not permit technical names to be indicated in such a manner as former special provision 101 required. For example, a DOD explosive shipment approved under the generic description ''Articles, explosive, n.o.s.'' was previously assigned special provision 101 in column 7 of the § 172.101 Hazardous Materials Table that required the name of the particular substance or article to be specified as the technical name for the substance or article (e.g., ''Fuze, Grenade, M219A2'') in association with the basic description. Therefore, PHMSA is reinstating special provision 101 for the following HMT entries:

UN0349 Articles, explosive, n.o.s.
UN0350 Articles, explosive, n.o.s.
UN0351 Articles, explosive, n.o.s.
UN0352 Articles, explosive, n.o.s.
UN0353 Articles, explosive, n.o.s.
UN0354 Articles, explosive, n.o.s.
UN0355 Articles, explosive, n.o.s.
UN0356 Articles, explosive, n.o.s.
UN0462 Articles, explosive, n.o.s.
UN0463 Articles, explosive, n.o.s.
UN0464 Articles, explosive, n.o.s.
UN0465 Articles, explosive, n.o.s.
UN0466 Articles, explosive, n.o.s.
UN0467 Articles, explosive, n.o.s.
UN0468 Articles, explosive, n.o.s.
UN0469 Articles, explosive, n.o.s.
UN0470 Articles, explosive, n.o.s.
UN0471 Articles, explosive, n.o.s.
UN0472 Articles, explosive, n.o.s.
UN0382 Components, explosive train, n.o.s.
UN0383 Components, explosive train, n.o.s.
UN0384 Components, explosive train, n.o.s.
UN0461 Components, explosive train, n.o.s.
UN0357 Substances, explosive, n.o.s.
UN0358 Substances, explosive, n.o.s.
UN0359 Substances, explosive, n.o.s.
UN0473 Substances, explosive, n.o.s.
UN0474 Substances, explosive, n.o.s.
UN0475 Substances, explosive, n.o.s.
UN0476 Substances, explosive, n.o.s.
UN0477 Substances, explosive, n.o.s.
UN0478 Substances, explosive, n.o.s.
UN0479 Substances, explosive, n.o.s.
UN0480 Substances, explosive, n.o.s.
UN0481 Substances, explosive, n.o.s.
UN0485 Substances, explosive, n.o.s.
UN0482 Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s.

Special Provision 118

Special provision 118 states that materials listing this special provision may not be transported under the provisions of Division 4.1 unless specifically authorized by the Associate Administrator. In the UN Model Regulations the corresponding special provision, SP 272, contained a note that the special provision referred to UN0143. This special provision in the UN Model Regulations has been revised to indicate that the special provision applies to both UN0143 and UN0150, as appropriate. To maintain consistency with the UN Model Regulations, PHMSA is adopting this editorial note and revising special provision 118 by adding the language ''(see UN0143 or UN0150 as appropriate)'' following the existing text.

Special Provision 134

Special provision 134 is revised to note that this provision also applies to equipment powered by wet batteries or sodium batteries that are transported with these batteries installed.

Special Provision 155

Special provision 155 states that Fish meal or fish scrap may not be transported if the temperature at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (9 °F) above the ambient temperature, whichever is higher.

PHMSA is revising special provision 155 by adding a reference to the new proper shipping name ''krill meal.'' Krill meal possesses similar self-heating hazard characteristics to fish meal and scrap; therefore, application of this special provision is appropriate. This addition clarifies that special provision 155 applies to fish meal and fish scrap as well as krill meal.

Special Provision 222

Special provision 222 is added to indicate that shipments of 1.4S materials reclassed as ORM–D are not eligible to be offered for transportation by aircraft. Special provision 222 is added to the ORM–D entries for Cartridges, small arms, Cartridges, power device *(used to project fastening devices).*

Special Provision 237

Special provision 237 specifies that ''Batteries, dry, containing potassium hydroxide solid, *electric storage* '' must be prepared and packaged in accordance with the requirements of § 173.159(a), (b), and (c) and that for transportation by aircraft, the provisions of § 173.159(b)(2) are applicable.

PHMSA is adding an additional sentence to special provision 237 clarifying the applicability of the provision. Specifically language is added to state that the entry for ''Batteries, dry, containing potassium hydroxide solid, *electric storage*'' may only be used for the transport of non-activated batteries that contain dry potassium hydroxide and that are intended to be activated prior to use by the addition of an appropriate amount of water to the individual cells.

Special Provision 238

Special provision 238 is added to address the shipment of neutron radiation detectors. Neutron detection is a key component used in nuclear arms interdiction in addition to other applications such as nuclear reactor monitoring, neutron-based cancer treatments, neutron spallation, nondestructive testing and health physics applications. Most neutron radiation detectors contain boron trifluoride gas, UN1008, which is currently forbidden by passenger and cargo aircraft as noted in Columns (9A) and (9B) of the HMT. Currently, neutron radiation detectors that contain this gas can only be transported by air under a special permit.

ICAO recently adopted a special provision specifically addressing neutron radiation detectors. The recently adopted special provision A190 permits, under certain conditions the transportation by cargo aircraft of neutron radiation detectors containing boron trifluoride. These conditions include quantity of gas limitations, and construction and packaging specifications. The special provision also provides that under certain conditions these neutron radiation detectors containing not more than 1 gram of boron trifluoride gas are not otherwise subject to the ICAO Technical Instructions.

PHMSA granted a special permit, for the transportation by all modes, of certain neutron radiation detectors containing boron trifluoride gas. The limitations set forth in Special Provision A190 of the ICAO Technical Instructions do not exceed any limitations of the special permit and, therefore, PHMSA is adopting and applying them to all modes of transportation except passenger-carrying aircraft by incorporating them into § 172.102(c)(1), Special provision 238. Specifically, the special provision provides packaging requirements (including pressure limitations), quantities permitted, and package construction requirements for radiation detectors containing non-pressurized boron trifluoride gas in excess of 1 gram. The special provision also provides additional exceptions from the HMR based on the transport mode and other conditions. The special provision will be applicable to the entry ''UN1008, Boron trifluoride'' in the HMT. PHMSA

believes the adoption of this special provision provides an adequate level of safety for the transportation of these items, while providing flexibility in the need to obtain a special permit.

Special Provision 338

A new special provision 338 is added to clarify that when lithium cells or batteries are contained in the fuel cell system, the item must be described under this entry and the entry ''Lithium batteries, contained in equipment.'' This special provision is applied to UN3473 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing flammable liquids*''; UN3476 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing water-reactive substances*''; UN3477 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing corrosive substances*''; UN3478 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing liquefied flammable gas*''; and UN3479 ''Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing hydrogen in metal hydride.*''

Special Provision 360

New special provision 360 is added and assigned to UN3091, ''Lithium batteries, contained in equipment'' to clarify that vehicles powered only by lithium batteries must be assigned to identification number UN3071, ''Battery powered vehicle.''

Special Provision 361

New special provision 361 is added to clarify that certain capacitors with limited energy storage capability are excepted from the HMR. Specifically, the special provision states that capacitors with an energy storage capacity of 0.3 Wh or less are not subject the HMR. Furthermore this special provision defines energy storage capacity as the energy held by a capacitor, as calculated using the nominal voltage and capacitance.

Section 173.176 provides that capacitors not installed in equipment must be transported in an uncharged state and capacitors installed in equipment must be transported in either an uncharged state or protected against short circuit. Certain types of capacitors such as asymmetrical capacitors are designed to maintain a terminal voltage. This special provision also clarifies that the entry UN3499 does not apply to these capacitors. This special provision is applied to the new HMT entry UN3499, ''Capacitor, *electric double layer (with an energy storage capacity greater than 0.3 Wh).*''

Veolia expressed concern that while manufacturers will have control over the charge state of a capacitor when it is offered for transportation, when these same capacitors are being offered for transportation for recycling or disposal, the recycling or disposal facility may not be aware of or have control over their charge state. Veoila further asserted that this special provision only applies to electric double layer capacitors with an energy storage capacity of greater than 0.3 Wh, and there are other types of capacitors that have a potential to store a significant amount of energy that may pose a risk during transportation. The 0.3 Wh threshold for electric double layer capacitors is the threshold determined by the UNSCOE below which a capacitor would not pose a significant risk in transportation. PHMSA is aware that there are additional emerging capacitor technologies that are under review by the UNSCOE for possible inclusion in the dangerous goods list.

In this final rule PHMSA is only addressing the adoption of the special provision consistent with the amendment to the UN Model regulations. PHMSA has published an advance notice of proposed rulemaking (ANPRM) under Docket HM–253 (77 FR 39662, July 5, 2012) requesting public comment and input concerning the transportation of hazardous materials for recycling or disposal.

Special Provision 362

New special provision 362 specifies when a material can be considered a chemical under pressure. Specifically, the special provision states that classification of these materials is to be based on hazard characteristics of the components in the propellant, the liquid, or the solid forms. Further, this special provision details the appropriate primary and subsidiary hazard classes to be assigned to chemical under pressure. Special provision 362 is assigned to the following HMT entries: UN3500, Chemical under pressure, n.o.s.; UN3501, Chemical under pressure, flammable, n.o.s.; UN3503, Chemical under pressure, corrosive, n.o.s.; UN3502, Chemical under pressure, toxic n.o.s.; UN3504, Chemical under pressure, flammable, toxic, n.o.s.; and UN3505, Chemical under pressure, flammable, corrosive, n.o.s.

Special Provision 365

With the adoption of a new HMT entry ''UN3506 Mercury contained in manufactured articles'' in the 17th Revised Edition of the UN Model Regulations to address manufactured articles containing mercury, PHMSA is adding new special provision 365 stating that manufactured instruments and articles containing mercury should reference UN3506. This special provision is applied to UN2809 Mercury.

Special Provision A51

PHMSA is adding a new special provision A51 to authorize the transport by passenger aircraft of wet cell aircraft batteries with a mass up to 100 kg net and lithium ion aircraft batteries in packages containing a single aircraft battery with a net mass not exceeding 35 kg. The August 15, 2012 NPRM proposed to authorize the transport of aircraft batteries into Part 175 that provides exceptions from certain regulations for air carrier operator equipment and items of replacement, as well as for items used to provide customer service aboard an aircraft. PRBA and Saft noted the NPRM proposed to authorize the transport of aircraft batteries in a way that is not fully consistent with the 2013–2014 ICAO Technical Instructions, which do not limit the use of this exception to a particular aircraft operator's aircraft batteries. PRBA notes that such an action would frustrate the intent of Congress when it passed the FAA Modernization and Reform Act of 2012. In this final rule we are incorporating this authorization into a special provision consistent with the 2013–2014 ICAO Technical Instructions.

Special Provision A60

Special Provision A60 permits UN2014, Hydrogen peroxide, aqueous solution, to be transported in excepted quantities provided a comparative fire test between packages containing the solution and identical packages containing water demonstrated no difference in the burning rate. The likelihood of finding discernible differences with more accurate test equipment used today is much greater than it would have been with equipment used when the test requirements were first developed. This more sensitive equipment often detects negligible differences between the two test subjects and, therefore, precludes transport of these small devices under the special provision. To address the issue, the ICAO Dangerous Goods Panel

(DGP) adopted a proposal to allow small differences in burning rates.

In this final rule we are harmonizing with the ICAO Technical Instructions with regard to the comparative fire test for Hydrogen peroxide, aqueous solution. Special provision A60 is revised accordingly.

Special Provision A100

Special Provision A100 states that primary (non-rechargeable) lithium batteries and cells are forbidden for transport aboard passenger-carrying aircraft and secondary (rechargeable) lithium batteries and cells are authorized aboard passenger-carrying aircraft in packages that do not exceed a gross weight of 5 kg.

Special provision A100 is revised to clarify the weight limitations for secondary lithium batteries are net and not gross quantities. There are some combinations of authorized battery packagings that contribute significantly towards the gross weight of the finished package. The intent of this change is to indicate that the quantity limits for secondary lithium battery shipments aboard passenger-carrying aircraft are to be based on the actual weight of the batteries in each individual package and not the weight of the completed package.

Special Provision A103

Special Provision A103 specifies that lithium batteries contained in equipment is authorized aboard passenger carrying aircraft if the gross weight of the inner package of secondary lithium batteries or cells packed with the equipment does not exceed 5 kg (11 pounds).

Special provision A103 is revised to clarify the weight limitations are net and not gross quantities. There are some combinations of authorized battery packagings that contribute significantly towards the gross weight of the finished package. The intent of this change is to indicate that the quantity limits for secondary lithium battery shipments aboard passenger carry aircraft are to be based on the actual weight of the batteries in each individual package and not the weight of the completed package.

Special Provision A189

We are adding a new special provision, A189, which is assigned to the HMT entry ''UN2209, Formaldehyde solutions, *with not less than 25 percent formaldehyde''* indicating how Formaldehyde solutions with more than 25% are to be classified. It was suggested at the ICAO DGP that the entry for ''UN2209, Formaldehyde solution *with not less than 25% formaldehyde''* implied that concentrations of less than 25% formaldehyde were not regulated. To clarify these requirements, the ICAO adopted a new special provision detailing how differing percentage of formaldehyde solutions are regulated.

We are adding language detailing how differing percentages of Formaldehyde solutions are to be regulated in the new special provision A189. This special provision is applied to UN3334, Aviation regulated liquid, n.o.s. and NA3082, Other regulated substances, liquid, n.o.s.

Special Provision A191

In the NPRM, PHMSA proposed a new special provision, A192, noting that regardless of the Division 6.1 (toxic) subsidiary indicated in the HMT, the poison subsidiary hazard label and an indication of this subsidiary hazard on the shipping paper are not required for manufactured articles containing less than 0.45 kg (1 pound) of mercury. This provision aligns with the decision of the UN Sub-Committee to ensure that transport of such articles, particularly by air, is not impeded due to mercury's revised classification.

PHMSA received one comment from UPS noting that this special provision was assigned A191 by ICAO and not A192 as assigned by PHMSA. UPS also noted that ICAO provided an exception from display of the subsidiary ''Toxic'' label and the identification of subsidiary risk for up to 5 kg (11 pounds) of mercury, PHMSA proposed an exception for no more than 0.454 kg (1 LB). UPS sees no reason for this lack of alignment, but foresees unnecessary challenges arising from such inconsistency. Therefore, UPS urges PHMSA to align directly with the 5 kg limit in the ICAO text. PHMSA is assigning special provision A191 to this entry for continuity with the international regulations. PHMSA agrees with UPS regarding the amount of mercury that may be present in manufactured articles to utilize the exception from communicating the subsidiary hazard, and is changing that amount to 5 kg (11 pounds).

Special Provision A200

As previously discussed, new special provision, A200, is added stating the entries assigned this special provision must be transported as cargo when transported by aircraft and cannot be carried onboard an aircraft by passengers or crewmembers either in or as carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10, ''Exceptions for Passengers, Crewmembers, and Air Operators.'' This special provision is assigned to articles and will be applied to: UN3166, Engines, internal combustion *or* Engines, fuel cell, *flammable gas powered;* UN3166, Engines, internal combustion, *or* Engines, fuel cell, *flammable liquid powered;* UN3166, Vehicle, *flammable gas powered or* Vehicle, fuel cell, *flammable gas powered;* UN3166, Vehicle, *flammable liquid powered or* Vehicle, fuel cell, *flammable liquid powered;* UN0503, Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners; and, UN3268, Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.

Special Provision B120

Special provision B120 is added to specify the use of FBCs conforming to the requirements in Subpart R and Subpart S of part 178 of this subchapter are permitted. The special provision is applicable to the following entries:

Proper shipping name	UN No.
Ammonium nitrate based fertilizer	UN2067
Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance.*	UN1942
Calcium nitrate	UN1454
Environmentally hazardous substance, solid, n.o.s	UN3077
Magnesium nitrate	UN1474
Naphthalene, crude *or* Naphthalene, refined	UN1334
Paraformaldehyde	UN2213
Potassium nitrate	UN1486
Sodium carbonate peroxyhydrate	UN3378
Sodium nitrate	UN1498
Sodium nitrate and potassium nitrate mixtures	UN1499

Proper shipping name	UN No.
Sodium perborate monohydrate	UN3377
Sulfur (domestic and international entries)	UN1350

FBCs must conform to the performance-oriented construction standards and testing criteria in new subparts R and S of part 178. In addition, shipments of FBCs must be prepared and otherwise conform to the general requirements for bulk packages in subpart B of part 173 and the new § 173.37.

IBC Codes

In a final rule published in the **Federal Register** on January 19, 2011 (76 FR 3308; HM–215K), the Table 1 (IBC Codes) in paragraph (c)(4) were editorially revised to remove UN Specifications 31A, 31B and 31N from IBC Codes IB4 through IB8. The revision was consistent with amendments to international standards that removed the specifications from the indicated codes in the table because IBC Codes IB4 through IB8 are assigned to solids, whereas, UN Specifications 31A, 31B, and 31N are authorized for transportation of liquids in IBC Codes IB1 through IB3 and are assigned to liquid materials only. In the January 19, 2011 final rule, PHMSA inadvertently failed to also remove the remaining liquid IBC specifications (31H1, 31H2, 31HZ1, and 31HZ2) from IB Codes IB4 through IB8. Therefore, PHMSA is editorially correcting the IBC Code Table in § 172.102(c)(4).

Special Provision TP39

Special provision, TP39, is added and assigned to HMT entry ''UN2381, Dimethyl disulfide.'' This special provision indicates that portable tank instruction T4 may continue to be applied until December 31, 2018. This provides more time for portable tank transporters to transition their current fleets.

Special Provision TP40

Special provision TP40 is added and assigned to HMT entries ''UN3500, Chemical under pressure, n.o.s.; UN3501, Chemical under pressure, flammable, n.o.s.; UN3503, Chemical under pressure, corrosive, n.o.s., UN3503; UN3502, Chemical under pressure, toxic n.o.s.; UN3504, Chemical under pressure, flammable, toxic, n.o.s.; and UN3505, Chemical under pressure, flammable, corrosive, n.o.s.'' The special provision indicates that the portable tanks must not be transported when connected with spray application equipment. This provides an additional measure preventing inadvertent release of hazardous materials in transport.

Special Provision TP41

Special provision TP41 is added and assigned to HMT entries ''UN3148, Water-reactive liquid, n.o.s.,'' indicating that the portable tank instruction T9 may continue to be applied until December 31, 2018.

Special Provision T50

Special provision T50 is revised to note that this provision is applicable to chemicals under pressure as well as liquefied compressed gases. Special provision T50 would be assigned to HMT entries ''UN3500, Chemical under pressure, n.o.s.; UN3501, Chemical under pressure, flammable, n.o.s.; UN3503, Chemical under pressure, corrosive, n.o.s., UN3503; UN3502, Chemical under pressure, toxic n.o.s.; UN3504, Chemical under pressure, flammable, toxic, n.o.s.; and UN3505, Chemical under pressure, flammable, corrosive, n.o.s.''

Special Provision W10

Special provision W10 is added and assigned to HMT entries ''UN3486 Calcium hypochlorite mixture, dry, corrosive *with more than 10% but not more than 39% available chlorine''* and to ''UN2208 Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine''* indicating that when offered for transportation by vessel, the use of large packagings is prohibited. This provision is adopted to align with a recent IMO change forbidding these commodities from being transported by vessel in large packages.

PHMSA received two comments (DGAC & IVODGA) on our proposal to adopt new special provision W10. IVODGA supported placing W10 in column 7 of the HMT in order for the UN2208 & UN3486 entries to harmonize with the IMDG Code. DGAC recommended against placing W10 in column 7 of the HMT for the UN2208 & UN3486 entries. DGAC also requested that PHMSA elaborate as to why this change is needed on a safety basis. The IMO Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC) at their 14th session; decided not to assign LP02 to UN3486 to be consistent with the assignment of packing authorizations for UN2208, a material exhibiting similar characteristics. To remain harmonized with the IMDG Code PHMSA will be adopting W10 as proposed in the August 15, 2012 NPRM.

Section 172.202

Section 172.202 establishes requirements for shipping descriptions on shipping papers. As part of these shipping paper requirements, in many situations a net or gross quantity of the hazardous materials transported must be included. At the 23rd meeting of the ICAO DGP, the issue of notation of quantities on shipping documents was raised. Specifically, it was noted that some confusion exists as to whether or not the net quantity or a gross mass is required on the shipping documents on particular shipments, such as limited quantities. At this meeting an amendment to the ICAO Technical Instructions was adopted to clarify what quantities (i.e. net or gross quantity) were required on the transport document for packages containing limited quantities when different hazardous materials are packed together in the same outer packaging.

PHMSA is adopting a similar provision to the one addressed by the ICAO DGP discussed above. Specifically, PHMSA is adding a new paragraph (a)(6)(vii) stating that for shipments containing hazardous materials in limited quantities with a ''30 kg gross'' limit in Column (9A) or (9B) of the § 172.101 Hazardous Materials Table and different hazardous materials packed together in the same outer packaging, the net quantity of each hazardous material followed by the gross mass of the completed package must be shown on the shipping paper.

This clarification addresses a transport scenario currently not addressed in the HMR thus alleviating confusion regarding the shipping paper requirements of such shipments. Furthermore, this harmonizes the HMR with the ICAO Technical Instructions and avoids shipping paper discrepancies for international shipments.

Section 172.203

This section details additional description requirements that are required for certain shipments of hazardous materials. PHMSA is amending paragraph (i)(3) to cross reference the IBR § 171.7.

Section 172.301

This section details the general marking requirements for non-bulk packagings. Specifically, this section states what information (proper shipping name and identification number, technical names, consignee's or consignor's name, etc.) must be displayed on the outside of non-bulk packages. While the HMR requires that an identification number, preceded by ''UN'' or ''NA'' as appropriate, be marked on the outside of a non-bulk packaging a specific size of this marking is not specified.

In this final rule, PHMSA is adding specific size requirements for the ''UN'' or ''NA'' markings. These markings must be marked in characters at least 12 mm (0.47 inches) high, however, packages with a maximum capacity of 30 liters (7.92 gallons) ,30 kg (66 pounds), or cylinders with a maximum water capacity of 60 liters (16 gallons) must be marked with characters at least 6 mm (0.2 inches) high and packages having a maximum capacity 5 liters (1.32 gallons) or 5 kg (11 pounds) or less must be marked in a size appropriate for the size of the package.

PHMSA is adopting this minimum size marking for the ''UN'' or ''NA'' markings to align with newly adopted requirements in the 17th Revised Edition of the UN Model Regulations. PHMSA recognizes the importance of establishing a minimum size requirement for the internationally recognized ''UN'' identification number marking system. Without a minimum size requirement for hazard communication, shippers may mark packages in a format that makes it difficult for first responders to identify the commodity associated with a particular package.

In response to the NPRM, PHMSA received several comments concerning this proposed requirement. DGAC and Dow suggested extending the compliance date for this provision to January 1, 2017 to allow companies time to make the transition, and for the depletion of both finished product and prepackaged inventory that do not meet the requirements of the proposal.

Veolia noted that their company's propriety software produces markings that would not be in compliance with the proposed size limitations and that they would incur a cost to reprogram their system if the proposal is maintained. They further contended that in 20 years of displaying the marking they are unaware of any instances of the markings being questioned as being too small or illegible. Veolia requested that the minimum size requirement apply to international shipments only.

Stericycle and the HWI requested an exception to this marking requirement for dedicated carriers of regulated medical waste. These commenters stated that the proposed change would impose a significant cost on the industry. They requested an exception for the continued use of existing containers used to transport regulated medical waste and permanently marked with the applicable ''UN'' number.

PHMSA accepts that many packages are currently marked in a manner that may not in all cases meet the new minimum size standards. In response to the comments raised to the NPRM we will provide, for domestic transportation, a transition period to continue using non-bulk packagings displaying ''UN'' or ''NA'' number markings in accordance with the requirements in effect on October 1, 2011 (i.e., no minimum size), until January 1, 2017.

PHMSA maintains that there is benefit to harmonization in this case, and having a single standard outweighs the cost incurred by a company to revise its software and systems to produce compliant markings. The transition period for the continued use of the current markings in domestic transportation provides an opportunity for companies to revise their marking systems and maintain compliance. PHMSA is sympathetic to the assertion that the containers used to transport regulated medical waste are often permanently stamped with the ''UN'' number and the containers often have very long useful lives. Therefore PHMSA is also including an exception that allows packages that are permanently marked with the UN number (e.g., by embossing or through a heat stamp process) and are manufactured prior to January 1, 2017 to continue in service for the life of the container.

DGAC noted that while an inch conversion was provided in the preamble there is no inch conversion noted in the regulations text. This was an oversight and has been corrected in this final rule.

COSTHA questioned if the minimum size of the ''UN'' number markings should be dictated by the maximum capacity of the outer package or the inner packagings. COSTHA proposed an example package consisting of 2 inner packagings of 4 L each. Maximum capacity is defined in § 171.8 as ''the maximum inner volume of receptacles or packagings.'' A package containing 2 inner packagings with a maximum capacity of 4 L each would have a maximum capacity of 8 L, and thus would require a 6 mm minimum UN number marking.

It was also noted that the UNSCOE, at its 39th session, provided an exception from minimum marking size requirements for cylinders of 60 liters water capacity or less. PHMSA agrees that cylinder markings have historically been allowed provisions that would allow for smaller UN number markings than other non-bulk packages and is providing an exception for cylinders of 60 liters water capacity or less consistent with the recent UNSCOE exception.

Therefore, with the aforementioned transition period, exceptions, and note, PHMSA is specifying a marking size consistent with package marking sizes adopted in the 17th Revised Edition of the UN Model Regulations.

Section 172.312

Section 172.312 details the specific marking requirements for liquid hazardous materials in non-bulk packagings. Paragraph (a) of this section describes scenarios when package orientation arrows must be displayed on the outside of a package. Provided certain criteria are met, paragraph (c) excepts certain shipments from the requirements of paragraph (a) and thus, the requirement to display the package orientation arrows on the package. Currently § 173.312(c)(3) states that when offered or intended for transportation by aircraft, packages containing flammable liquids in inner packagings of 120 mL (4 fluid oz.) or less prepared in accordance with § 173.150(b) or (c) of this subchapter when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents are not required to display the package orientation arrows on the outside of the package. The ICAO TI have been amended to extend this exception to the package orientation markings to all liquid hazardous materials in inner packagings of 120 mL (4 fluid oz.) when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents. PHMSA is adopting this change, consistent with the amendment made to the ICAO TI to extend the exception for the display of the package orientation arrows to all liquid hazardous materials in inner packagings of 120 mL (4 fluid oz.) when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents.

Section 172.407

This section provides label specifications. PHMSA is amending paragraph (f) to include a cross reference to the IBR § 171.7.

Section 172.604

Section 172.604 prescribes emergency response telephone number requirements. Paragraph (d) of this section provides a listing of materials that are excepted from the requirement to provide an emergency response telephone number on a shipping document.

PHMSA is adding ''Krill Meal, PGIII'' to the list of materials excepted from the emergency response telephone number requirements. Krill meal poses similar hazards to fish scrap and meal; therefore, we are providing Krill meal with the same exception from the emergency response telephone number requirements as fish scrap and meal.

Part 173

Part 173 of the HMR describes the general requirements for shipments and packagings of hazardous materials. Consistent with amendments adopted by the UN Model Regulations, PHMSA is adopting changes throughout the Part 173 packaging requirements to authorize more flexibility when choosing packages for hazardous materials. Specifically PHMSA is authorizing the use of the following packaging types and materials:

The specific packaging requirements for Class 1 explosive materials are specified in § 173.62. In this final rule PHMSA is revising § 173.62 to authorize wood as an appropriate material used to construct receptacles, inner and outer intermediate packagings, and intermediate packagings/dividing partitions for certain explosives. Furthermore, PHMSA is authorizing the use of metals other than steel or aluminum in specification packagings, specifically drums (1N1 or 1N2) and boxes (4N), as appropriate. This authorization does not include chlorosilanes under § 173.206 because of corrosion concerns. Otherwise, it authorizes the use of closed head drums where open head drums are generally permitted. PHMSA believes these amendments provide greater flexibility in packaging while maintaining an equivalent level of safety.

Consistent with amendments adopted by the ICAO Technical Instructions, PHMSA is adopting changes in various sections on Part 173 where certain articles, items, and materials are excepted from the requirements of the subchapter. There is a potential for these excepted articles, items, and materials to be inappropriately carried aboard an aircraft by passengers or crewmembers. The changes will address this concern by clarifying that certain excepted articles, items and materials, identified by ICAO as posing a safety risk, must be transported as cargo and cannot be carried onboard an aircraft by passengers or crewmembers as carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10, ''Exceptions for Passengers, Crewmembers, and Air Operators.'' The amended sections include §§ 173.159a, 173.162, 173.164, 173.175, 173.219, and 173.306. For UN3166 and UN3268, Special Provision A200 is created to communicate this requirement and a reference to special provision A200 is placed in column 7 of the HMT for these entries. In response to the NPRM, COSTHA and Mercotac, suggested changes to regulatory text language to eliminate confusion that these items may only be able to be transported as cargo. PHMSA has revised the language in §§ 173.159a, 173.162, 173.175, 173.219, and 173.306 to be consistent with the language in special provision A200 that these excepted articles, items and materials must be transported as cargo and cannot be carried onboard an aircraft by passengers or crewmembers as carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.

PHMSA received one comment from the FCHEA requesting that we amend § 175.10(a)(19) to allow fuel cell cartridges containing flammable gas in division 2.1 and fuel cells containing water reactive materials in division 4.3 in checked passenger baggage. PHMSA did not propose changes to the provisions allowing for the checking limited types of fuel cells in the NPRM, and consider this request to be outside the scope of this rulemaking.

Section 173.4b

This section specifies exceptions for materials packaged in de minimus quantities. In the NPRM, PHMSA proposed and is subsequently adopting in this final rule, an exception in § 175.10(a)(22) to permit non-infectious specimens packaged in accordance with § 173.4b(b) to be carried aboard an aircraft by passengers and crewmembers in checked or carry-on baggage or on their person. In the NPRM we inadvertently neglected to revise the language in § 173.4b(b)(8) to recognize this exception. In this final rule, PHMSA is revising § 173.4b(b)(8) to reference the adopted exception in § 175.10(a)(22).

Section 173.12

This section specifies the exceptions for shipment of waste materials including the requirements for waste packages known as ''lab packs.'' A lab pack, although not specifically defined in § 171.8, is considered a large outer packaging containing small inner packagings that are filled with various compatible laboratory hazardous wastes. Paragraph (b) of this section specifies the authorized inner and outer packagings for lab packs.

In this final rule, PHMSA is revising paragraph (b)(2)(ii)(a) of this section by adding 1N2 metal drums to the permitted outer packagings currently authorized for a lab pack.

Section 173.21

Section 173.21 prescribes materials and packages forbidden for transport. In this final rule, PHMSA is correcting the IMDG Code section reference to control temperature requirements in § 173.21(f)(3)(ii) from 7.7 to 7.3.7.

Section 173.37

Currently, the HMR does not include a section that prescribes general requirements for packaging hazardous materials in Flexible Bulk Containers (FBCs). In this final rule, PHMSA is adding such requirements in new § 173.37 in a similar format to the general requirements for other bulk and large packagings (e.g., portable tanks, IBCs, etc.) in subpart B of part 173. This section includes, but is not be limited to, requirements addressing the initial use and reuse of FBCs, capacity requirements and general transport conditions. Consistent with the use and reuse requirements of other large and bulk packagings, the general requirements in part 173 complement the construction and manufacture specifications for such bulk packagings in part 178 of the HMR.

PHMSA is authorizing the reuse of FBCs. The FBC must be given a visual examination prior to reuse. Furthermore, the general requirements for FBCs specify that FBCs must be transported in a conveyance with rigid sides and ends that extend at least two-thirds the height of the FBC, must not be offered for transportation in freight containers, and may not exceed 15 cubic meters in capacity.

Section 173.50

Section 173.50 provides definitions for the various divisions of Class 1 (explosives) referenced in Subpart C of Part 173. Paragraph (b) of this section notes that Class 1 (explosives) are divided into six divisions. Division 1.6 is described as an explosive consisting

''of extremely insensitive articles that do not have a mass explosive hazard. This division is comprised of articles that contain only extremely insensitive detonating substances and that demonstrate a negligible probability of accidental initiation or propagation.''

In this final rule, PHMSA is removing the word ''detonating'' from this definition to align with the revised definition provided in the 17th Revised Edition of the UN Model Regulations.

Section 173.56

Section 173.56 prescribes the definition of new explosives and provides explosive (Class 1) classification and approval requirements. Paragraph (h) of § 173.56 states that small arms ammunition, within certain parameters is not subject to the approval requirements of the rest of § 173.56.

PHMSA received a comment from SAAMI requesting that PHMSA amend § 173.56 to except Cases, cartridge, empty with primer and Cartridges for tools, blank from the approval requirements of § 173.56. SAAMI noted that for Cartridges for tools, blank the switch from UN 0323 to UN 0014 could necessitate new EX approvals for products which are essentially identical to those already exempted. SAAMI noted that Cases, cartridge, empty with primer refers to small arms cartridges with no bullet or propellant but with a primer, just an empty primed case. SAAMI stated that Cases, cartridge, empty with primer of 50 caliber or less clearly meet the intent and equivalent level of safety to products already referenced in 173.56(h).

PHMSA is amending § 173.56(h) to ensure Cartridges for tools, blank that meet the conditions of that paragraph are excepted from the requirements of the rest of this section. PHMSA believes this to be a natural extension of the intent of the exception in § 173.56(h) as well as a necessary domestic change that is a direct result of international rulemaking.

PHMSA will not be adding Cases, cartridge, empty with primer to § 173.56(h). PHMSA believes Cases, cartridge, empty with primer to be materially different from those articles currently authorized for the exception in § 173.56(h). The proposed addition of Cases, cartridge, empty with primer to § 173.56(h) is also not a direct result of international rulemaking and this rulemaking vehicle is not suited for such a proposal.

Section 173.59

Section 173.59 provides definitions of explosive terms related to the transport and classification of explosives used throughout subpart C of part 173. These definitions are intended for information only and are not to be used for purposes of classification or to replace proper shipping names prescribed in § 172.101. In the UN Model Regulations, Appendix B to Chapter 3 contains a similar list of explosive definitions which are also intended for information only and are not to be used for purposes of hazard classification.

In April 2010, the United States and the United Kingdom submitted a formal document regarding proposed modifications to the UN test series 7 for consideration by the UN Subcommittee of Experts on the Transport of Dangerous Goods. Test series 7 is used to classify explosives into the appropriate class.[1] This paper sought to modify the test series 7 to more accurately address the classification of Division 1.6. Specifically, Division 1.6 is for extremely insensitive detonating articles and the proposed changes in the US/UK paper are designed to ensure that the probability of accidental initiation or propagation of an article attaining this division remains negligible.

In the 17th Revised Edition of the UN Model Regulations, the proposals presented in the US/UK paper regarding the UN test series 7 were adopted. Among the adopted proposals was the addition of various explosive specific definitions referencing the modifications to the UN test series 7. In this final rule, we are revising the various definitions prescribed in § 173.59. Specifically, we revised the definition for ''Articles, explosive, extremely insensitive (Articles, EEI)'' by removing the word ''detonating'' and adding the words ''tools'' after ''starter pistols'' in the definition for ''Cartridges, blank.'' We also replaced the definition for ''Explosive, extremely insensitive detonating substances (EIDS)'' with a new definition for ''Explosive, extremely insensitive substances (EIS).'' Lastly, we added a definition for ''Auxiliary explosive component, isolated.'' The addition of and revisions to these definitions provide consistency with international regulations and clarity when utilizing the UN test series 7 for explosive classification.

PHMSA received one comment form SAAMI that requested we revise the proposed definition of Cartridges, blank. The definition proposed by SAAMI was ''Cartridges, blank. Articles that consist of a cartridge case with a center or rim fire primer, with or without a confined charge of smokeless or black powder, but with no projectile. Used in training, saluting, or in starter pistols, tools, etc.'' SAAMI's proposal would remove the requirement for Cartridges, blank to contain a confined charge of smokeless powder. This SAAMI proposed definition is not consistent with the UN adopted definition for Cartridges, blank. Additionally adopting the definition proposed by SAAMI may conflict with the standing definition for Cases, cartridge empty with, primer. For the aforementioned reasons, PHMSA is adopting the definition as proposed in the August 15, 2012 NPRM.

Section 173.62

Section 173.62 prescribes the specific packaging requirements for explosives. These packaging requirements stipulate the permitted inner, intermediate, and outer packagings as well as any specific additional packaging information. These packaging requirements are generally aligned with the requirements stipulated in the UN Model Regulations.

In this final rule, PHMSA is revising various packaging provisions in the ''Table of Packing Methods'' in this section to align with changes adopted in the 17th Revised Edition of the UN Model Regulations. The revisions to the authorized packaging methods provide greater flexibility when packaging explosives while retaining an appropriate level of safety. These changes include, but are not limited to, permitting various explosives to be transported in closed head drums in addition to the already permitted removable head drums and adding the option to utilize wooden inner and intermediate packagings in various packaging provisions.

Section 173.63

Section 173.63 provides packaging exceptions for specific types of low hazard explosive materials including certain detonators, small arms ammunition and detonating cord. PHMSA received one comment from SAAMI requesting that PHMSA clarify its intent to allow these articles to display either the ground limited quantity mark or the air limited quantity mark regardless of the mode of transport.

In this final rule PHMSA is clarifying the language in § 173.63(b)(2) to clearly state that a limited quantity of 1.4S material may be marked with either the surface or the air limited quantity

[1] The scientific data regarding the adoption of these modifications are presented in working paper ST/SG/AC.10/C.3/2010/40 entitled ''Proposed modifications to Test Series 7.'' This paper can be viewed at the following URL: *http://www.unece.org/fileadmin/DAM/trans/doc/2010/ac10c3/ST-SG-AC10-C3-2010-40e.pdf.*

marking regardless of mode of transport. However, PHMSA also notes that in October of 2012 the ICAO Dangerous Goods Panel Working Group of the Whole (DGP–WG/12) considered, but did not adopt, a proposal to authorize limited quantities of certain 1.4S articles. DGP–WG/12 did note that packages bearing the limited quantity marking of other modes could still be accepted for air transport provided all additional requirements of the ICAO Technical Instructions were met. As a result of the DGP–WG/12 decision PHMSA and FAA believe retaining the option to display the air limited quantity marking by all modes may result in confusion and potentially frustrate shipments of packages that display the air limited quantity marking in air transit.

As a result of the recent DGP–WG/12 decision PHMSA and FAA plan to consider removing the authorization to display the air limited quantity marking for limited quantity materials packaged in accordance with § 173.63(b)(2) in a future rulemaking, as such a change was not proposed in the NPRM to this final rule.

PHMSA received one comment from SAAMI requesting that the recent UN assignment of limited quantity packaging authorizations to Cases, cartridges, empty with primer (UN0055) be extended to this commodity in the HMR. PHMSA agrees and has made the relevant text changes to § 173.63. SAAMI also commented that the ORM–D entries removed from the table should be left until the expiration of the transitional period for their use. PHMSA agrees and has inserted those proper shipping names back into § 173.63.

Section 173.115

Section 173.115 prescribes the definitions for Class 2 materials. Paragraph (k) of this section specifies how the oxidizing ability of certain Division 2.2 gases is determined. Currently, the HMR references ISO standards that include test and calculations used to determine the oxidizing ability of certain Division 2.2 gases. The UN Model Regulations and the ICAO Technical Instructions replace references to ISO standards 10156:1996 and 10156–2:2005 with the updated version ISO 10156:2010.

Based on its technical review, PHMSA believes the updated standard provides an adequate level of safety and is referencing the standard in this section and adding it to the list of IBR materials in § 171.7.

Section 173.121

Section 173.121 prescribes the requirements for selection of packing groups for Class 3 flammable liquids. Paragraph (b) of this section describes the criteria for inclusion of viscous Class 3 materials in Packing Group III.

ICAO adopted requirements in the Technical Instructions that increased the quantity of viscous Class 3 flammable liquids permitted reclassification from Packing Group II to Packing Group III from 30 L (7.9 gal) per package to 100 L (26.42 gal) per package when offered for transport by cargo aircraft.

In this final rule, PHMSA is expanding the per package amounts of viscous Class 3 material meeting the requirements in § 173.121(b). The increase will facilitate multi-modal transportation by permitting shipments offered by highway, rail, and cargo-carrying aircraft to utilize the same 100 L criteria.

Section 173.134

Provisions contained in the UN Model Regulations, Chapter 2.6, Class 6—Toxic and Infectious Substances, relating to the transportation of medical devices and equipment, have been amended to except medical equipment which has been drained of free liquid from the requirements of the UN Model Regulations. In addition, except for medical devices or equipment being transported for disposal, or medical devices or equipment contaminated with or suspected of contamination with a Category A infectious substance, the UN Model Regulations have been amended to exempt medical devices or equipment potentially contaminated with or containing infectious substances which are being transported for disinfection, cleaning, sterilization, repair or equipment evaluation from all other requirements of the UN Model Regulations, provided they meet certain packaging requirements.

PHMSA is amending § 173.134, ''Class 6, Division 6.2—Definitions and Exceptions'' by adopting the additional exemptions for medical devices and equipment.

Section 173.158

Section 173.158 prescribes packaging requirements for nitric acid mixtures of varying concentrations. PHMSA is revising the list of outer packagings permitted for nitric acid mixtures of varying concentrations.

Specifically, PHMSA is revising paragraph (d)(2) by adding 1N2, 4A, 4B and 4N packagings to the list of authorized outer packagings of combination packages for Nitric acid of 90 percent or greater concentration, when offered for transportation or transported by rail, highway, or water, in addition to the packaging options currently authorized.

PHMSA is also revising paragraph (e) of this section pertaining to nitric acid of less than 90 percent concentration, when offered for transportation or transported by rail, highway, or water. Specifically, this paragraph is revised to permit packagings of specification 4A, 4B, or 4N metal boxes for certain nitric acid concentrations.

Further, PHMSA is revising paragraphs (f)(3), (g) and (h) by adding specification 1N2, 4A, 4B and 4N packagings to the list of authorized outer packagings of combination packagings for Nitric acid of the following concentrations; (1) Nitric acid of 70 percent or less concentration, when offered for transportation or transported by rail, highway, or water; (2) Nitric acid of more than 70 percent concentration, when offered for transportation or transported by cargo aircraft only; and (3) Nitric acid of less than 70 percent concentration, when offered for transportation in cargo aircraft only.

The addition of these packaging options will increase flexibility for shippers when determining the appropriate packaging for nitric acid mixtures, in addition to the packaging options currently authorized.

Section 173.159a

Section 173.159a provides exceptions for non-spillable batteries. Paragraph (d) of this section excepts non-spillable batteries from the requirements of the HMR provided certain criteria, including specific packaging requirements and the absence of free-flowing liquid in the battery, are met.

In this final rule, PHMSA is clarifying paragraph (d) of this section by adding a new subparagraph (d)(3) stating that ''for transport by aircraft, must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.'' This clarification will align the HMR with the previously discussed changes made to the ICAO TI with regard to the air transport of non-spillable batteries that are excepted from the HMR.

Section 173.160

Section 173.160 prescribes packaging requirements for ''Bombs, smoke, non-explosive'' when shipped without ignition devices. PHMSA is revising the

list of packagings permitted for ''Bombs, smoke, non-explosive'' shipped without ignition devices. Specifically, PHMSA is adding the authorization to use metal (4A, 4B, and 4N), fiberboard (4G) or solid plastic (4H2) boxes, or metal (1A2, 1B2, and 1N2), plastic (1H2), plywood (1D), or fiber (1G) drums.

Section 173.162

Section 173.162 prescribes the packaging requirements for ''UN2803, Gallium.'' PHMSA is revising paragraph (a)(1), to permit both open and closed steel, metal, other that steel and aluminium drums (1A1, 1N1, 1N2, 1H1, 3A2 or 3H2) in addition to the packaging options currently authorized.

Further, PHMSA is revising paragraph (a)(2), to permit metal, other than steel or aluminium (4N) boxes; metal, other than steel or aluminium drums (1N1, 1N2); and plastic drums (1H1 or 1H2) in addition to the packaging options currently authorized.

In addition, PHMSA is clarifying paragraph (c) by stating that ''for transport by aircraft, must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.'' This clarification will align the HMR with the previously discussed changes adopted in the ICAO Technical Instructions regarding the air transport of gallium otherwise excepted from the HMR.

Section 173.164

Section 173.164 prescribes the packaging requirements for Mercury (metallic and articles containing mercury). In this final rule, PHMSA is revising paragraph (a)(1), to permit steel drums; metal, other that steel and aluminum drums (1A1, 1N1, 1N2) and metal, other than steel or aluminum boxes (4N), in addition to the packaging options currently authorized in paragraphs (a), (b) and (c).

Paragraph (f) is added to provide an exception to the requirements of the HMR for vessel transport of manufactured articles or instruments containing less than 0.45 kg (1.0 pound) of mercury. This exception is inserted to mirror an existing IMDG Code provision and harmonize the requirements for vessel shipments of mercury contained in manufactured articles as much as possible.

In addition, PHMSA is clarifying paragraphs (a)(5), (b), and (c)(2) of this section by adding the phrase ''when transported as cargo.'' This clarification will align the HMR with the previously discussed changes adopted in the ICAO Technical Instructions regarding the air transport of manufactured articles containing mercury otherwise excepted from the HMR.

Section 173.165

Section 173.165 prescribes the transport and packaging requirements for polyester resin kits. PHMSA is revising § 173.165 to better align the packaging and other requirements for UN3269, Polyester resin kits with the various international modal standards. These amendments correct inconsistencies adopted in a final rule published in the **Federal Register** on January 19, 2011 (76 FR 3308; HM–215K).

Section 173.175

Section 173.175 prescribes the transport and packaging requirements for permeation devices. Currently, permeation devices containing hazardous materials that are used for calibrating air quality monitoring devices are not subject to the HMR provided they meet specific requirements that include packaging, quantity limitations, testing, and transport controls.

PHMSA is adding a new paragraph (g) stating that ''for transport by aircraft, must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.'' This clarification aligns the HMR with changes adopted in the ICAO Technical Instructions regarding the air transport of permeation devices that are otherwise excepted from the HMR.

Section 173.176

Electric double layer capacitors are devices that store but do not produce electrical energy. They contribute to increased fuel efficiency in many alternative energy solutions such as hybrid vehicles. Some double layer capacitors contain flammable liquid absorbed in a solid with small amounts present as free liquid while others use a liquid electrolyte. Currently, the HMR do not contain specific requirements to address the transport of electric double layer capacitors.

New Section 173.176 addresses electric double layer capacitors, prescribing the testing, marking, safety, and packaging requirements for electric double layer capacitors with an energy storage capacity greater than 0.3 Wh. PHMSA is incorporating these requirements consistent with the 17th Revised Edition of the UN Model Regulations. These amendments address potential electrical and other hazards arising from the release of hazardous materials during the transportation of these articles.

Section 173.181

Section 173.181 prescribes the non-bulk packaging requirements applicable to pyrophoric liquids. Paragraph (b) of this section specifies the specification boxes authorized to package these substances. PHMSA is revising paragraph (b) by adding packaging authorizations for steel boxes (4A), aluminum boxes (4B), metal boxes, other than steel or aluminum (4N), or fiberboard boxes (4G); steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), metal drums, other than steel or aluminum (1N1 or 1N2), plywood drums (1D), or fiber drums (1G); or steel jerricans (3A1 or 3A2) or aluminum jerricans (3B1 or 3B2).

Section 173.183

Section 173.183 prescribes the packaging requirements for nitrocellulose base film. To provide greater flexibility in packaging selection, PHMSA is adding other metal drums (4A2), aluminum jerricans (3B2), and steel, aluminum or other metal (4A, 4B, 4N) boxes, to the list of authorized packagings.

Section 173.184

Section 173.184 provides the definition and packaging requirements for highway or rail fusees. To provide greater flexibility in packaging selection, steel (1A2), aluminum (1B2) or other metal (1N2) drums; steel (3A2) or aluminum (3B2) jerricans; and steel (4A), aluminum (4B) or other metal (4N) boxes are added to the list of authorized packagings.

Section 173.186

Section 173.186 provides definitions and packaging requirements for various types of matches. To provide greater flexibility in packaging selection, PHMSA is adding packaging options to the list permitted for strike-anywhere matches specified in paragraph (f) of this section. Specifically steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), other metal drums (1N1, 1N2), steel jerricans (3A1, 3A2), aluminum jerricans (3B1, 3B2), steel (4A), aluminum (4N) and other metal (4N) boxes are added to the list of authorized packagings.

Section 173.187

Section 173.187 prescribes the packaging requirements for pyrophoric solids, metals or alloys, n.o.s. To provide greater flexibility in packaging selection, PHMSA is adding packaging

options to the list permitted for pyrophoric solids, metals or alloys, n.o.s. specified in paragraph (a) and (d) of this section. Specifically, steel, aluminum or other metal boxes (4A, 4B or 4N) are added to the list of authorized packagings in paragraph (a). In addition, steel, aluminum or other metal drums (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) are added to the list of authorized packagings in paragraph (d).

Section 173.188

Section 173.187 prescribes the packaging requirements for white and yellow phosphorus. To provide greater flexibility in packaging selection, steel, aluminum or other metal boxes (4A, 4B or 4N) are added to the list of authorized packagings in paragraph (a)(1). In addition, PHMSA is adding steel, aluminum or other metal drums (1A1, 1B1 or 1N1) not over 250 L (66 gallons) capacity each and steel, aluminum or other metal drums (1A2, 1B2, or 1N2) not over 115 L (30 gallons) capacity each, to the list of authorized packagings in paragraph (a)(2).

Section 173.189

Section 173.189 prescribes the packaging and transport requirements for batteries containing sodium or cells containing sodium. To provide greater flexibility in packaging selection, PHMSA is adding 1N2, 4A, 4B, 4N, 4H1, 3A2, 3B3 and 3H2 outer packagings to the list of authorized outer packagings in paragraph (b).

Section 173.193

Section 173.193 prescribes the packaging requirements for bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures. To provide greater flexibility in packaging selection, metal boxes (4A, 4B or 4N) are added to the list of authorized outer packagings in paragraph (a).

Section 173.194

Section 173.194 prescribes the packaging requirements for gas identification sets. To provide greater flexibility in packaging selection, metal boxes (4A, 4B or 4N) are added to the list of authorized outer packagings in paragraphs (b)(1) and (b)(2).

Section 173.196

Section 173.196 prescribes the packaging requirements for Category A infectious substances. To provide greater flexibility in packaging selection, PHMSA is adding drums (1A1, 1A2, 1B1, 1B2, 1N1, 1N2, 1H1, 1H2, 1D, 1G); boxes (4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2); or jerricans (3A1, 3A2, 3B1, 3B2, 3H1, 3H2) as examples of the types of authorized ''rigid outer packaging'' referenced in paragraph (a)(3).

Section 173.199

Section 173.199 prescribes the packaging requirements for category B infectious substances. Paragraph (d) of this section provides the requirements for refrigerated or frozen specimens in ice, dry ice or liquid nitrogen. These provisions include the requirement to secure secondary packages.

Consistent with an editorial amendment to Packing Instruction P650 in the 17th Revised Edition of the UN Model Regulations, PHMSA is removing the language ''position after the ice or dry ice has dissipated'' from the requirements to secure secondary packages.

Section 173.201

Section 173.201 prescribes the authorized non-bulk packagings for liquid hazardous materials in packing group I. To provide greater flexibility in packaging selection, PHMSA is adding ''Metal box other than steel or aluminum: 4N'' to authorized outer packagings of combination packagings listed in paragraph (b) of this section.

Section 173.202

Section 173.202 prescribes the authorized non-bulk packagings for liquid hazardous materials in packing group II. To provide greater flexibility in packaging selection, PHMSA is adding ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b).

Section 173.203

Section 173.203 prescribes the authorized non-bulk packagings for liquid hazardous materials in packing group III. To provide greater flexibility in packaging selection, PHMSA is adding ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b).

Section 173.211

Section 173.211 prescribes the authorized non-bulk packagings for hazardous materials in packing group I. To provide greater flexibility in packaging selection, PHMSA is adding ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b) and the single packagings authorized in paragraph (c).

Section 173.212

Section 173.212 prescribes the authorized non-bulk packagings for hazardous materials in packing group II. To provide greater flexibility in packaging selection, PHMSA is adding ''Metal box other than steel or aluminum: 4N'' to authorized outer packagings of combination packagings indicated in paragraph (b). Further, we are adding ''Metal box other than steel or aluminum: 4N'' and ''Metal box other than steel or aluminum with liner: 4N'' to authorized single packagings permitted in paragraph (c) of this section.

Section 173.213

Section 173.213 prescribes the authorized non-bulk packagings for hazardous materials in packing group III. To provide greater flexibility in packaging selection, PHMSA is adding ''Metal box other than steel or aluminum: 4N'' to the authorized outer packagings of combination packagings indicated in paragraph (b). Further, we are adding ''Metal box other than steel or aluminum: 4N'' and ''Metal box other than steel or aluminum with liner: 4N'' to the single packagings authorized in paragraph (c).

Section 173.219

Section 173.219 prescribes the transport conditions and packaging requirements for life saving appliances. Paragraph (b) of this section provides a list of hazardous materials that a life-saving appliance is permitted to contain as well as other transport requirements. Currently, the transport conditions specified in paragraph (b)(1) of this section specify that Division 2.2 compressed gases, including oxygen are permitted; however, oxygen generators are not. In this final rule, PHMSA is broadening the materials permitted in life-saving appliances by modifying paragraph (b)(1) to include liquefied gases as well.

Paragraph (c) of this section prescribes the packaging requirements and exceptions provided for life saving appliances. Subsequent changes are proposed to paragraph (c)(1) of this section to reflect this inclusion of liquefied gases discussed previously. Furthermore, paragraph (c)(5) currently states that, for other than transportation by aircraft, life-saving appliances containing no hazardous materials other than carbon dioxide with a capacity not exceeding 100 cm^3 are not subject to the provisions of this subchapter provided they are overpacked in rigid outer packagings with a maximum gross mass of 40 kg. In this final rule, PHMSA is

revising the exception in (c)(5) by replacing the language ''carbon dioxide'' with ''cylinders of Division 2.2 compressed or liquefied gases with no subsidiary risk,'' and the quantity limit ''100 cm^3'' with ''120 mL, installed solely for the purpose of activating the appliance.''

In addition, we are further clarifying paragraph (c)(5) of this section by adding the statement, ''For transportation by aircraft, such appliances must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.'' This clarification aligns the HMR with the recently adopted changes in the ICAO Technical Instructions regarding the air transport of life saving appliances that would otherwise be excepted from the HMR.

Section 173.220

Section 173.220 prescribes packaging requirements for internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, battery-powered equipment or machinery, fuel cell-powered equipment or machinery. In this rule PHMSA is amending paragraph (d) to cross reference the IBR § 171.7.

Section 173.221

Section 173.221 prescribes the non-bulk packaging requirements for Polymeric beads (or granules), expandable, *evolving flammable vapor* and Plastic molding compound *in dough, sheet or extruded rope form, evolving flammable vapor.* PHMSA is adding the following packaging authorizations: metal (4A, 4B, or 4N), and plastic (4H1 or 4H2) drums, and 1N1, 1N2 drums in vapor tight metal or plastic jerricans (3A1, 3A2, 3B1, 3B2, 3H1, or 3H2). PHMSA is also adding a paragraph to the section that reference the reader to a newly created § 176.907 for cargo transport and hazard communication marking requirements for shipments of Polymeric beads expandable, *evolving flammable vapor* and Plastic molding compound *in dough, sheet or extruded rope form, evolving flammable vapor* when transported by vessel. These changes address the safety hazard presented by shipments of polymeric beads or plastic molding compounds off-gassing flammable vapors during vessel transport. See *Section 176.907* for a detailed discussion of our addition of these vessel cargo transport requirements.

Section 173.225

Section 173.225 prescribes the packaging requirements and other provisions for organic peroxides. Packaging requirements for organic peroxides are very specific and include requirements for the concentration by mass permitted, diluents percentage, water mass, temperature controls and organic peroxide specific packing methods.

Paragraph (c) of this section contains and describes the organic peroxide table and how specific organic peroxides are to be transported. In addition, paragraph (e) contains a separate table that prescribes the packaging requirements for organic peroxides packaged in IBCs. As self-insulating hazardous materials, organic peroxides can pose different risks when transported in larger quantities. Thus, a separate table unique to the transport of these substances in IBCs is contained in the HMR. The ''Organic Peroxide IBC Table'' includes maximum quantities permitted to be packaged and any temperature and emergency controls.

The organic peroxides tables in paragraphs (c) and (e) specify by technical name those organic peroxides that are authorized for transportation and not subject to the approval provisions of § 173.128. An organic peroxide identified by technical name is authorized for transportation only if it conforms to all applicable provisions of these tables. In this final rule, we are amending the Organic Peroxides Tables in § 173.225 by adding new entries and revising current entries to account for new organic peroxides and formulations that are commercially available.

The following entries are added in the § 173.225(c) organic peroxides table:

UN3106, ''([3R-(3R,5aS,6S,8aS,9R,10R,12S,12aR**)]-Decahydro-10methoxy-3,6,9-trimethyl-3,12-epoxy-12H-pyrano[4,3-j]-1,2-benzodioxepin)''

UN3110, ''3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxonane''

UN3119, ''Di-(3,5,5-trimethylhexanoyl) peroxide''

The following current entries in the § 173.225(c) organic peroxides table are amended:

UN3115, ''Diisopropyl peroxydicarbonate''

UN3115, ''Di-(3,5,5-trimethylhexanoyl) peroxide''

The following entries are added to the § 173.225(e) Organic Peroxide IBC Table:

UN3119 ''Diisobutyryl peroxide, not more than 28% as a stable dispersion in water''

UN3119, ''Diisobutyryl peroxide, not more than 42% as a stable dispersion in water''

The following entries are amended in the § 173.225(e) Organic Peroxide IBC Table:

UN3119 ''Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 38% in diluent type A''

UN3119 ''1,1,3,3-Tetramethylbutyl peroxyneodecanoate, not more than 52%, stable dispersion, in water''

Section 173.226

Section 173.226 prescribes the packaging requirements for Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A. Specifically, this section authorizes the transport of Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A in specification cylinders, specification drums packaged further in specification drums and combination packages. PHMSA is revising the requirements of paragraph (c) by adding an authorization to package such materials in ''Metal box other than steel or aluminum: 4N'' drums. In addition, PHMSA is correcting an editorial error by replacing the incorrect wording ''Expanded plastic box: 4H2'' with the correct wording ''Expanded plastic box: 4H1.''

Section 173.230

Section 173.230 prescribes the transport requirements for fuel cell cartridges containing hazardous material. Paragraph (e) of this section prescribes the packaging requirements for fuel cell cartridges containing hazardous material. Furthermore, paragraph (e)(2)(ii) notes that ''Fuel cell cartridges contained in equipment must be protected against short circuits and the entire fuel cell system must be protected from unintentional activation. The equipment must be securely cushioned in the outer packaging.'' As currently stated in the HMR, this requirement may imply that only fuel cell cartridges contained in equipment, not the fuel cell system, would have to be protected against short circuits. This is not the intent of this requirement. Therefore, PHMSA is clarifying that the entire fuel cell system must be protected against short circuits and unintentional activation.

Section 173.240

Section 173.240 prescribes the bulk packagings authorized for certain low hazard solid materials. As discussed previously, PHMSA is adopting flexible bulk container provisions throughout the HMR.

In this section, PHMSA is adding paragraph (f) that authorizes the use of FBCs for certain low hazard solid materials. Specifically, paragraph (f) permits the use of FBCs if B120 is indicated in Column (7) of the specific entry in § 172.101 HMT and the FBC conforms to the requirements in subparts R and S of part 178 of the HMR. Furthermore, paragraph (f) notes that FBCs may not be used for Packing Group I or II hazardous materials. Only select low hazard solid materials are authorized for transport in FBCs. The use of FBCs for the transportation of an HMT entry not assigned special provision B120 is prohibited.

Section 173.301b

Section 173.301b provides additional general requirements for shipment of UN pressure receptacles. Recent international adoption of this standard leads PHMSAto incorporate by reference ISO 13340:2001(E) Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04–01, and require all non-refillable UN pressure receptacle valves to be in compliance with this standard.

Section 173.306

Section 173.306 prescribes the exceptions for limited quantities of compressed gases including aerosols. Paragraph (a) of this section prescribes the general requirements for limited quantities of compressed gases while paragraph (j) specifically addresses aerosols and receptacles small, containing gas, with a capacity of less than 50 mL.

In this final rule, we are revising paragraph (j) to note that aerosols conforming to this paragraph, when offered for transportation by air, must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10. This clarification aligns the HMR with the previously discussed changes adopted in the ICAO Technical Instructions regarding the air transport of aerosols that are otherwise excepted from the HMR.

Section 173.313

Section 173.313 contains instructions for UN portable tanks and the table for liquefied compressed gases. The UN Portable Tank Table for Liquefied Compressed Gases is referenced in § 172.102(c)(7)(iii) of the HMR for portable tanks used to transport liquefied compressed gases.

Chemical manufacturers throughout the world are currently supplying pressurized products contained and transported in gas cylinders. The products are liquids or solids such as adhesives, coatings and cleaners combined with a gas or gas mixtures in pressure receptacles under sufficient pressure to expel the contents. These mixtures are typically expelled from the pressurized receptacles as foams, streams or thick sprays. Under the current HMR these types of products are classified as liquefied gases and transported in accordance with the applicable sections for the liquefied gases in which they are classified. A typical product however is a combination of a propellant (gas phase) and a liquid or solid component, and therefore the term liquefied gas does not correctly reflect the contents. As they are not filled in aerosol dispensers and as the receptacles used exceed the volume limitations for aerosols, they may not be transported as aerosols. The United Nations Sub-Committee of experts on the Transportation of Dangerous goods agreed to create new entries (UN numbers) for these products to address their unique characteristics and corresponding regulations to address the safe transport of such materials.

In this final rule, we are adopting entries in the HMT for various chemicals under pressure and the corresponding packaging provisions. We are modifying § 173.313 to include the packaging requirements for chemicals under pressure transported in portable tanks. Specifically, we are revising the section title, introductory test, and table name to reflect that chemicals under pressure are addressed in this section. We are also adding table entries for identification numbers UN3500, UN3501, UN3502, UN3503, UN3504 and UN3505. Lastly, we are correcting the maximum filling density for UN3220.

The addition of packaging requirements specific to chemicals under pressure will ensure that an appropriate level of safety is achieved for these unique materials. PHMSA participated in, and concurs with, the discussions and decisions regarding the packagings selected for these materials. The packagings adopted by the UN, ICAO and IMO provide an appropriate level of safety for these materials and, thus, PHMSA is adopting similar packagings in the HMR. Furthermore, aligning with international packaging standards facilitates the movement of these materials both domestically and internationally.

Section 173.316

Section 173.316 provides the requirements for cryogenic liquids contained in cylinders. Specifically, the HMR requires each cylinder containing cryogenic liquids be equipped with one or more pressure relief devices.

PHMSA is revising § 173.316, ''Cryogenic Liquids in Cylinders'' to include a requirement consistent with the UN Model Regulations that all pressure relief device inlets must under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices must be so arranged as to ensure that the escaping vapor is discharged unobstructed.

This requirement will enhance safety by assisting in the proper function of the pressure release devices. Further, it will prevent unsafe conditions in transport if the liquid form of the gas were released through the pressure release device. For instance, if the gas released is a Division 2.1 (flammable) gas or a Division 2.3 (poisonous) gas, it will reduce the opportunity for the released liquid form of the gas to create an asphyxiant environment through the rapid displacement of the normal concentration of oxygen in the breathable atmosphere. Finally, it will reduce the potential of released cryogenic oxygen in liquid form to create an oxygen enriched atmosphere that may explosively combust.

Section 173.318

Section 173.318 provides the requirements for cryogenic liquids contained in cargo tanks. Specifically, the HMR requires each cargo tank containing cryogenic liquids be equipped with one or more pressure relief devices.

PHMSA is revising § 173.318, ''Cryogenic Liquids in Cargo Tanks'' to include a requirement consistent with the UN Model Regulations that all pressure relief device inlets must under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices be so arranged as to ensure that the escaping vapor is discharged unobstructed.

This requirement will enhance safety by assisting in the proper function of the pressure release devices. Further, it will prevent unsafe conditions in transport if the liquid form of the gas were released through the pressure release device. For instance, if the gas released is a Division 2.1 (flammable) gas or a Division 2.3 (poisonous) gas, it would reduce the opportunity for the released liquid form of the gas to create an asphyxiant

environment through the rapid displacement of the normal concentration of oxygen in the breathable atmosphere. Finally it will reduce the chance of released cryogenic oxygen in liquid form creating an oxygen enriched atmosphere that may explosively combust.

Section 173.335

Section 173.335 is created to provide packaging requirements for new HMT entries ''Chemical under pressure n.o.s.'' Specifically, PHMSA is adopting transport requirements, filling limits, minimum service pressure, and periodic inspection requirements for cylinders utilized for shipments of chemical under pressure n.o.s.

Cylinders used to ship chemical under pressure n.o.s. must be authorized UN or DOT cylinders for the propellant and otherwise conform to the applicable requirements of subpart G of part 173. 3M noted in their comments to the August 15, 2012 NPRM that while PHMSA created a section that included filling limits for cylinders containing chemical under pressure, we did not increase the water capacity for non-refillable UN pressure receptacles filled with chemical under pressure classed as flammable or toxic. In § 173.301b non-refillable cylinders containing a flammable or a toxic gas are limited to 1.25 liters. The UN authorizes non-refillable cylinders with a capacity up to 50 liters when it contains a chemical under pressure. In this final rule we will revise §§ 173.301b and 173.302a to increase the maximum allowable water capacity for non-refillable cylinders containing chemical under pressure to 50 liters (3050 in3).

Section 173.340

Section 173.340 prescribes the packaging requirements for NA1693, tear gas devices. PHMSA is revising the packaging requirements in paragraphs (c) and (d) by authorizing the use of 4A, 4B, or 4N metal boxes, and 1B2, 1N2, or 1H2 drums.

Part 175

Section 175.8

Section 175.8 provides exceptions from certain regulations for air carrier operator equipment and items of replacement. ICAO amended the Technical Instructions applicable to exceptions from certain regulations for air carrier operator equipment and items of replacement, and to better reflect items that may be sold as part of duty free services. PHMSA is revising paragraph (b)(2) of this section to add portable electronic devices containing lithium batteries to the list of items permitted aboard an aircraft for use or sale on that specific aircraft.

Section 175.10

Section 175.10 specifies the conditions for which passengers, crew members, or an operator may carry hazardous materials aboard an aircraft. Consistent with revisions to the ICAO Technical Instructions, in this final rule, PHMSA is revising paragraph (a)(14), the conditions under which electrically powered heat-producing articles may be carried aboard an aircraft. The requirement that the heat-producing component, or the energy source, must be removed to prevent unintentional functioning during transport is being revised to permit the removal of another component, such as a fuse, to prevent unintentional functioning during transport. In addition the paragraph is being revised to specify procedures for protecting any removed battery from short circuit during transport. PHMSA is also adding paragraphs (a)(20), (a)(21), (a)(22), (a)(23), and (a)(24) to specify conditions under which permeation devices for calibrating air quality monitoring equipment, internal combustion or fuel cell engines, non-infectious specimens, insulated packagings containing refrigerated liquid nitrogen, and small compressed gas cartridges fitted into devices, respectively, may be carried aboard an aircraft.

PHMSA received one comment from the FCHEA requesting that we amend § 175.10(a)(19) to allow fuel cell cartridges containing flammable gas in Division 2.1 and fuel cells containing water reactive materials in Division 4.3 in checked passenger baggage. PHMSA did not propose changes to the provisions allowing for the checking of limited types of fuel cells in the NPRM, and consider this request to be outside the scope of this rulemaking.

PRBA noted in their comments to the NPRM that the 2013–2014 ICAO Technical Instructions contain a provision that authorizes passengers to carry portable medical electronic devices aboard passenger aircraft with lithium metal batteries containing up to 8 grams of lithium metal. While this amendment should be added to the HMR it was not included in the August 15, 2012 NPRM and the public has not been provided notice of any intent to add a new exception for lithium battery-containing portable medical devices in § 175.10 or afforded the opportunity to provide us with written data, views, or arguments to aid our decision. As the FAA Modernization and Reform Act of 2012 requires harmonization in this instance, we will propose to adopt this exception in a future rulemaking.

Part 176

Section 176.2

Section 176.2 provides definitions of terms specifically as they pertain to Part 176. In this final rule, PHMSA is adopting various revisions to the vessel stowage and segregation requirements specified in Part 176. As part of these changes certain terminology must be defined.

The term ''Closed cargo transport unit for Class 1'' is defined by the IMDG Code as a freight container or transport vehicle that fully encloses the contents by permanent structures and can be secured to the ship's structure and are, except for the carriage of division 1.4 explosives, structurally serviceable (see § 176.172). Portable magazines conforming to § 176.137 are also considered closed cargo transport units for Class 1. Small compartments such as deck houses and mast lockers are included. Cargo transport units with fabric sides or tops are not closed cargo transport units. The floor of any closed cargo transport unit must either be constructed of wood, close-boarded or so arranged that goods are stowed on sparred gratings, wooden pallets or dunnage. The IMO adopted this new definition for ''closed cargo transport unit for Class 1'' to define the characteristics required for cargo transport units carrying explosives by vessel.

A new definition for ''potential or possible sources of ignition'' was adopted by the IMO for incorporation in the next published IMDG Code. The term ''Potential or possible sources of ignition'' as defined in the IMDG Code ''means but is not limited to, open fires, machinery exhausts, galley uptakes, electrical outlets and electrical equipment including those on refrigerated or heated cargo transport units unless they are of certified safe type.'' The text ''means but is not limited to'' indicates that the list of potential or possible sources of ignition is not all inclusive; as it is impossible to identify in a definition all potential or possible sources of ignition that may exist on a variety of vessels with various engineering designs and stowage configurations. PHMSA is adopting a definition for ''Potential or possible sources of ignition'' that replaces ''of certified safe type'' with ''designed to operate in a hazardous environment.'' This change is due to some ambiguity as to what is considered a certified safe type of refrigerated or heated cargo transport unit. Adoption of this

definition will provide guidance to vessel stowage planners in determining safe stowage locations for cargo on board vessels.

The term ''Protected from sources of heat'' as defined by the IMDG Code means ''that packages and cargo transport units must be stowed at least 2.4 m from heated ship structures, where the surface temperature is liable to exceed 131 °F (55 °C). Examples of heated structures are steam pipes, heating coils, top or side walls of heated fuel and cargo tanks, and bulkheads of machinery spaces. In addition, packages not loaded inside a cargo transport unit and stowed on deck must be shaded from direct sunlight. The surface of a cargo transport unit can heat rapidly when in direct sunlight in nearly windless conditions and the cargo may also become heated. Depending on the nature of the goods in the cargo transport unit and the planned voyage precautions must be taken to ensure that exposure to direct sunlight is reduced''. This definition was adopted by the IMO for inclusion in the next IMDG Code to provide a list of possible sources of heat a cargo transport unit might encounter during vessel transport. This definition also includes requirements for break bulk packages stowed on deck that are required to be protected from sources of heat by means of a stowage provision or a general stowage requirement found in Part 176.

PHMSA received one comment from IVODGA concerning the proposed definition of ''protected from sources of heat.'' IVODGA suggested that at the end of the new definition for ''protected from sources of heat'' we include that ''* * * containers should not be stowed in the upper most tier position when this is required, which does not include tank units that have protective insulation shields'' since the new definition seems to bridge the older *shade from radiant heat* and other heat related factors onboard vessels. PHMSA does not see the need to be more specific and restrictive than the internationally accepted definition calls for and is maintaining the definition of protected from sources of heat as proposed in the NPRM.

Therefore, in this final rule, PHMSA is adding definitions in this section for the terms, ''Closed cargo transport unit for Class 1,'' ''Potential or possible sources of ignition'' and ''Protected from sources of heat'' with additional text clarifying that a portable magazine conforming to § 176.137 is also considered ''closed cargo transport unit for Class 1.''

Section 176.63

Section 176.63 prescribes supplementary requirements with respect to the stowage of specific hazardous materials in addition to those authorized in the HMT in § 172.101. This section sets forth the basic physical requirements for the authorized vessel stowage locations.

One commenter (SAAMI) noted that limited quantity shipments are assigned the least restrictive stowage category and are excepted from additional stowage provisions in 3.4.3 of the IMDG Code and requested that PHMSA do the same. PHMSA agrees and is revising paragraph (a) of this section to allocate stowage category A to hazardous materials offered as limited quantities, and to except these shipments from the other stowage provisions assigned in column 10B of the HMT for shipments of limited quantities.

PHMSA is also revising paragraph (b) of this section by replacing the phrase ''shade from radiant heat'' with the phrase ''protected from sources of heat.'' This revision of terminology is necessary to incorporate other changes to the vessel stowage codes in Column 10 B of the HMT.

PHMSA is also revising paragraph (e) of this section to remove references to magazine stowage type A and C, as the definition of ''closed cargo transport unit for Class 1'' was added to § 176.2 references to magazine stowage type A and C are no longer needed in this section.

Paragraph (e) also contains an exception for empty packages containing residue (excluding Class 2.3 empty packages containing residue and waste aerosols), including IBCs and large packages to be stowed on deck, or under deck if in a mechanically ventilated cargo space. This exception will apply regardless of the stowage provisions indicated in § 172.101(k). PHMSA believes the reduced hazard present in empty packages containing residue combined with the mechanically ventilated cargo space warrants a relaxation of stowage requirements for shipments of empty packages (excluding Class 2.3 and waste aerosols) that otherwise would require on deck stowage.

Section 176.76

Section 176.76 specifies the requirements for transport vehicles, freight containers, and portable tanks containing hazardous materials transported via vessel.

In this final rule, PHMSA is adding a new paragraph (a)(11) requiring that banding or securing straps used to secure packages must not be over tightened to cause damage or deformation of the packages or the securing points within the freight container or transport vehicle. PHMSA is adopting this change to harmonize cargo securement requirements in the HMR with recently adopted changes in the IMDG Code. This requirement is intended to prevent undue stress and potential damage to packages and tie down points during transport.

PHMSA had originally proposed to replace the existing paragraph (a)(9) with this regulatory text, but received one comment from IVODGA noting that the provisions of (a)(9) concerning security devices is still necessary, and a request to maintain the current text of (a)(9) and simply insert a new paragraph with the proposed text. PHMSA agrees and is maintaining the current paragraph (a)(9). IVODGA also requested that the following text be included at the end of the newly proposed paragraph of our proposed text: ''* * * or transport vehicle. The Maximum Securing Load on internal container lashing, securing or anchor points shall not be exceeded.'' PHMSA believes that inserting IVODGA's proposal would be very difficult to enforce, as anchor points in containers are not marked with maximum securing loads. Additionally PHMSA believes that the language proposed in the NPRM accounts for IVODGA's concerns as deformation of the securing points is indicative of exceeding the securing points capabilities.

PHMSA received an additional comment from IVODGA requesting we amend § 176.76 to require transport equipment with refrigerated or heating units used for the transport of hazardous materials of Division 2.1, Class 3, or those capable of releasing flammable vapors during transport to be equipped with explosion proof electrical fittings. PHMSA has determined that such an amendment is beyond the scope of the proposals presented in the August 15, 2012 NPRM and therefore will not be addressed in this final rule.

Section 176.83

Section 176.83 prescribes the general vessel segregation requirements. Paragraph (m) of this section specifies additional segregation requirements for certain groups of hazardous materials. Paragraph (m)(2) of this section prescribes segregation requirements for materials shipped under n.o.s. entries. Furthermore, paragraph (m)(3) discusses materials that fall outside the defining criteria for hazardous materials, but display chemical properties similar to

hazardous materials listed in segregation groups.

In this final rule, PHMSA is revising paragraph (m)(2) to clarify that the offeror of hazardous materials is responsible for deciding if allocation of a segregation group is appropriate. We are also revising paragraph (m)(3) to clarify that the offer of hazardous materials for transportation or the person packing the cargo transport unit is responsible for identifying a relevant segregation group and applying the segregation requirements for that segregation group. These revisions will replace the current term ''shipper,'' which is not defined in § 171.8, with the terms ''offeror'' and ''person who offers'' which are defined terms in § 171.8.

Section 176.84

Section 176.84 prescribes the meanings and requirements for numbered or alpha-numeric stowage provisions for vessel shipments listed in column 10B of the § 172.101 Hazardous Materials Table. The provisions in § 176.84 are broken down into general stowage provisions whose meanings are defined in the ''table of provisions'' in paragraph (b), and the stowage provisions applicable to vessel shipments of Class 1 explosives defined in the table to paragraph (c)(2).

PHMSA is revising stowage provisions 25 and 128 and deleting stowage provisions 19, 48, and 50 from the table in paragraph (b). Stowage provision 25 is revised from ''Shade from radiant heat'' to read ''Protected from sources of heat.'' Stowage provision 128 is revised from ''Stow in accordance with the IMDG Code, Sub-section 7.1.10.3 (incorporated by reference; see § 171.7 of this subchapter)'' to read ''Stow in accordance with the IMDG Code, Sub-section 7.6.2.7.2 (incorporated by reference; see § 171.7 of this subchapter).'' Deleted stowage provision 19 previously read ''Protect from sparks and open flames.'' Deleted stowage provision 48 previously read ''Stow ''away from'' sources of heat''. Deleted stowage provision 50 previously read ''Stow ''away from'' sources of heat where temperatures in excess of 55 °C (131 °F) for a period of 24 hours or more will be encountered.''

The current stowage provision table in paragraph (b) contains three listings requiring shipments to be either shaded or stowed away from sources of heat. The addition of a standard definition for ''protected from sources of heat'' to the list of definitions in § 176.2 has rendered stowage provisions 19, 48, and 50 redundant and all HMT listings previously assigned stowage provisions 19 or 48 have been assigned the revised stowage provision 25. Furthermore, no listings in the current HMR are assigned stowage provision 50; therefore, we are deleting it and all references to it. The change to stowage provision 128 will account for a citation change in the newest edition of the IMDG Code.

In this final rule, PHMSA is revising explosive stowage provision 26E and deleting explosive stowage provisions 7E, 8E, and 20E from the table in paragraph (c)(2). Deleted explosive stowage provision 7E previously read ''Stowage category ''04'' for projectiles or cartridges for guns, cannons or mortars; Stowage category ''08'' for other types.'' Deleted explosive stowage provision 8E previously read ''When under deck, special stowage is required.'' Deleted explosive stowage provision 20E previously read ''Stowage category ''03'' for projectiles or cartridges for guns, cannons or mortars; Stowage category ''07'' for other types; magazines must be of steel construction that prevents leakage.'' Changes to explosive stowage provisions 7E, 8E, and 20E are necessary to account for revisions to the stowage category definitions proposed in § 172.101(k). Additionally, as a result of the removal of stowage provisions 10 and 13 from § 172.101(k), PHMSA is revising explosive stowage provision 26E in § 176.84. Please see section 172.101 for explosive stowage codes associated with HMT entries previously assigned these explosive stowage provisions and a list of entries these provisions have been removed from.

Section 176.116

Section 176.116 prescribes the general stowage conditions for Class 1 explosive materials. Paragraph (a) of this section prescribes explosive stowage requirements, which take into account heat and sources of ignition. Paragraph (f) of this section prescribes explosives stowage requirements for under deck storage. PHMSA is revising paragraph (a) to clarify the general stowage conditions for Class 1 materials on board vessels and deleting and reserving paragraph (f).

PHMSA is revising paragraph (a)(1) to require explosive materials to be stowed in a cool part of the ship, to be kept as cool as practicable while on board, and to be stowed as far away as practicable from any potential source of heat or ignition. This change is due to the inclusion of a definition for ''potential source of heat or ignition'' in § 176.2. A new paragraph (a)(2) is added requiring Class 1 materials to be stowed away from the side of a ship's side at a distance at least equal to one eighth of the beam of the vessel or 2.4 m (8 feet), whichever is less. PHMSA received one comment (IVODGA) requesting an exception for materials within Class 1 of low or relatively low hazard within division 1.4 through 1.6 and the allowance to transport these in all positions available on-deck. In 7.1.4.4.3 of the IMDG goods of division 1.4 are excepted from the requirement to be stowed away from the side of a ship. Another comment by Horizon also noted that 1.4 cargos should be excluded from this requirement. PHMSA agrees to provide such an exception for goods of division 1.4, but sees no need to extend the exception beyond what is authorized by the international standard.

This minimum distance for explosive shipment stowage from the ship's side is adopted to harmonize with a recent change in the IMDG Code and provides an increased level of safety by ensuring explosive shipments are not stowed adjacent to the ships internal structure.

Paragraph (f) previously indicated general stowage provisions for HMT explosive entries stowed under deck and assigned stowage category 09 or 10. The removal of stowage category 09 and 10 make these provisions no longer applicable.

Section 176.128

Section 176.128 defines the varying levels of containment for explosives identified as magazine stowage types ''A'', ''C,'' and ''Special Stowage.'' The IMO has determined that a distinction between closed cargo transport units and magazines is no longer necessary. PHMSA concurs with the IMO on this issue and is deleting § 176.128 and reserving it for future use. With the addition of a definition for ''closed cargo transport unit for Class 1,'' and the requirement for all explosive shipments to be stored at a distance at least equal to one eighth of the beam of the vessel or 2.4 m (8 feet), whichever is less, specific requirements for type A, C, and special magazine stowage are now unnecessary. Note that portable magazines remain authorized by § 176.137 and the definition of ''closed cargo transport unit for Class 1.''

Section 176.130

Section 176.130 prescribes requirements for magazine stowage type A. The IMO determined that a distinction between closed cargo transport units and magazines is no longer necessary. PHMSA concurs with the IMO on this issue and is deleting § 176.130 and reserving it for future use. In general, a magazine is equivalent to a closed cargo transport unit with a

wooden floor. Properly packaged and transported packages in a closed cargo transport unit will adequately address safety concerns presented by commodities previously required to be transported in magazine stowage type A.

Section 176.133

Section 176.133 prescribes requirements for magazine stowage type C. The IMO has determined that all explosive shipments must be stored at a distance at least equal to one eighth of the beam of the vessel or 2.4 m (8 feet), whichever is less, thus making the provisions for magazine stowage type C unnecessary. PHMSA concurs with the IMO on this issue and is deleting § 176.133 and reserving it for future use.

Section 176.134

Section 176.134 prescribes requirements for vehicles carrying Class 1 materials requiring magazine stowage. The removal of magazine stowage definitions and provisions make this section unnecessary. Therefore, PHMSA is deleting this section and reserving it for future use.

Section 176.136

Section 176.136 prescribes requirements for special stowage of Class 1 materials. Changes to vessel stowage location codes in § 172.101(k) and the assignment of vessel stowage codes requiring on deck stowage for entries previously authorized as special stowage make this section unnecessary. Therefore, PHMSA is deleting this section and reserving it for future use.

Section 176.138

Section 176.138 prescribes general requirements for on deck stowage. Paragraph (b) provides general requirements for on deck stowage of explosives. In this final rule, PHMSA is revising this section to require explosives to not be stowed within 6 m (20 feet) of the newly defined term ''any potential sources of heat or ignition.'' This change is adopted to incorporate a newly defined term in § 176.2. PHMSA received one comment from IVODGA requesting an editorial clarification to separate the proposed language into ''from any source of heat and any possible sources of ignition'' and is making the requested change.

Section 176.144

Section 176.144 prescribes segregation requirements for Class 1 materials transported by vessel. Paragraph (d) allows materials requiring ordinary stowage (non-magazine stowage) to be stowed in the same magazine as materials requiring magazine stowage. PHMSA is revising paragraph (d) to state that if part of a shipment requires non-metallic lining of closed cargo transport units, Class 1 materials requiring ordinary stowage (stowage not requiring non-metallic lining of closed cargo transport units) may be stowed in the same closed cargo transport unit provided there are no exposed parts of any ferrous metal or aluminum alloy, unless separated by a partition. The removal of sections and requirements for magazine stowage necessitates the change in this section.

During the review of the NPRM PHMSA noted that Table 176.144(a) includes a reference to explosives requiring special stowage in Note: 1. This final rule removes the special stowage section in the HMR. Therefore, PHMSA is removing the reference to special stowage in Note 1 of Table 176.144(a).

Section 176.146

Section 176.146 prescribes segregation requirements for Class 1 materials and non-hazardous goods transported by vessel. Paragraph (a) currently states that Class 1 material need not be segregated from non-hazardous materials except as provided in paragraphs (b) and (c). Paragraph (b) then goes on to state that certain cargo (mail, baggage, and personal effects) may not be stowed in the same compartment as, or in compartments immediately above or below, Class 1 (explosive) materials other than those in compatibility group S. Paragraph (c) states that where Class 1 (explosive) materials are stowed against an intervening bulkhead, any mail on the other side of the bulkhead must be stowed away from it.

In this final rule, PHMSA is revising paragraphs (a) and (b) and deleting and reserving paragraph (c). Specifically, we are revising paragraph (a) to remove a reference to the removed paragraph (c). We are also revising paragraph (b) to read ''readily combustible materials may not be stowed in the same compartment or hold as Class 1 (explosive) materials other than those in compatibility group S.'' This change incorporates the adoption by IMO of the defined term ''readily combustible material'' in 176.2. In this final rule, PHMSA is removing and reserving paragraph (c) as the vast majority of mail is now sent by air and not vessel. A specific requirement for stowage of mail away from the intervening bulkhead between it and Class 1 materials is deemed unnecessary.

Section 176.170

Section 176.170 prescribes requirements for shipments of Class 1 materials in freight containers by vessel. Paragraph (a) states that when Class 1 materials are stowed in a freight container, the freight container, for the purposes of this subpart, may be regarded as a magazine but not as a separate compartment. Paragraph (c) states that freight containers used to transport Class 1 (explosive) materials for which magazine stowage type A is required must have a floor consisting of tightly fitted wooden boards, plywood or equivalent non-metallic material, and a non-metallic lining.

PHMSA is amending paragraph (a) and deleting and reserving paragraph (c). Paragraph (a) is revised to state that when Class 1 materials are stowed in a freight container, the freight container, for the purposes of this subpart G of Part 176, may be regarded as a closed transport unit for Class 1 or a magazine but not a separate compartment. This change is being made to incorporate the definition of ''closed cargo transport unit for Class 1'' and the removal of magazine stowage A, C, and Special Stowage. Paragraph (c) references freight containers used to transport Class 1 (explosive) materials for which magazine stowage type A is required. The removal of a definition for and requirements for magazine stowage type A make this paragraph unnecessary.

Section 176.200

Section 176.200 prescribes general stowage requirements for Class 2 materials transported by vessel. Paragraph (c) of this section prescribes the orientation and outer packaging requirements for cylinders transported by vessel.

PHMSA is revising paragraph (c) to clarify that cylinders offered for transport by vessel in a vertical position must be stowed in either a block and cribbed or boxed-in with suitable sound lumber. PHMSA is also replacing the word movement with shifting in the requirement for the crib or box bracing to prevent any movement. These revisions are to harmonize with vessel transportation requirements incorporated in the IMDG Code and clarify that cylinders stored in a vertical position must be adequately blocked and braced using sound lumber.

Section 176.210

Section 176.210 prescribes on deck stowage requirements for cylinders transported by vessel. This section currently requires cylinders of Class 2 materials being transported by vessel to

be protected from radiant heat, including the direct rays of the sun, by structural erections or awnings.

In this final rule, PHMSA is revising this section by replacing ''protected from radiant heat, including the direct rays of the sun, by structural erections or awnings'' with the newly defined term ''protected from sources of heat.''

Section 176.230

Section 176.230 prescribes stowage requirements for Division 2.1 materials transported by vessel. Currently the HMR requires Division 2.1 materials transported in Specification 106A or 110A multi-unit car tanks must be stowed on deck only, and must be shaded from radiant heat.

In this final rule, PHMSA is replacing the phrase ''shaded from radiant heat'' with the newly defined ''protected from sources of heat.''

Section 176.305

Section 176.305 prescribes stowage requirements for Class 3 materials transported by vessel. Paragraph (a) states that Class 3 flammable or combustible liquids must be kept as cool as reasonably practicable and be stowed away from all sources of heat and ignition.

In this final rule, PHMSA is revising paragraph (a) to read ''a Class 3 (flammable) or combustible liquid must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.'' These changes incorporate the definitions of ''protected from sources of heat'' and ''potential or possible sources of ignition.''

Section 176.400

Section 176.400 prescribes stowage requirements for Division 1.5, Class 4 (flammable solids) and Class 5 materials transported by vessel. Paragraph (a) requires Class 4 (flammable solid) material and Division 5.2 (organic peroxide) materials to be kept as cool as reasonably practicable and be stowed away from all sources of heat and ignition.

PHMSA is revising paragraph (a) to read ''Class 4 (flammable solid) material and Division 5.2 (organic peroxide) material must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.'' These changes incorporate the definitions of ''protected from sources of heat'' and ''potential or possible sources of ignition.''

Paragraph (b) of this section requires Division 5.2 (organic peroxide) material to be stowed away from living quarters or access to them. Division 5.2 (organic peroxide) substances not requiring temperature control should be protected from radiant heat, which includes direct rays of the sun, and stowed in a cool, well-ventilated area.

PHMSA is amending paragraph (b) to replace ''should be protected from radiant heat, which includes direct rays of the sun, and stowed in a cool, well-ventilated area'' with ''must be protected from sources of heat, including radiant heat and strong sunlight, and must be stowed in a cool, well-ventilated area.'' These changes are being made to incorporate the definitions of ''protected from sources of heat'' harmonize with the IMDG Code, and to emphasize that protecting shipments of organic peroxides not requiring temperature control from sources of heat is a requirement and not optional.

Section 176.600

Section 176.600 prescribes detailed requirements for Division 2.3 (Poisonous Gas) and Division 6.1 (Poisonous) materials transported by vessel. Paragraph (d) of this section requires each package of Division 2.3 (poisonous gas) material or Division 6.1 (poison) material that also bears a FLAMMABLE LIQUID or FLAMMABLE GAS label must be stowed in a mechanically ventilated space, kept as cool as reasonably practicable, and be stowed away from all sources of heat and ignition.

PHMSA is revising paragraph (d) to replace ''stowed away from all sources of heat and ignition'' with ''protected from sources of heat and stowed away from potential sources of ignition.'' These changes incorporate the definitions of ''protected from sources of heat'' and ''potential or possible sources of ignition.''

PHMSA received one comment from Horizon requesting that the mechanically ventilated space and protected from sources of ignition stowage requirements be applied only to 2.3 materials and 6.1 materials that are toxic by inhalation. The proposal in the NPRM was done solely to change the terminology based on the adoption of new international definitions for ''protected from sources of heat'' and ''potential or possible sources of ignition.'' No changes to the actual commodities that require such segregation were proposed or will be implemented in this rulemaking.

Section 176.907

Section 176.907 is created to incorporate cargo transport requirements for shipments of UN2211, Polymeric Beads, Expandable *evolving flammable vapor* and UN3314, Plastics Molding Compound *in dough, sheet or extruded rope form, evolving flammable vapor.* Several cases of damage to cargo transport units were presented to the IMO with the root cause being identified as the release of flammable pentane gas during transportation of shipments UN2211 and UN3314. To address the concerns presented by off gassing of flammable vapors which lead to a rise in pressure that may damage cargo transport units, the IMO instituted measures to ensure an adequate exchange of air within the cargo transport unit is provided. PHMSA is harmonizing with the recent changes to the IMDG and addressing safety concerns presented by the off gassing of flammable vapors from shipments of UN2211 and UN3314 by requiring that when UN2211 or UN3314 are transported by vessel, the cargo transport unit must provide an adequate exchange of air. This adequate exchange of air may be accomplished by using a ventilated container, an open-top container, or a container in one door off operation. As an alternative to these methods of air exchange, shippers may transport these cargos under temperature control in refrigerated cargo transport units. Exceptions to the cargo transport unit providing an adequate exchange of air requirement are provided for shipments packed in hermetically sealed packagings or IBCs which conform to the packing group II performance level for liquid dangerous goods in which the total pressure in the package (i.e., the vapor pressure of the liquid plus the partial pressure of air or other inert gasses less 100 kPa (15 psia)) with a filling temperature of 55° C (131° F) does not exceed two-thirds of the marked test pressure. Cargo transport units containing shipments of UN2211 or UN3314 must be marked with a warning mark including the words ''CAUTION—MAY CONTAIN FLAMMABLE VAPOR'' or ''CAUTION—MAY CONTAIN FLAMMABLE VAPOUR'' with lettering not less than 25 mm high. This mark must be affixed at each access point in a location where it will be easily seen by persons prior to opening or entering the cargo transport unit and must remain on the cargo transport unit until the cargo transport unit has been completely ventilated to remove any hazardous concentration of vapor or gas, the immediate vicinity of the cargo transport unit is clear of any source of ignition, and the goods have been unloaded.

PHMSA received one comment from IVODGA requesting a further exception

for shipments that do not meet the ventilation requirements or the packaging requirements of the proposed section. IVODGA asked PHMSA to allow freight containers or transport vehicles containing these shipments not meeting the conditions of the proposed 176.907 to be allowed to be transported on vessel using on-deck stowage and stowed away from sources of potential ignition. PHMSA does not see a need to allow for less protective stowage provisions than the IMDG Code provides for these commodities. While the suggested stowage location and provisions proposed by IVODGA do represent a certain degree of caution; the adopted and harmonized requirements provide additional protection from the potential offgassing of pentane from these commodities; and thus PHMSA is adopting the changes as proposed in the NPRM.

Part 178

Section 178.71

Section 178.71 prescribes specifications for UN pressure receptacles. In this final rule PHMSA is incorporating by reference ISO 13340:2001(E) Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04–01. Non-refillable pressure receptacles must comply with cylinder valve requirements from ISO 13340. ISO 13340 was incorrectly proposed for addition to § 178.274(i) in the NPRM. PHMSA is correcting this proposal by incorporating this standard into the correct sections and requiring non-refillable pressure receptacles to comply with cylinder valve requirements in ISO 13340.

Section 178.512

Section 178.512 prescribes the standards, packaging identification codes, and construction requirements for steel and aluminum boxes (4A and 4B boxes). To incorporate the authorization for use of 4N boxes (metal other than steel or aluminum), the title of the section is revised to ''Standards for steel, aluminum or other metal boxes.'' Section 178.512 is also revised to include the authorized packaging identification code, 4N, for other metal boxes, and expand the construction requirements of the section to include these packagings. Subsequent changes are made throughout the section to address the inclusion of 4N other metal boxes.

Section 178.603

Section 178.603 prescribes the drop test requirements for non-bulk packagings in the HMR. Section 178.603 provides that a drop test must be conducted for the qualification of all packaging design types, and further provides that exceptions for the number of steel and aluminum packaging samples used for conducting the drop test are subject to the approval of the Associate Administrator. Currently, paragraph (a) of this section contains a table that outlines specific types of packagings and the corresponding number of samples that should be tested and the drop orientation of those samples. In this final rule, PHMSA is revising this table by including ''other metal boxes'' to the listed packagings. To incorporate the authorization for use of 4N boxes (metal other than steel or aluminum), § 178.603 is revised to require the drop test for other metal (4N) boxes, and authorize exceptions, subject to the approval of the Associate Administrator, for the number of samples used for conducting the drop test of these packagings.

Section 178.705

Section 178.705 prescribes standards for metal IBCs. Paragraph (a)(3) indicates that IBC specifications 31A, 31B, and 31N are authorized for both liquids and solids. PHMSA is revising this sentence editorially by removing the authorization to package solids in specification 31 IBCs as the specification is only assigned to liquid substances. This editorial change is consistent with the § 172.102 IBC Code Table revisions in paragraph (c)(4) and other IBC standards (e.g., § 178.707(a)(5)) prescribed in subpart N of part 178.

Section 178.910

Section 178.910 prescribes the marking requirements for specification Large Packaging design types. Paragraph (a)(1) of this describes the size specifications and format of the marking requirements. In this final rule, PHMSA is clarifying these requirements by indicating that for large packages manufactured after January 1, 2014 the minimum marking size must be 12 mm in height.

Furthermore, paragraph (b) of this section is now reserved. However, we are adding a paragraph (b) indicating that for all Large Packages manufactured, repaired or remanufactured after January 1, 2015 the large package must be marked with the symbol applicable to a Large Package designed for stacking or not designed for stacking, as appropriate. This language will be accompanied by an example of such a mark.

Section 178.980

Section 178.980 prescribes the procedures for conducting the stacking test for qualification of all Large Packaging design types. Paragraph (e)(1) describes the criterion a metal or rigid plastic Large Packaging must meet to be considered as successfully passing the stacking test. While paragraph (e) addresses metal or rigid plastic Large Packagings, the criterion that a fiberboard or wooden Large Packaging must meet to be considered as successfully passing the stacking test is omitted.

Therefore, in this final rule, we are correcting this omission, by adding a new paragraph (e)(2) that addresses the criterion for fiberboard or wooden Large Packagings to pass the test and redesignating the following paragraphs accordingly.

Subpart R

Currently, the HMR do not contain specifications for FBCs. In this final rule, PHMSA is adopting the specification, construction, and testing requirements for FBCs. On February 2, 2010, PHMSA published a final rule in the **Federal Register** under Docket Number PHMSA–2006– 25736 (HM–231) [75 FR 4699] entitled ''Hazardous Materials; Miscellaneous Packaging Amendments.'' In HM–231, specification and testing requirements were adopted for Large Packagings. The specification and testing requirements for FBCs are modeled on the regulatory structure adopted for Large Packagings in HM–231. Thus, new subpart R of part 178 entitled ''Subpart R—Flexible Bulk Container Standards'' is added.

Section 178.1000

PHMSA is adopting new § 178.1000 entitled ''Purpose and scope.'' This section prescribes the packaging designs to which Subpart R applies and the location in the HMR where terms used in the subpart are defined.

Section 178.1005

In this final rule, PHMSA is adding new § 178.1005 entitled ''Flexible Bulk Container Identification Code.'' This section provides the identification code (i.e. BK3) assigned to FBCs.

Section 178.1010

In this final rule, PHMSA is adding new § 178.1010 entitled ''Marking of Flexible Bulk Containers.'' This section prescribes the markings the manufacturer of an FBC must mark on

a package to indicate the FBC meets the specification. The marking requirements for FBCs are based on the current marking requirements for IBCs prescribed in § 178.703.

Section 178.1015

In this final rule, PHMSA is adding new § 178.1015 entitled ''General Flexible Bulk Container Standards.'' This section prescribes the general packaging integrity requirements an FBC design must meet.

Section 178.1020

In this final rule, PHMSA is adding new § 178.1020 entitled ''Period of use for transportation of hazardous materials in Flexible Bulk Containers.'' This section prescribes the length of time an FBC may be used to package hazardous materials. Specifically, this section states that an FBC used to package hazardous materials may remain in service not to exceed two years from the date of manufacture.

Subpart S

Currently, the HMR do not prescribe testing criteria for FBCs. PHMSA is adopting testing protocol for FBCs. On February 2, 2010, PHMSA published a final rule in the **Federal Register** under Docket Number PHMSA–2006– 25736 (HM–231) [75 FR 4699] entitled ''Hazardous Materials; Miscellaneous Packaging Amendments.'' In HM–231, specification and testing requirements were adopted for Large Packagings. The test protocol proposed in this final rule for FBCs are modeled on the regulatory structure adopted for Large Packagings in HM–231. Thus, new subpart S of part 178 entitled ''Subpart S—Testing of Flexible Bulk Container Standards'' is added.

Section 178.1030

In this final rule, PHMSA is adopting § 178.1030 entitled ''Purpose and scope.'' This section prescribes the applicability to which the Subpart S tests apply.

Section 178.1035

In this final rule, PHMSA is adopting § 178.1035 entitled ''General requirements.'' This section prescribes the general packaging requirements for FBCs and addresses the following topics: FBC-related definitions; defining responsibility for compliance with specification requirements; design qualification testing; periodic design testing; proof of compliance; and record retention.

Section 178.1040

In this final rule, PHMSA is adopting test preparation requirements for FBCs in new § 178.1040 entitled ''Preparation of Flexible Bulk Containers for Testing.'' This section specifies the general test preparation requirements applicable to all tests an FBC is required to successfully pass.

Section 178.1045

In this final rule, PHMSA is adopting requirements for drop tests conducted on FBCs. A drop test is used to measure a packaging's ability to withstand falls from specific heights and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA is adding a new § 178.1045 entitled ''Drop test.'' This section prescribes the preparation of test samples, test methods authorized, drop heights, and criteria for passing the drop test.

Section 178.1050

In this final rule, PHMSA is adopting requirements for top lift tests conducted on FBCs. A top lift test measures a package's ability to be moved mechanically by lifting the package by its top end and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA is adding new § 178.1050 entitled ''Top lift test.'' This section prescribes requirements for the preparation of test samples, test methods authorized, and criteria for passing the top lift test.

Section 178.1055

In this final rule, PHMSA is adopting requirements for stacking tests conducted on FBCs. A stacking test is used to measure a packaging's ability to withstand other packages placed on top of it and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA is adding new § 178.1055 entitled ''Stacking test.'' This section prescribes requirements for the preparation of test samples, test methods authorized, and criteria for passing the stacking test.

Section 178.1060

In this final rule, PHMSA is adopting requirements for topple tests conducted on FBCs. A topple test is used to measure a packaging's ability to withstand tipping of the package and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA is adding new § 178.1060 entitled ''Topple test.'' This section prescribes the preparation of test samples, test methods authorized, topple height, and criteria for passing the topple test.

Section 178.1065

In this final rule, PHMSA adopting requirements for righting tests conducted on FBCs. A righting test is used to measure a packaging's ability to withstand lifting from a lying position at a given rate of speed and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA is adding new § 178.1065 entitled ''Righting test.'' This section prescribes the preparation of test samples, test methods authorized, and criteria for passing the righting test.

Section 178.1070

In this final rule, PHMSA is adopting requirements for tear tests conducted on FBCs. A tear test is used to measure a packaging's ability to withstand shearing and tearing that may be encountered during transportation, such as loading and unloading, and is used to determine if a package is suitable to transport hazardous materials. Thus, PHMSA is adding new § 178.1070 entitled ''Tear test.'' This section prescribes the preparation of test samples, test methods authorized, and criteria for passing the tear test.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule amends regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. To this end, this final rule amends the HMR to more fully align with the biennial updates of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions.

Harmonization serves to facilitate international commerce; at the same time, harmonization promotes the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment

on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated community. Thus, as explained in the corresponding sections above, we are not harmonizing with certain specific provisions of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions. Moreover, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community. Additionally, the following external agencies were consulted in the development of this rule:

U.S. Coast Guard
U.S. Department of Agriculture (USDA)
U.S. Department of Energy
U.S. Department of Interior
U.S. Department of Justice

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This final rule is amending the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail above, PHMSA is incorporating changes into the HMR based on the 17th Revised Edition of the UN Model Regulations, Amendment 36–12 to the IMDG Code, and the 2013–2014 ICAO Technical Instructions, which become effective January 1, 2013. The large volume of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible.

B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 (''Regulatory Planning and Review'') and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, E.O. 13563 (''Improving Regulation and Regulatory Review'') supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

Economic Benefits to Harmonization. In this final rule, PHMSA is incorporating by reference the most recent versions of various international hazardous materials standards, including the 2013–2014 ICAO Technical Instructions, Amendment 36–12 to the IMDG Code, and the 17th Revised Edition of the UN Model Regulations. Additionally, PHMSA is updating its incorporation by reference of the Canadian Transportation of Dangerous Goods Regulations to include Amendment 8 (SOR/2011–239) October 27, 2011; Amendment 9 (SOR/2011–60) March 3, 2011; and Amendment 10 (SOR/2011–210) September 30, 2011. Lastly, PHMSA is adopting updated International Standards Organization (ISO) standards.

The primary benefit of harmonizing the U.S. Hazardous Materials Regulations (HMR) with the international hazardous materials standards noted previously is that it will reduce the regulatory compliance costs faced by U.S. companies. Without harmonization, these companies will be forced to comply with dual systems of regulations, and as a result will incur higher compliance costs than would be encountered under a single regulatory scheme. The benefit of harmonization attributable to this rulemaking is the difference in regulatory compliance costs faced by companies operating under a single regulatory framework instead of multiple regulatory frameworks.

If the U.S. regulations were not harmonized with the international standards mentioned above, we estimate that it would cost U.S. companies an additional $62 million per year to comply with both the HMR and the international standards. Harmonizing the HMR with the international standards, however, will avert these $62 million in additional costs, and these averted costs are therefore considered the primary benefit attributable to this rulemaking.

The $62 million estimate is based on the assumption that in the absence of harmonization both exporters and importers would have to adhere to two separate hazard communication systems, one used for the transportation of materials within the United States and one used for the transportation of materials outside the United States. Exporters would directly incur four different cost elements and would have to pay for (1) dual labels and safety data sheets, (2) additional training, (3) additional management activities, and (4) additional packaging costs. Foreign producers who ship products to the United States would also incur these four cost elements, and we assume that the foreign producers would pass half of those incurred costs on to U.S. consumers in the form of higher prices.

To develop the $62 million estimate, we estimated the average hazard communication cost per dollar of hazardous materials produced in the United States and then multiplied that cost figure by an estimate of the value of U.S. imports and exports of hazardous materials. In other words, in the absence of harmonization, we assume that companies involved with U.S. foreign trade would have to pay for additional hazard communication requirements for international movements; these companies would have to comply with the HMR communication requirements during domestic legs of the movement and with international standards during legs of the movement outside of the United States.

A proxy for hazard communication costs was obtained from a recent Occupational Safety and Health Administration study looking at the costs for industry to comply with the revised Hazard Communication Standard.[2] The study estimated the total compliance cost to be $201 million per year based on four cost elements: revisions to labels and safety data sheets, additional training, additional management activities, and printing of color packaging. The first three cost elements are relevant for our purposes and totaled $177 million.

To put the $177 million hazard communication cost estimate on a per unit basis, we divided the $177 million by an estimate of the total value of hazardous materials produced in the United States in 2010. The total value of hazardous materials produced in the United States was estimated to be $151 billion. To derive this $151 billion estimate, we summed relevant product values reported in the Census Bureau's Annual Survey of Manufactures: Value of Product Shipments, and then multiplied the result by 12.4 percent—the percentage of shipment values reported to be hazardous products (this parameter was obtained from Table 10 in the Census Bureau's 2007 Commodity Flow Survey for Hazardous Materials). The resulting hazard communication cost per dollar of hazardous materials

[2] *http://www.osha.gov/dsg/hazcom/hazcom-faq.html.*

output was estimated to be $0.001 (or $177 million ÷ $151 billion).

We were not able to identify any comprehensive source on hazardous materials imports and exports and therefore developed estimates for these figures using quarterly trade data from the Bureau of Economic Analysis [3] and data on the transportation of hazardous materials from the Census Bureau's 2007 Commodity Flow Survey. The quarterly trade data on the value of imports and exports—for fuels and lubricants, chemicals, and medicinal/dental/pharmaceutical products—were summed to produce a single annual trade value for 2010 for industries that produce hazardous materials. Before aggregating the import and export values, we reduced the import values by half to take into account the assumption mentioned previously that foreign producers would be able to pass on only half of the additional hazard communication costs to U.S. consumers. Total annual trade for industries that produce hazardous materials was computed to be just over $498 billion in 2010.

We then multiplied this $498 billion trade figure by 12.4 percent, the percentage of output in these industries reported to be hazardous products; this parameter was obtained from Table 10 in the 2007 Commodity Flow Survey for Hazardous Materials. The resulting estimate indicates that approximately $62 billion worth of hazardous materials were involved in international trade with the United States in 2010.

Multiplying the hazard communication cost per dollar of hazardous material output ($0.001) by the value of hazardous materials involved in international trade ($62 billion) results in a hazard communication cost estimate of approximately $62 million per year that companies would have to pay to comply with different regulatory requirements applicable to international movements. Harmonizing the HMR with international standards will make these $62 million in hazard communications costs unnecessary, and therefore is the main benefit attributable to this rulemaking.

Cost of Harmonization. The potential costs of this rulemaking include private sector compliance costs and any costs that can be attributed to a possible reduction in public safety as a result of harmonizing the HMR with international standards. We expect that both of these costs will be negligible. Estimates suggest that private sector compliance costs associated with complying with the different amendments in the final rule will be minimal. In terms of costs due to any reduction in public safety as a result of harmonizing the HMR with international standards, PHMSA believes that none of the proposed revisions to the HMR have material safety impacts. We therefore assume that the gross social costs of this NPRM are effectively zero.

Net Benefit. Based on the discussions of benefits and costs provided above the estimated net benefit associated with the international harmonization final rule (2137–AE87) is nearly $62 million.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (1), (2), (3), (4) and (5) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2013. If this final rule was not adopted, U.S. companies, including numerous small entities competing in foreign markets, will be at an economic disadvantage. These companies will be forced to comply with a dual system of regulations. The changes in this final rule are intended to avoid this result. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days from publication of this final rule.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and, does not impose substantial direct compliance costs the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. This final rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users and suppliers, packaging manufacturers, distributors, and training companies. As discussed above, under *Executive Order 12866,* the majority of amendments in this final rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this final rule will relieve U.S. companies, including small entities

[3] *http://www.bea.gov/international/detailed_trade_data.htm.*

competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, we certify that these amendments will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137–0018, ''Inspection and Testing of Portable Tanks and Intermediate Bulk Containers,'' and OMB Control Number 2137–0572, ''Testing Requirements for Non-Bulk Packages.'' This final rule may result in an increase in the annual burden and costs of both OMB Control Numbers due to the proposed amendments to allow the use of metals other than steel or aluminum for drums and boxes as well as the proposed new Flexible Bulk Container package authorization, which will require package manufacturers to document and maintain package test results, should they elect to manufacture Flexible Bulk Containers or of metals other than steel or aluminum for drums and boxes.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule, and estimates the information collection and recordkeeping burden in this rule to be as follows:

OMB Control No.: 2137–0018.

Annual Increase in Number of Respondents: 25.

Annual Increase in Annual Number of Responses: 50.

Annual Increase in Annual Burden Hours: 200.

Annual Increase in Annual Burden Costs: $5,000.

50 estimated responses at $25 per hour and four hours per response.

OMB Control No.: 2137–0572.

Annual Increase in Number of Respondents: 100.

Annual Increase in Annual Number of Responses: 300.

Annual Increase in Annual Burden Hours: 600.

Annual Increase in Annual Burden Costs: $15,000.

300 Annual responses at $25 per hour and 2 hours per response.

PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center generally publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that federal agencies consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the action; (2) alternatives to the action; (3) probable environmental impacts of the action and alternatives; and (4) the agencies and persons consulted during the consideration process (40 CFR 1508.9(b)).

Description of Action

Docket No. PHMSA–2012–0027 (HM–215L), Final Rule. The transportation of hazardous materials in commerce is subject to the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 et seq. To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provides that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Purpose and Need

In this final rule, PHMSA is amending the HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize and align the HMR with recent amendments adopted in the UN Model Regulations, IMDG Code, and the ICAO Technical Instructions. The amendments in this final rule are intended to facilitate the safe and efficient transportation of hazardous materials in international commerce, provide clarity designed to encourage and increase regulatory compliance, and improve the efficacy of emergency response in the event a hazardous materials incident occurs.

Alternatives

In developing this rule, we considered three alternatives:

(1) Do nothing.

(2) Adopt the international standards in their entirety.

(3) Adopt most of the international standards, with certain modifications based on safety or economic considerations.

Alternative 1

Because our goal is to facilitate uniformity, compliance, commerce and safety in the transportation of hazardous materials, we rejected this alternative.

Alternative 2

By adopting the international standards in their entirety, PHMSA could potentially adopt provisions that, in our view, do not provide an adequate level of transportation safety and environmental safety and protection. Further, because we provide for domestic exceptions and extended compliance periods to minimize the potential economic impact of any revisions on the regulated community, this alternative was also rejected.

Alternative 3

Consistency between U.S. and international regulations helps to assure the safety of international hazardous

materials transportation and the environment through better understanding of the regulations, an increased level of compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident. Under Alternative 3, we would harmonize the HMR with international standards to the extent consistent with U.S. safety, economic, and environmental protection goals.

Alternative 3 is the only alternative that addresses, in all respects, the purpose of this regulatory action, which is to facilitate the safe and efficient transportation of hazardous materials in international commerce and the protection of the environment. These actions will provide the greatest possible harmonization with international requirements without posing an undue increased cost burden on the regulated community. For these reasons, alternative 3 is our selected alternative.

Analysis of Environmental Impacts

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk-management system that is prevention-oriented and focused on identifying hazards and reducing the probability and quantity of a hazardous material release. Amending the HMR to maintain alignment with international standards enhances the safe transportation of hazardous materials in domestic and international commerce. When considering the adoption of international standards under the HMR, we review and consider each amendment on its own merit and assess the likely impact on transportation safety and the environment. It is our conclusion that the provisions in this final rule will not have either a substantial positive or adverse effect on the environment. In this final rule PHMSA is adopting the following noteworthy amendments to the HMR:

Chemicals under pressure. Manufacturers in the United Kingdom, the United States, Australia, Canada, and other countries are supplying pressurized products contained and transported in gas cylinders. The products are liquids or solids such as adhesives, coatings and cleaners combined with a gas or gas mixtures in pressure receptacles under sufficient pressure to expel the contents. These mixtures are typically expelled from the pressurized cylinders as foams, streams or thick sprays. Currently the HMR does not comprehensively address chemicals under pressure. Because of the substantial packaging integrity inherent in pressure vessel designs, PHMSA believes the chemical under pressure amendments in this rule will result in a positive environmental impact.

Flexible Bulk Containers (FBCs). Incorporate a new packaging definition, operational controls, performance-oriented standards, and testing requirements for Flexible Bulk Containers (FBCs). FBCs are flexible bulk packages with a capacity over the currently authorized maximum volumetric capacity for flexible IBCs, but not exceeding 15 cubic meters. FBCs provide shippers the opportunity to utilize a reusable flexible packaging for bulk shipments of certain authorized low-hazard commodities, all of which are currently authorized in non-specification bulk bins. Because of the inherent integrity of a specification packaging design when compared to a non-specification packaging design, PHMSA believes the amendments in this final rule authorizing the construction and use of FBCs will result in a net positive environmental impact due to a possible decrease in the unintentional release of hazardous material.

Packaging Authorizations. Part 173 of the HMR prescribes the general requirements for shipment preparation and packaging selection for hazardous materials. Consistent with amendments adopted in the various international standards, we are amending multiple Part 173 packaging sections by authorizing additional packaging specifications used to package hazardous materials. These amendments include, but are not limited to, the authorization to use wood as a material of package construction for certain explosives, the authorization to use metals other than steel or aluminum for boxes and drums for certain hazardous materials, and the incorporation of authorizations and specifications of FBCs. Because of the substantial integrity in the newly authorized packaging specifications, PHMSA believes the amendments in this final rule will result in a positive environmental impact. Higher integrity packaging designs prevent the unintentional release of hazardous materials when transported in commerce.

Vessel Stowage Requirements. The requirements for vessel stowage are described and specified in § 172.101(k) and HMT entries are assigned appropriate vessel stowage codes and stowage special provisions in column 10 of the HMT. We are clarifying these instructions by revising the vessel stowage location requirements for explosives and reducing the number of explosive stowage categories from 15 to 5 in column 10A of the HMT. Specifically, explosive stowage categories 6 through 15 are eliminated, and stowage categories 1 through 5 are retained and modified. We are also adopting modifications to the vessel stowage provisions indicated in column 10B of the HMT. In order to harmonize with the IMDG Code, PHMSA is incorporating the addition of a new definition for protected from sources of heat and potential or possible sources of ignition (see Section 176.2 of this final rule for definitions), and subsequently revise and delete various vessel stowage provisions.

The amendments adopted in this final rule consolidate the number of vessel stowage codes for explosives, resulting in greater clarity in the HMR and reducing the potential for unintentional release of hazardous materials. PHMSA believes these changes will have a positive impact on the environment.

Conclusion

In the NPRM PHMSA sought public comments on our environmental assessment. No comments were received. In this final rule, PHMSA is amending the HMR in response to revisions adopted in the various international standards. Through this integrated and cooperative approach, we believe we can be most successful in reducing incidents, enhancing public safety, and protecting the environment. The amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements and to provide greater flexibility in packaging selection suitable for the transportation of hazardous materials. PHMSA believes the net environmental impact of this rule will be somewhat positive. Additionally, we believe there

will be little or no adverse environmental impact associated with the amendments adopted in this rule. We conclude that there are no significant environmental impacts associated with this rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (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) which may be viewed at *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Public Law 96–39), as amended by the Uruguay Round Agreements Act (Public Law 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public, and we have assessed the effects of this final rule to ensure that it does not cause unnecessary obstacles to foreign trade. In fact, the rule is designed to facilitate international trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is amending 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. Revise § 171.7 to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference*—(1) *General.* There is incorporated, by reference in parts 170–189 of this subchapter, matter referred to that is not specifically set forth. This matter is hereby made a part of the regulations in parts 170–189 of this subchapter. The matter subject to change is incorporated only as it is in effect on the date of issuance of the regulation referring to that matter. The material listed in paragraphs (b) through (ee) of this secton have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. Matters referenced by footnote are included as part of the regulations of this subchapter.

(2) *Accessibility of materials.* All incorporated matter is available for inspection at:

(i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, East Building, PHH–10, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. For information on the availability of this material at PHH–10, call 1–800–467–4922, or go to: *http://www.phmsa.dot.gov;* and

(ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *Air Transport Association of America,* 1301 Pennsylvania Avenue NW., Washington, DC 20004–1707.

(1) ATA Specification No. 300 Packaging of Airline Supplies, Revision 19, July 31, 1996, into § 172.102.

(2) [Reserved]

(c) *The Aluminum Association,* 1525 Wilson Blvd., Suite 6000, Arlington, VA 22209, telephone 703–358–2960, *http://www.aluminum.org.*

(1) Aluminum Standards and Data, Seventh Edition, June 1982, into §§ 172.102; 178.65.

(2) Welding Aluminum: Theory and Practice, 2002 Fourth Edition, into § 178.68.

(d) *American National Standards Institute, Inc.,* 25 West 43rd Street, New York, NY 10036.

(1) ANSI/ASHRAE 15–94, Safety Code for Mechanical Refrigeration, 1944, into §§ 173.306; 173.307.

(2) ANSI B16.5–77, Steel Pipe Flanges, Flanged Fittings, 1977, into § 178.360–4.

(3) ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 1971 Edition, into §§ 173.417; 173.420.

(4) ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 1982 Edition, into §§ 173.417; 173.420.

(5) ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 1987 Edition, into §§ 173.417; 173.420.

(6) ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 1990 Edition, into §§ 173.417; 173.420.

(7) ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 1995 Edition, into §§ 173.417; 173.420.

(8) ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 2001 Edition, into §§ 173.417; 173.420.

(e) *American Petroleum Institute,* 1220 L Street NW., Washington, DC 20005–4070.

(1) API Recommended Practice Closures of Underground Petroleum Storage Tanks, 3rd Edition, March 1996, into § 172.102.

(2) [Reserved]

(f) *American Pyrotechnics Association (APA),* P.O. Box 30438, Bethesda, MD 20824, (301) 907–8181, *www.americanpyro.com.*

(1) APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version into § 173.56.

(2) [Reserved]

(g) *American Society of Mechanical Engineers,* ASME International, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900, telephone 1–800–843–2763 or 1–973–882–1170, *http://www.asme.org.*

(1) 'ASME Code'; ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code, into §§ 172.102; 173.5b; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.245–1; 178.245–3; 178.245–4; 178.245–6; 178.245–7; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.270–2; 178.270–3; 178.270–7; 178.270–9; 178.270–11; 178.270–12; 178.271–1; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407.

(2) ASME B31.4–1998 Edition, Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids, Chapters II, III, IV, V and VI, November 11, 1998, into § 173.5a.

(h) *American Society for Testing and Materials,* 100 Barr Harbor Drive, West Conshohocken, PA 1942, telephone (610) 832–9585, *http://www.astm.org.* Copies of historical standards or standards that ASTM does not have may be purchased from: Engineering Societies Library, 354 East 47th Street, New York, NY 10017.

(1) ASTM A 20/A 20M–93a Standard Specification for General Requirements for Steel Plates for Pressure Vessels, 1993, into §§ 178.337–2; 179.102–4; 179.102–1; 179.102–17.

(2) ASTM A 47–68 Malleable Iron Castings, 1968, into § 179.200–15.

(3) ASTM A 53/A 53M–06a (ASTM A 53) Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless, 2006, into § 173.5b.

(4) ASTM A 106/A 106M–06a (ASTM A 106) Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service, 2006, into § 173.5b.

(5) ASTM A 240/A 240M–99b Standard Specification for Heat-Resisting Chromium and Chromium-Nickel Stainless Steel Plate, Sheet and Strip for Pressure Vessels, 1999, into §§ 178.57; 178.358–5; 179.100–7; 179.100–10; 179.102–1; 179.102–4; 179.102–17; 179.200–7; 179.201–5; 179.220–7; 179.300–7; 179.400–5.

(6) ASTM A 242–81 Standard Specification for High-Strength Low-Alloy Structural Steel, 1981, into § 178.338–2.

(7) ASTM A 262–93a Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steels, 1993, into 179.100–7; 179.200–7; 179.201–4.

(8) ASTM A 285–78 Pressure Vessel Plates, Carbon Steel, Low- and Intermediate-Tensile Strength, 1978, into § 179.300–7.

(9) ASTM A 300–58 Steel Plates for Pressure Vessels for Service at Low Temperatures, 1958, into § 178.337–2.

(10) ASTM A 302/A 302M–93 Standard Specification for Pressure Vessel Plates, Alloy Steel, Manganese-Molybdenum and Manganese-Molybdenum Nickel, 1993, into § 179.100–7; 179.200–7; 179.220–7.

(11) ASTM A 333–67 Seamless and Welded Steel Pipe for Low-Temperature Service, 1967, into § 178.45.

(12) ASTM A 370–94 Standard Test 179.102–1; 179.102–4; Methods and Definitions for Mechanical Testing of Steel Products, 1994, into §§ 179.102–17; 179.102–1; 179.102–4.

(13) ASTM A 441–81 Standard Specification for High-Strength Low-Alloy Structural Manganese Vanadium Steel, 1981, into § 178.338–2.

(14) ASTM A 514–81 Standard Specification for High-Yield Strength Quenched and Tempered Alloy Steel Plate, Suitable for Welding, 1981, into § 178.338–2.

(15) ASTM A 515/A 515M–03 Standard Specification for Pressure Vessel Plates, Carbon Steel, for Intermediate- and Higher-Temperature Service, 2003, into § 179.300–7.

(16) ASTM A 516/A 516M–90 Standard Specification for Pressure Vessel Plates, Carbon Steel, for Moderate and Lower-Temperature Service, 1990, into § 178.337–2; 179.100–7; 179.102–1; 179.102–2; 179.102–4; 179.102–17; 179.200–7; 179.220–7; 179.300–7.

(17) ASTM A 537/A 537M–91 Standard Specification for Pressure Vessel Plates, Heat-Treated, Carbon-Manganese-Silicon Steel, 1991, into § 179.100–7; 179.102–4; 179.102–17.

(18) ASTM A 572–82 Standard Specification for High-Strength Low-Alloy Columbian-Vanadium Steels of Structural Quality, 1982, into § 178.338–2.

(19) ASTM A 588–81 Standard Specification for High-Strength Low-Alloy Structural Steel with 50 Ksi Minimum Yield Point to 4 in. Thick, 1981, into § 178.338–2.

(20) ASTM A 606–75 Standard Specification for Steel Sheet and Strip Hot-Rolled and Cold-Rolled, High-Strength, Low-Alloy, with Improved Atmospheric Corrosion Resistance, 1975 (Reapproved 1981), into § 178.338–2.

(21) ASTM A 607–98 Standard Specification for Steel, Sheet and Strip, High-Strength, Low-Alloy, Columbium or Vanadium, or Both, Hot-Rolled and Cold-Rolled, 1998, into § 178.338–2.

(22) ASTM A 612–72a High Strength Steel Plates for Pressure Vessels for Moderate and Lower Temperature Service, 1972, into § 178.337–2.

(23) ASTM A 633–79a Standard Specification for Normalized High-Strength Low-Alloy Structural Steel, 1979 Edition, into § 178.338–2.

(24) ASTM A 715–81 Standard Specification for Steel Sheet and Strip, Hot-Rolled, High-Strength, Low-Alloy with Improved Formability, 1981, into § 178.338–2.

(25) ASTM A 1008/A 1008M–03 Standard Specification for Steel, Sheet, Cold-Rolled, Carbon, Structural, High-Strength Low-Alloy and High Strength Low-Alloy with Improved Formability, 2003, into § 178.338–2; 178.345–2.

(26) ASTM A 1011/A 1011M–03a Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low Alloy

and High Strength Low-Alloy with Improved Formability, 2003, into § 178.338–2; 178.345–2.

(27) ASTM B 162–93a Standard Specification for Nickel Plate, Sheet, and Strip, 1993, into § 173.249; 179.200–7.

(28) ASTM B 209–93 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate, 1993, into § 179.100–7; 179.200–7; 179.220–7.

(29) ASTM B 221–76 Aluminum Alloy Extruded Bars, Rods, Shapes, and Tubes, 1976, into § 178.46.

(30) ASTM B 557–84 Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products, 1984, into § 178.46.

(31) ASTM B 580–79 Standard Specification for Anodic Oxide Coatings on Aluminum, (Re-approved 2000), into § 173.316; 173.318; 178.338–17.

(32) ASTM D 56–05, Standard Test Method for Flash Point by Tag Closed Cup Tester, approved May 1, 2005, into § 173.120.

(33) ASTM D 86–07a, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, approved April 1, 2007, into § 173.121.

(34) ASTM D 93–08, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester, approved October 15, 2008, into § 173.120.

(35) ASTM D 1078–05, Standard Test Method for Distillation Range of Volatile Organic Liquids, approved May 15, 2005, into § 173.121.

(36) ASTM D 1238–90b Standard Test Method for Flow Rates of Thermoplastics for Extrusion Plastometer, 1990, into § 173.225.

(37) ASTM D 1709–01 Standard Test Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method, 2001, into § 173.197.

(38) ASTM D 1835–97 Standard Specification for Liquefied Petroleum (LP) Gases, 1997, into § 180.209.

(39) ASTM D 1838–64 Copper Strip Corrosion by Liquefied Petroleum (LP) Gases, 1964, into § 173.315.

(40) ASTM D 1922–00a Standard Test Method for Propogation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method, 2000, into § 173.197.

(41) ASTM D 3278–96 (Reapproved 2004) E1, Standard Test Methods for Flash Point of Liquids by Small Scale Closed-Cup Apparatus, approved November 1, 2004, into § 173.120.

(42) ASTM D 3828–07a, Standard Test Methods for Flash Point by Small Scale Closed Cup Tester, approved July 15, 2007, § 173.120.

(43) ASTM D 4206–96 Standard Test Method for Sustained Burning of Liquid Mixtures Using the Small Scale Open-Cup Apparatus, 1996, into § 173.120.

(44) ASTM D 4359–90 Standard Test Method for Determining Whether a Material is a Liquid or a Solid, 1990 into § 171.8.

(45) ASTM E 8–99 Standard Test Methods for Tension Testing of Metallic Materials, 1999, into § 178.36; 178.37; 178.38; 178.39; 178.44; 178.45; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.68.

(46) ASTM E 23–98 Standard Test Methods for Notched Bar Impact Testing of Metallic Materials, 1998, into § 178.57.

(47) ASTM E 112–88 Standard Test Methods for Determining Average Grain Size, 1988, into § 178.44.

(48) ASTM E 112–96 Standard Test Methods for Determining Average Grain Size, 1996 Edition, into § 178.274; Part 178, appendix A.

(49) ASTM E 114–95 Standard Practice for Ultrasonic Pulse-Echo Straight-Beam Examination by the Contact Method, 1995, into § 178.45.

(50) ASTM E 213–98 Standard Practice for Ultrasonic Examination of Metal Pipe and Tubing, into § 178.45.

(51) ASTM E 290–97a Standard Test Methods for Bend Testing of Material for Ductility, published February 1998, into § 178.37.

(i) *American Water Works Association,* 1010 Vermont Avenue NW., Suite 810, Washington, DC 20005.

(1) AWWA Standard C207–55, Steel Pipe Flanges, 1955, into § 178.360–4.

(2) [Reserved]

(j) *American Welding Society,* 550 NW. Le Jeune Road, Miami, Florida 33126.

(1) AWS Code B 3.0; Standard Qualification Procedure; 1972 (FRB 3.0–41, rev. May 1973), into §§ 178.356–2, 178.358–2.

(2) AWS Code D 1.0; Code for Welding in Building Construction (FR D 1.0–66, 1966), into §§ 178.356–2; 178.358–2.

(k) *Association of American Railroads,* American Railroads Building, 50 F Street NW., Washington, DC 20001; telephone (877) 999–8824, *http://www.aar.org/publications.com.*

(1) AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars), December 2000, § 173.31; 179.6; 179.7; 179.15; 179.16; 179.20; 179.22; 179.100–9; 179.100–10; 179.100–12; 179.100–13; 179.100–14; 179.100–18; 179.101–1; 179.102–1; 179.102–4; 179.102–17; 179.103–5; 179.200–7; 179.200–9; 179.200–10; 179.200–11; 179.200–13; 179.200–17; 179.200–22; 179.201–6; 179.220–6; 179.220–7; 179.220–10; 179.220–11; 179.220–14; 179.220–18; 179.220–26; 179.300–9; 179.300–10; 179.300–15; 179.300–17; 179.400–5; 179.400–6; 179.400–8; 179.400–11; 179.400–12; 179.400–15; 179.400–18; 179.400–20; 179.400–25; 180.509; 180.513; 180.515; 180.517.

(2) AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, 1988, into § 174.55; 174.63.

(3) AAR Specifications for Design, Fabrication and Construction of Freight Cars, Volume 1, 1988, into § 179.16.

(4) AAR Standard 286; AAR Manual of Standards and Recommended Practices, Section C, Car Construction Fundamentals and Details, Standard S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars (Adopted 2002; Revised: 2003, 2005, 2006), into 179.13.

(l) *Chlorine Institute, Inc.,* 1300 Wilson Boulevard, Arlington, VA 22209.

(1) Chlorine Institute Emergency Kit ''A'' for 100-lb. & 150 lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks), Edition 10, June 2003, into 173.3.

(2) Chlorine Institute Emergency Kit ''B'' for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks), Edition 9, June 2003, into 173.3.

(3) Type 1 JQ 225, Dwg., H51970, Revision F, November 1996, into § 173.315.

(4) Type 1 JQ 225, Dwg. H50155, Revision H, November 1996, into § 173.315.

(5) Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, Edition 4, October 2003, into § 177.840.

(6) Section 3, Pamphlet 166, Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition, October 2002, into § 178.337–9.

(7) Standard Chlorine Angle Valve Assembly, Dwg. 104–8, July 1993, into § 178.337–9.

(8) Excess Flow Valve with Removable Seat, Dwg. 101–7, July 1993, into § 178.337–8.

(9) Excess Flow Valve with Removable Basket, Dwg. 106–6, July 1993, into § 178.337–8.

(10) Standards for Housing and Manway Covers for Steel Cargo Tanks, Dwgs. 137–1 and 137–2, September 1, 1982, into § 178.337–10.

(11) Typical Manway Arrangement Chlorine Cargo Tank, Dwg 137–5, November 1996, into 178.337–10.

(m) *Canadian General Standards Board*, Place du Portage III, 6B1 11 Laurier Street, Gatineau, Quebec, Canada K1A 1G6.

(1) National Standard of Canada (CAN/CGSB 43.147—2005)

Construction, Modification, Qualification, Maintenance, and Selection and Use of Means of Containment for the Handling, Offering for Transport, or Transportation of Dangerous Goods by Rail, into § 171.12.

(2) [Reserved]

(n) *Compressed Gas Association (CGA),* 1235 Jefferson Davis Highway, Arlington, VA 22202.

(1) CGA Pamphlet C–3, Standards for Welding on Thin-Walled Steel Cylinders, 1994, into § 178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.211.

(2) CGA C–5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991 (reaffirmed 1995), into § 173.302a.

(3) CGA Pamphlet C–6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993, into § 173.3, 173.198, 180.205, 180.209, 180.211, 180.411, 180.519.

(4) CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 2002, Fourth Edition, into § 180.205; 180.209.

(5) CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1996, Third Edition, into § 180.205.

(6) CGA Pamphlet C–6.3, Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, 1991, into § 180.205; 180.209.

(7) CGA C–7, Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A, issued 2004 (8th Edition), into § 172.400a.

(8) CGA Pamphlet C–8, Standard for Requalification of DOT–3HT Cylinder Design, 1985, into § 180.205; 180.209.

(9) CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2001, Third Edition, into § 178.35.

(10) CGA Pamphlet C–12, Qualification Procedure for Acetylene Cylinder Design, 1994, into § 173.301; 173.303; 178.59; 178.60.

(11) CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 2000, Fourth Edition, into § 173.303; 180.205; 180.209.

(12) CGA Pamphlet C–14, Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems, 1979, into § 173.301; 173.323.

(13) CGA Pamphlet G–2.2, Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, 1985, Second Edition, Reaffirmed 1997, into § 173.315.

(14) CGA Pamphlet G–4.1, Cleaning Equipment for Oxygen Service, 1985, into § 178.338–15.

(15) CGA Pamphlet P–20, Standard for the Classification of Toxic Gas Mixtures, 1995, into § 173.115.

(16) CGA Pamphlet P–20, Standard for the Classification of Toxic Gas Mixtures, 2003, Third Edition, into § 173.115.

(17) CGA S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, (with the exception of paragraph 9.1.1.1), Twelfth Edition, 2005, into § 173.301, 173.304a 178.75.

(18) CGA Pamphlet S–1.2, Safety Relief Device Standards Part 2—Cargo and Portable Tanks for Compressed Gases, 1980, into § 173.315; 173.318; 178.276; 178.277.

(19) CGA S–7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 2005, into § 173.301.

(20) CGA Technical Bulletin TB–2, Guidelines for Inspection and Repair of MC–330 and MC–331 Cargo Tanks, 1980, into § 180.407; 180.413.

(21) CGA Technical Bulletin TB–25, Design Considerations for Tube Trailers, 2008 Edition, into § 173.301.

(o) *Department of Defense (DOD),* 2461 Eisenhower Avenue, Alexandria, VA 22331.

(1) DOD TB 700–2; NAVSEAINST 8020.8B; AFTO 11A–1–47; DLAR 8220.1: Explosives Hazard Classification Procedures, January 1998, into § 173.56.

(2) Packaging of Hazardous Material, DLAD 4145.41/AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B, January 14, 2000, into § 173.7

(p) *Department of Energy (USDOE),* 100 Independence Avenue SW., Washington, DC 20545. USDOE publications available from: Superintendent of Documents, Government Printing Office (GPO) or The National Technical Information Service (NTIS).

(1) USDOE, CAPE–1662, Revision 1, and Supplement 1, Civilian Application Program Engineering Drawings, April 6, 1988, into §§ 178.356–1; 178.356–2; 178.358–1; 178.358–2; 178.358–3; 178.358–4.

(2) USDOE, Material and Equipment Specification No. SP–9, Rev. 1, and Supplement—Fire Resistant Phenolic Foam, March 28, 1968, into §§ 178.356–2; 178.358–2.

(3) USDOE, KSS–471,—Proposal for Modifications to U.S. Department of Transportation Specification 21PF–1, Fire and Shock Resistant Phenolic Foam—Insulated Metal Overpack, November 30, 1986, into § 178.358–1; 178.358–3.

(q) *General Services Administration,* Specification Office, Room 6662, 7th and D Street, S.W., Washington, DC 20407.

(1) Federal Specification RR–C–901D, Cylinders, Compressed Gas: Seamless Shatterproof, High Pressure DOT 3AA Steel, and 3AL Aluminum, February 21, 2003, into §§ 173.302; 173.336; 173.337.

(2) [Reserved]

(r) *Institute of Makers of Explosives,* 1120 19th Street NW., Suite 310, Washington, DC 20036–3605.

(1) IME Standard 22,IME Safety Library Publication No. 22, Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, February 2007, into §§ 173.63; 177.835.

(2) [Reserved]

(s) *International Atomic Energy Agency (IAEA),* P.O. Box 100, Wagramer Strasse 5, A–1400 Vienna, Austria. Also available from: Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, USA; or Renouf Publishing Company, Ltd., 812 Proctor Avenue, Ogdensburg, New York 13669, USA.

(1) No. TS–R–1 (ST–1, Revised), Regulations for the Safe Transport of Radioactive Material, (IAEA Regulations), 1996 Edition (Revised), into § 171.22; 171.23; 171.26, 173.415, 173.416, 173.417, 173.473.

(2) [Reserved]

(t) *International Civil Aviation Organization* (''ICAO''), 999 University Street, Montréal, Quebec H3C 5H7, Canada, 1–514–954–8219, *http://www.icao.int.* ICAO Technical Instructions available from: INTEREG, International Regulations, Publishing and Distribution Organization, P.O. Box 60105, Chicago, IL 60660.

(1) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2013–2014 Edition, into §§ 171.8; 171.22; 171.23; 171.24; 172.101; 172.202; 172.401; 172.512; 172.519; 172.602; 173.56; 173.320; 175.10, 175.33; 178.3.

(2) [Reserved]

(u) International Electrotechnical Commission (IEC), 3 rue de Varembé, P.O. Box 131, CH—1211, GENEVA 20, Switzerland.

(1) IEC 62282–6–100:2010(E), Fuel cell technologies—Part 6–100: Micro fuel cell power systems—Safety, Edition 1.0, March 2010, into §§ 173.230; 175.10.

(2) 62282–6–100 Amend. 1 IEC 2012(E), Amendment 1 to IEC 62282–6–100: Fuel cell technologies—Part 6–100: Micro fuel cell power systems—Safety,

Edition 1.0, October 2012, into §§ 173.230; 175.10

(v) *International Maritime Organization (''IMO''),* 4 Albert Embankment, London, SE1 7SR, United Kingdom or New York Nautical Instrument & Service Corporation, 140 West Broadway, New York, NY 10013, +44 (0) 20 7735 7611, *http://www.imo.org.*

(1) International Convention for the Safety of Life at Sea, 1974, Consolidated Edition (SOLAS), Chapter II–2, Construction—Fire protection, fire detection and fire extinction, Regulation 19, Carriage of dangerous goods, Fifth Edition 2009, into §§ 176.63, 176.84.

(2) International Maritime Dangerous Goods Code (IMDG Code), Incorporating Amendment 36–12 (English Edition), 2011, into §§ 171.22; 171.23; 171.25; 172.101 172.202; 172.203 172.401; 172.502; 172.519; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 178.3; 178.274.

(w) *International Organization for Standardization,* Case Postale 56, CH–1211, Geneve 20, Switzerland, *http://www.iso.org.* Also available from: ANSI 25, West 43rd Street, New York, NY 10036, 1–212–642–4900, *http://www.ansi.org.*

(1) ISO 535–1991(E) Paper and board—Determination of water absorptiveness—Cobb method, 1991, into § 178.516; 178.707; 178.708.

(2) ISO 1496–1: 1990 (E)—Series 1 freight containers—Specification and testing, Part 1: General cargo containers. Fifth Edition, (August 15, 1990), into § 173.411.

(3) ISO 1496–3(E)—Series 1 freight containers—Specification and testing—Part 3: Tank containers for liquids, gases and pressurized dry bulk, Fourth edition, March 1995, into § 178.74; 178.75; 178.274.

(4) ISO 1516:2002(E), Determination of flash/no flash—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(5) ISO 1523:2002(E), Determination of flash point—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(6) ISO 2431–1984(E) Standard Cup Method, 1984, into § 173.121.

(7) ISO 2592:2000(E), Determination of flash and fire points—Cleveland open cup method, Second Edition, 2000–09–15, into § 173.120.

(8) ISO 2719:2002(E), Determination of flash point—Pensky-Martens closed cup method, Third Edition, 2002–11–15, into § 173.120.

(9) ISO 2919–1980(E) Sealed radioactive sources—Classification, 1980, into § 173.469.

(10) ISO 3036–1975(E) Board—Determination of puncture resistance, 1975, into § 178.708.

(11) ISO 3405:2000(E), Petroleum products—Determination of distillation characteristics at atmospheric pressure, Third Edition, 2000–03–01, into § 173.121.

(12) ISO 3574–1986(E) Cold-reduced carbon steel sheet of commercial and drawing qualities, into § 178.503; Part 178, appendix C.

(13) ISO 3679:2004(E), Determination of flash point—Rapid equilibrium closed cup method, Third Edition, 2004–04–01, into § 173.120.

(14) ISO 3680:2004(E), Determination of flash/no flash—Rapid equilibrium closed cup method, Fourth Edition, 2004–04–01, into § 173.120.

(15) ISO 3807–2(E), Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs, First edition, March 2000, into §§ 173.303; 178.71.

(16) ISO 3924:1999(E), Petroleum products—Determination of boiling range distribution—Gas chromatography method, Second Edition, 1999–08–01, into § 173.121.

(17) ISO 4126–1:2004(E): Safety devices for protection against excessive pressure—Part 1: Safety valves, Second edition 2004–02–15, into § 178.274.

(18) ISO 4126–7:2004(E): Safety devices for protection against excessive pressure—Part 7: Common data, First Edition 2004–02–15 into § 178.274.

(19) ISO 4126–7:2004/Cor.1:2006(E): Safety devices for protection against excessive pressure—Part 7: Common data, Technical Corrigendum 1, 2006–11–01, into § 178.274.

(20) ISO 4626:1980(E), Volatile organic liquids—Determination of boiling range of organic solvents used as raw materials, First Edition, 1980–03–01, into § 173.121.

(21) ISO 4706:2008(E), Gas cylinders—Refillable welded steel cylinders—Test pressure 60 bar and below, First Edition, 2008–04–15, Corrected Version, 2008–07–01, into § 178.71.

(22) ISO 6406(E), Gas cylinders—Seamless steel gas cylinders—Periodic inspection and testing, Second edition, February 2005, into § 180.207.

(23) ISO 6892 Metallic materials—Tensile testing, July 15, 1984, First Edition, into § 178.274.

(24) ISO 7225(E), Gas cylinders—Precautionary labels, Second Edition, July 2005, into § 178.71.

(25) ISO 7866(E), Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing, First edition, June 1999, into § 178.71.

(26) ISO 8115 Cotton bales—Dimensions and density, 1986 Edition, into § 172.102.

(27) ISO 9809–1(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa., First edition, June 1999, into §§ 178.71; 178.75.

(28) ISO 9809–2(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., First edition, June 2000, into §§ 178.71; 178.75.

(29) ISO 9809–3 (E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, First edition, December 2000, into §§ 178.71; 178.75.

(30) ISO 9978:1992(E)—Radiation protection—Sealed radioactive sources—Leakage test methods. First Edition, (February 15, 1992), into § 173.469.

(31) ISO 10156:2010(E): Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Third edition, 2010–04–01, into § 173.115.

(32) ISO 10156:2010/Cor.1:2010(E): Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Technical Corrigendum 1, 2010–09–01, into § 173.115.

(33) ISO 10297:2006(E), Transportable gas cylinders—Cylinder valves—Specification and type testing, Second Edition, 2006–01–15, into § 173.301b; 178.71.

(34) ISO 10461:2005(E), Gas cylinders—Seamless aluminum-alloy gas cylinders—Periodic inspection and testing, Second Edition, 2005–02–15 and Amendment 1, 2006–07–15, into § 180.207.

(35) ISO 10462 (E), Gas cylinders—Transportable cylinders for dissolved acetylene—Periodic inspection and maintenance, Second edition, February 2005, into § 180.207.

(36) ISO 10692–2:2001(E), Gas cylinders—Gas cylinder valve connections for use in the micro-electronics industry—Part 2: Specification and type testing for valve to cylinder connections, First Edition, 2001–08–01, into § 173.40.

(37) ISO 11114–1(E), Transportable gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials, First edition, October 1997, into §§ 173.301b; 178.71.

(38) ISO 11114–2(E), Transportable gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials, First edition, December 2000, into §§ 173.301b; 178.71.

(39) ISO 11117:2008(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Second edition, 2008–09–01, into § 173.301b.

(40) ISO 11117:2008/Cor.1:2009(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Technical Corrigendum 1, 2009–05–01, into § 173.301b.

(41) ISO 11118(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, First edition, October 1999, into § 178.71.

(42) ISO 11119–1(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders, First edition, May 2002, into § 178.71.

(43) ISO 11119–2(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners, First edition, May 2002, into § 178.71.

(44) ISO 11119–3(E), Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-load-sharing metallic or non-metallic liners, First edition, September 2002, into § 178.71.

(45) ISO 11120(E), Gas cylinders—Refillable seamless steel tubes of water capacity between 150 L and 3000 L—Design, construction and testing, First edition, March 1999, into §§ 178.71; 178.75.

(46) ISO 11621(E), Gas cylinders—Procedures for change of gas service, First edition, April 1997, into §§ 173.302, 173.336, 173.337.

(47) ISO 11623(E), Transportable gas cylinders—Periodic inspection and testing of composite gas cylinders, First edition, March 2002, into § 180.207.

(48) ISO 13340:2001(E) Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04–01, into §§ 173.301b; 178.71.

(49) ISO 13736:2008(E), Determination of flash point—Abel closed-cup method, Second Edition, 2008–09–15, into § 173.120.

(50) ISO 16111:2008(E), Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride, First Edition, 2008–11–15, into §§ 173.301b; 173.311; 178.71.

(51) ISO 18172–1:2007(E), Gas cylinders—Refillable welded stainless steel cylinders—Part 1: Test pressure 6 MPa and below, First Edition, 2007–03–01, into § 178.71.

(52) ISO 20703:2006(E), Gas cylinders—Refillable welded aluminum-alloy cylinders—Design, construction and testing, First Edition, 2006–05–01, into § 178.71.

(x) *National Board of Boiler and Pressure Vessel Inspectors,* 1055 Crupper Avenue, Columbus, Ohio 43229.

(1) NB–23, National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, 1992 Edition, into § 180.413.

(2) [Reserved]

(y) *National Fire Protection Association,* 1 Batterymarch Park, Quincy, MA, 02169–7471 1–617–770–3000, *http://www.nfpa.org.*

(1) NFPA 58-Liquefied Petroleum Gas Code, 2001 Edition, into §§ 173.5, 173.315.

(2) NFPA 498-Standards for Safe Havens and Interchange Lots for Vehicles Transporting Explosives, 2010 Edition, into § 177.835.

(z) *National Institute of Standards and Technology,* Department of Commerce, 5285 Port Royal Road, Springfield, VA 22151.

(1) USDC, NBS Handbook H–28 (1957), 1957 Handbook of Screw-Thread Standards for Federal Services, December 1966 Edition, into §§ 179.2; 178.45; 178.46.

(2) [Reserved]

(aa) *Organization for Economic Cooperation and Development (OECD),* OECD Publications and Information Center, 2001 L Street, N.W., Suite 700, Washington, DC 20036.

(1) Test No. 404: Acute Dermal Irritation/Corrosion, OECD Guidelines for the Testing of Chemicals, Section 4: Health Effects, adopted April 24, 2002, into § 173.137.

(2) Test No. 430: In VitroSkin Corrosion: Transcutaneous Electrical Resistance Test (TER), OECD Guidelines for the Testing of Chemicals, Section 4: Health Effects, adopted April 13, 2004, into § 173.137.

(3) OECD (2004), Test No. 431: In VitroSkin Corrosion: Human Skin Model Test, OECD Guidelines for the Testing of Chemicals, Section 4: Health Effects, OECD Publishing, adopted April 13, 2004, into § 173.137.

(4) Test No. 435: In VitroMembrane Barrier Test Method for Skin Corrosion, OECD Guidelines for the Testing of Chemicals, Section 4: Health Effects, adopted July 19, 2006, into § 173.137.

(bb) *Transport Canada,* TDG Canadian Government Publishing Center, Supply and Services, Canada, Ottawa, Ontario, Canada K1A 059, 416–973–1868, *http://www.tc.gc.ca.*

(1) Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), into §§ 171.12; 171.22; 171.23; 172.401; 172.502; 172.519; 172.602; 173.31; 173.32; 173.33.

(i) SOR 2001–286, including Clear Language Amendments, August 2001.

(ii) SOR/2002–306 August 8, 2002.

(iii) SOR/2003–273 July 24, 2003

(iv) SOR/2003–400 December 3, 2003

(v) SOR/2005–216 July 13, 2005

(vi) SOR/2005–279 September 21, 2005

(vii) SOR/2008–34 February 7, 2008

(viii) SOR/2007–179 July 31, 2007

(2) [Reserved]

(cc) *Truck Trailer Manufacturers Association,* 1020 Princess Street, Alexandria, Virginia 22314.

(1) TTMA RP No. 61–98, Performance of manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks, June 1, 1998, into § 180.405.

(2) TTMA RP No. 81–97, Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks, July 1, 1997 Edition, into §§ 178.345–10; 178.346–3.

(3) TTMA TB No. 107, Procedure for Testing In-Service Unmarked and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers, June 1, 1998 Edition, into § 180.405.

(dd) *United Nations,* Publications, 2 United Nations Plaza, Room DC2–853, New York, NY 10017, 1–212–963–8302, *http://unp.un.org.*

(1) UN Recommendations on the Transport of Dangerous Goods, Model Regulations (UN Recommendations), 17th revised edition, Volumes I and II (2011), into §§ 171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; 178.274.

(2) UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, fifth revised edition, amendment 1 (2011) (Manual of Tests and Criteria), into §§ 172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; 173.220; Part 173, appendix H; 178.274.

(ee) *United States Enrichment Corporation, Inc. (USEC),* USEC Inc., 6903 Rockledge Drive, Bethesda, MD 20817.

(1) USEC–651—Good Handling Practices for Uranium Hexafluoride, Revision 8, January 1999, into § 173.417.

(2) [Reserved]

TABLE 1 TO 49 CFR 171.7—MATERIALS NOT INCORPORATED BY REFERENCE

Source and name of material	49 CFR reference
American Biological Safety Association 1202 Allanson Road, Mundelein, IL 60060:	
Risk Group Classification for Infectious Agents, 1998	173.134.
American Institute of Chemical Engineers (AIChE), 3 Park Avenue New York, NY 10016–5991:	
Process Safety Progress Journal, Vol. 21, No. 2, Example of a Test Method for Venting Sizing: OPPSD/SPI Methodology.	Note to § 173. 225(h)(3)(vi).
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428 (Non-current ASTM Standards are available from: Engineering Societies Library, 354 East 47th Street, New York, NY 10017):	
ASTM E 380–89 Standards for Metric Practice	171.10
Association of American Railroads, American Railroads Building, 50 F Street, NW., Washington, DC 20001:	
AAR Catalog Nos. SE60CHT; SE60CC; SE60CHTE; SE60CE; SE60DC; SE60DE	179.14
AAR Catalog Nos. SE67CC; SE67CE; SE67BHT; SE67BC; SE67BHTE; SE67BE	179.14
AAR Catalog Nos. SE68BHT; SE68BC; SE68BHTE; SE68BE	179.14
AAR Catalog Nos. SE69AHTE; SE69AE	179.14
AAR Catalog Nos. SF70CHT; SF70CC; SF70CHTE; SF70CE	179.14
AAR Catalog Nos. SF73AC; SF73AE; SF73AHT; SF73AHTE	179.14
AAR Catalog Nos. SF79CHT; SF79CC; SF79CHTE; SF79CE	179.14
Bureau of Explosives, Hazardous Materials Systems (BOE), Association of American Railroads, American Railroads Building, 50 F Street NW., Washington, DC 20001:	
Fetterley's Formula (The Determination of the Relief Dimensions for Safety Valves on Containers in which Liquefied gas is charged and when the exterior surface of the container is exposed to a temperature of 1,200 °F.).	173.315
Intermodal Loading Guide for Products in Closed Trailers and Containers, issued June 2001	174.55; 174.101; 174.112; 174.115.
Pamphlet 6, Illustrating Methods for Loading and Bracing Carload and Less-Than-Carload Shipments of Explosives and Other Dangerous Articles, 1962.	174.55; 174.101; 174.112; 174.115; 174.290.
Pamphlet 6A (includes appendix No. 1, October 1944 and appendix 2, December 1945), Illustrating Methods for Loading and Bracing Carload and Less-Than-Carload Shipments of Loaded Projectiles, Loaded Bombs, etc., 1943.	174.101; 174.290
Pamphlet 6C, Illustrating Methods for Loading and Bracing Trailers and Less-Than-Trailer Shipments of Explosives and Other Dangerous Articles Via Trailer-on-Flatcar (TOFC) or Container-on-Flatcar (COFC), 1985.	174.55; 174.63; 174.101; 174.112; 174.115
Emergency Handling of Hazardous Materials in Surface Transportation, 1989	171.7
Centers for Disease Control and Prevention 1600 Clifton Road, Atlanta, GA 30333:	
Biosafety in Microbiological and Biomedical Laboratories, Fourth Edition, April 1999	173.134
Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151:	
CGA C–1.1, Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion Method, 2004, First Edition.	180.209
National Institutes of Health Bethesda, MD 20892:	
NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines), January 2001, Appendix B.	173.134
Pantone Incorporated 590 Commerce Boulevard, Carlstadt, New Jersey 07072–3098:	
Pantone ®Formula guide coated/uncoated, Second Edition 2004	172.407, 172.519
Society of Plastics Industries, Inc., Organic Peroxide Producers Safety Division, 1275 K Street NW., Suite 400, Washington, DC 20005:	
Self Accelerating Decomposition Temperature Test, 1972	173.21
Truck Trailer Manufacturers Association, 1020 Princess Street, Alexandria, Virginia 22314, telephone (703) 549–3010, *http://www.ttmanet.org:*	
TTMA RP No. 96–01, TTMA RP No. 96–01, Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks, January 2001 Edition.	178.345–3

■ 3. In § 171.8, the definition of ''Flexible bulk container'' is added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Flexible bulk container means a flexible container with a capacity not exceeding 15 cubic meters and includes liners and attached handling devices and service equipment.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

■ 5. In § 172.101:

■ a. Paragraph (c)(10)(i) introductory text is revised;

■ b. The first sentence in paragraph (c)(10)(iii) is revised;

■ c. Paragraph (k) is revised; and

■ d. The Hazardous Materials Table is amended by removing the entries under ''[REMOVE]'', by adding the entries under ''[ADD]'', and revising entries under ''[REVISE]'' in the appropriate alphabetical sequence.

The revisions and additions read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(10) *Mixtures and solutions.* (i) A mixture or solution meeting the definition of one or more hazard class that is not identified specifically by name, comprised of a single predominant hazardous material identified in the Table by technical name and one or more hazardous and/or non-hazardous material, must be described using the proper shipping name of the hazardous material and the qualifying word ''mixture'' or ''solution'', as appropriate, unless—

* * * * *

(iii) A mixture or solution meeting the definition of one or more hazard class that is not identified in the Table specifically by name, comprised of two or more hazardous materials in the same hazard class, must be described using an appropriate shipping description (e.g., ''Flammable liquid, n.o.s.''). * * *

* * * * *

(k) Column 10: Vessel stowage requirements. Column 10A [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels. Column 10B [Other provisions] specifies codes for stowage requirements for specific hazardous materials. Hazardous materials offered for transportation as limited quantities are allocated stowage category A and are not subject to the stowage codes assigned by column 10B. The meaning of each code in Column 10B is set forth in § 176.84 of this subchapter. Section 176.63 of this subchapter sets forth the physical requirements for each of the authorized locations listed in Column 10A. (For bulk transportation by vessel, see 46 CFR parts 30 to 40, 70, 98, 148, 151, 153 and 154.) The authorized stowage locations specified in Column 10A are defined as follows:

(1) Stowage category ''A'' means the material may be stowed ''on deck'' or ''under deck'' on a cargo vessel or on a passenger vessel.

(2) Stowage category ''B'' means—

(i) The material may be stowed ''on deck'' or ''under deck'' on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each 3 m of overall vessel length; and

(ii) ''On deck only'' on passenger vessels in which the number of passengers specified in paragraph (k)(2)(i) of this section is exceeded.

(3) Stowage category ''C'' means the material must be stowed ''on deck only'' on a cargo vessel or on a passenger vessel.

(4) Stowage category ''D'' means the material must be stowed ''on deck only'' on a cargo vessel or on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers or one passenger per each 3 m of overall vessel length, but the material is prohibited on a passenger vessel in which the limiting number of passengers is exceeded.

(5) Stowage category ''E'' means the material may be stowed ''on deck'' or ''under deck'' on a cargo vessel or on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each 3 m of overall vessel length, but is prohibited from carriage on a passenger vessel in which the limiting number of passengers is exceeded.

(6) Stowage category ''01'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) or on a passenger vessel.

(7) Stowage category ''02'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) or ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transport units on a passenger vessel.

(8) Stowage category ''03'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel.

(9) Stowage category ''04'' means the material may be stowed ''on deck'' in closed cargo transport units or ''under deck'' in closed cargo transports on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel.

(10) Stowage category ''05'' means the material may be stowed ''on deck'' in closed cargo transport units on a cargo vessel (up to 12 passengers) but the material is prohibited on a passenger vessel.

* * * * *

§ 172.101 Hazardous Materials Table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	*	*		*	*	*	*	*	*				
	Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	48, 87, 126
	Aerosols, *flammable, (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	304	None	Forbidden	150 kg	A	48, 87, 126
	Aerosols, *non-flammable, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2		306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, *poison, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	48, 87, 126
	*		*		*	*	*		*	*			
	Amyl chlorides	3	UN1107	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B	
	*		*		*	*	*		*	*			
	Amyl mercaptans	3	UN1111	II	3	A3, A6, IB2, T4, TP1.	None	202	242	5 L	60 L	B	95, 102
	*		*		*	*	*		*	*			
	Amyl nitrites	3	UN1113	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	E	40
	*		*		*	*	*		*	*			
	Butyl mercaptans	3	UN2347	II	3	A3, A6, IB2, T4, TP1.	150	202	242	5 L	60 L	D	52, 95
	*		*		*	*	*		*	*			
	Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.4S	UN0014	II	None		63	62	None	25 kg	100 kg		
	*		*		*	*	*		*	*			
	Iodine monochloride	8	UN1792	II	8	B6, IB8, IP2, IP4, N41, T7, TP2.	None	212	240	Forbidden	50 kg	D	40, 66, 74, 89, 90
	*		*		*	*	*		*	*			
A	Mercury *contained in manufactured articles.*	8	UN2809	III	8		None	164	None	No limit	No limit	B	40, 97
	*		*		*	*	*		*	*			
G	Nitriles, toxic, liquid, n.o.s..	6.1	UN3276	I	6.1	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	52
				II	6.1	IB2, T11, TP2, TP27.	153	202	243	5 L	60 L	B	52
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A	52

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
G	Nitriles, toxic, solid, n.o.s.	6.1	UN3439	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	D	52
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	52
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	52
	*		*		*	*	*		*	*			
G	Organophosphorus compound, toxic, liquid, n.o.s.	6.1	UN3278	I	6.1	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	
				II	6.1	IB2, T11, TP2, TP27.	153	202	243	5 L	60 L	B	
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A	
G	Organophosphorus compound, toxic, solid, n.o.s.	6.1	UN3464	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
	*		*		*	*	*		*	*			
G	Organometallic compound, toxic, liquid, n.o.s.	6.1	UN3282	I	6.1	T14, TP2, TP13, TP27.	None	201	242	1 L	30 L	B	
				II	6.1	IB2, T11, TP2, TP27.	153	202	242	5 L	60 L	B	
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A	
G	Organometallic compound, toxic, solid, n.o.s.	6.1	UN3467	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
	*		*		*	*	*		*	*			
G	Toxic by inhalation liquid, corrosive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3492	I	6.1, 8, 3	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40, 125

G	Toxic by inhalation liquid, corrosive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3493	I	6.1, 8, 3	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40, 125
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3488	I	6.1, 3, 8	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40, 125
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3489	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40, 125
G	Toxic by inhalation liquid, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3381	I	6.1	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3382	I	6.1	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3383	I	6.1, 3	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3384	I	6.1, 3	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3385	I	6.1, 4.3	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3386	I	6.1, 4.3	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3490	I	6.1, 4.3, 3	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	21, 28, 40, 49
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3491	I	6.1, 4.3, 3	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	21, 28, 40, 49
G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3387	I	6.1, 5.1	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3388	I	6.1, 5.1	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40

G	Toxic by inhalation liquid, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3389	I	6.1, 8	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, corrosive, n.o.s. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3390	I	6.1, 8	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Vinyltrichlorosilane, stabilized.	3	UN1305	II	3, 8	A3, A7, B6, N34, T10, TP2, TP7, TP13.	None	206	243	1 L	5 L	B	40
*	*	*	*	*	*	*	*	*	*	*	*	*	*
[ADD]													
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 8	A34	306	None	None	75 kg	150 kg	A	25, 87, 126
	Aerosols, *flammable, (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	None	None	75 kg	150 kg	A	25, 87, 126
	Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	304	None	Forbidden	150 kg	A	25, 87, 126
	Aerosols, *non-flammable, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2		306	None	None	75 kg	150 kg	A	25, 87, 126
	Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	25, 87, 126
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Amyl chloride	3	UN1107	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B	
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Amyl mercaptan	3	UN1111	II	3	A3, A6, IB2, T4, TP1.	None	202	242	5 L	60 L	B	95, 102
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Amyl nitrite	3	UN1113	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	E	40
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Butyl mercaptan	3	UN2347	II	3	A3, A6, IB2, T4, TP1.	150	202	242	5 L	60 L	D	52, 95
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Capacitor, *electric double layer (with an energy storage capacity greater than 0.3 Wh).*	9	UN3499		9	361	176	176	176	No limit	No limit	A	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cartridges for weapons, blank *or* Cartridges, small arms, blank *or* Cartridges for tools, blank.	1.4S	UN0014	II	1.4S		63	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
G	Chemical under pressure, corrosive, n.o.s.	2.2	UN3503		2.2, 8	362, T50, TP40	None	335	313	Forbidden	100 kg	D	40
G	Chemical under pressure, flammable, corrosive, n.o.s.	2.1	UN3505		2.1, 8	362, T50, TP40	None	335	313	Forbidden	75 kg	D	40
G	Chemical under pressure, flammable, n.o.s.	2.1	UN3501		2.1	362, T50, TP40	None	335	313	Forbidden	75 kg	D	40
G	Chemical under pressure, flammable, toxic, n.o.s.	2.1	UN3504		2.1, 6.1	362, T50, TP40	None	335	313	Forbidden	75 kg	D	40
G	Chemical under pressure, n.o.s.	2.2	UN3500		2.2	362, T50, TP40	None	335	313	75 kg	150 kg	B	
G	Chemical under pressure, toxic, n.o.s.	2.2	UN3502		2.2, 6.1	362, T50, TP40	None	335	313	Forbidden	100 kg	D	40
	*		*		*	*	*		*	*			
	Iodine monochloride, liquid.	8	UN3498	II	8	IB2, T7, TP2	154	202	242	1 L	30 L	D	40, 66, 74, 89, 90
	Iodine monochloride, solid.	8	UN1792	II	8	B6, IB8, IP2, IP4, N41, T7, TP2.	None	212	240	Forbidden	50 kg	D	40, 66, 74, 89, 90
	*		*		*	*	*		*	*			
	Krill meal	4.2	UN3497	II	4.2	155, IB6, IP2, T3, TP33.	None	212	242	No limit	No limit	B	25, 88, 128
				III	4.2	155, IB8, IP3, T1, TP33.	None	213	242	No limit	No limit	A	128
	*		*		*	*	*		*	*			
A W	Mercury contained in manufactured articles.	8	UN3506	III	8, 6.1	A191	164	None	None	No limit	No limit	B	40, 97
	*		*		*	*	*		*	*			
G	Nitriles, liquid, toxic, n.o.s.	6.1	UN3276	I	6.1	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	52
				II	6.1	IB2, T11, TP2, TP27.	153	202	243	5 L	60 L	B	52
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A	52
G	Nitriles, solid, toxic, n.o.s.	6.1	UN3439	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	D	52
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	52
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	52

	*		*		*	*	*	*	*	*				
G	Organometallic compound, liquid, toxic, n.o.s.	6.1	UN3282	I	6.1	T14, TP2, TP13, TP27.	None	201	242	1 L	30 L	B		
				II	6.1	IB2, T11, TP2, TP27.	153	202	242	5 L	60 L	B		
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A		
G	Organometallic compound, solid, toxic, n.o.s.	6.1	UN3467	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B		
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B		
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A		
	*		*		*	*	*	*	*	*				
G	Organophosphorus compound, liquid, toxic, n.o.s.	6.1	UN3278	I	6.1	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B		
				II	6.1	IB2, T11, TP2, TP27.	153	202	243	5 L	60 L	B		
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A		
	*		*		*	*	*	*	*	*				
G	Organophosphorus compound, solid, toxic, n.o.s.	6.1	UN3464	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B		
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B		
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A		
	*		*		*	*	*	*	*	*				
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3488	I	6.1, 3, 8	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40, 125	
G	Toxic by inhalation liquid, flammable, corrosive, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3489	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40, 125	
G	Toxic by inhalation liquid, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3381	I	6.1	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40	
G	Toxic by inhalation liquid, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3382	I	6.1	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40	

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Toxic by inhalation liquid, flammable, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3383	I	6.1, 3	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, flammable, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3384	I	6.1, 3	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3385	I	6.1, 4.3	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3386	I	6.1, 4.3	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3490	I	6.1, 4.3, 3	1, B9, B14, B30, B72, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	21, 28, 40, 49
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an LC50 lower or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3491	I	6.1, 4.3, 3	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	21, 28, 40, 49
G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3387	I	6.1, 5.1	1, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40

G	Toxic by inhalation liquid, oxidizing, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3388	I	6.1, 5.1	2, B9, B14, B32, T20, TP2, TP13, TP38, TP44.	None	227	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, corrosive, n.o.s. *with an LC50 lower than or equal to 200 ml/m³ and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3389	I	6.1, 8	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
G	Toxic by inhalation liquid, corrosive, n.o.s. *with an LC50 lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC50.*	6.1	UN3390	I	6.1, 8	2, B9, B14, B32, T20, TP2, TP13, TP27, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Vinyltrichlorosilane	3	UN1305	II	3, 8	A3, A7, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	B	40
	*		*		*	*	*		*	*			
	[REVISE]												
	*		*		*	*	*		*	*			
I	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	1.4G	UN0503	II	1.4G	161, A200	None	62	None	Forbidden	75 kg	02	25
	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	9	UN3268	III	9	160, A200	166	166	166	25 kg	100 kg	A	
	*		*		*	*	*		*	*			
	Ammonium nitrate based fertilizer.	5.1	UN2067	III	5.1	52, 150, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	B	25, 59, 60, 66, 117
	Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives.*	5.1	UN3375	II	5.1	147, 163	None	214	214	Forbidden	Forbidden	D	25, 59, 60, 66, 124
	*		*		*	*	*		*	*			
D	Ammonium nitrate-fuel oil mixture *containing only prilled ammonium nitrate and fuel oil.*	1.5D	NA0331	II	1.5D		None	62	None	Forbidden	Forbidden	03	25, 19E

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Ammonium nitrate, *with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	1.1D	UN0222	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance.*	5.1	UN1942	III	5.1	A1, A29, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	25, 59, 60, 116
	*		*		*	*	*		*	*			
	Ammonium perchlorate	1.1D	UN0402	II	1.1D	107	None	62	None	Forbidden	Forbidden	04	25, 19E
	*		*		*	*	*		*	*			
	Ammonium picrate, *dry or wetted with less than 10 percent water, by mass.*	1.1D	UN0004	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E, 19E
	*		*		*	*	*		*	*			
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.2G	UN0171	II	1.2G			62	62	Forbidden	Forbidden	03	25
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.3G	UN0254	II	1.3G			62	62	Forbidden	Forbidden	03	25
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.4G	UN0297	II	1.4G			62	62	Forbidden	75 kg	02	25
	Ammunition, incendiary *liquid or gel, with burster, expelling charge or propelling charge.*	1.3J	UN0247	II	1.3J			62	None	Forbidden	Forbidden	05	25, 23E
	*		*		*	*	*		*	*			
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge.*	1.2H	UN0243	II	1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E

Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge.*	1.3H	UN0244	II	1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge.*	1.2G	UN0009	II	1.2G			62	62	Forbidden	Forbidden	03	25
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge.*	1.3G	UN0010	II	1.3G			62	62	Forbidden	Forbidden	03	25
Ammunition, incendiary *with or without burster, expelling charge or propelling charge.*	1.4G	UN0300	II	1.4G			62	62	Forbidden	75 kg	02	25
Ammunition, practice	1.4G	UN0362	II	1.4G			62	62	Forbidden	75 kg	02	25
Ammunition, practice	1.3G	UN0488	II	1.3G			62	62	Forbidden	Forbidden	03	25
Ammunition, proof	1.4G	UN0363	II	1.4G			62	62	Forbidden	75 kg	02	25
*		*		*	*	*		*	*			
Ammunition smoke, white phosphorus *with burster, expelling charge, or propelling charge.*	1.2H	UN0245	II	1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Ammunition, smoke, white phosphorus *with burster, expelling charge, or propelling charge.*	1.3H	UN0246	II	1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.2G	UN0015	II	1.2G			62	62	Forbidden	Forbidden	03	25, 17E
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.3G	UN0016	II	1.3G			62	62	Forbidden	Forbidden	03	25, 17E
Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.4G	UN0303	II	1.4G			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
*		*		*	*	*		*	*			
Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.2G	UN0018	II	1.2G, 8, 6.1.			62	62	Forbidden	Forbidden	03	25, 17E
Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.3G	UN0019	II	1.3G, 8, 6.1.			62	62	Forbidden	Forbidden	03	25, 17E
Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.4G	UN0301	II	1.4G, 8, 6.1.			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
*		*		*	*	*		*	*			
Ammunition, toxic *with burster, expelling charge or propelling charge.*	1.2K	UN0020	II	1.2K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Ammunition, toxic *with burster, expelling charge or propelling charge.*	1.3K	UN0021	II	1.3K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	*		*		*	*	*		*	*			
	Articles, explosive, extremely insensitive *or* Articles, EEI.	1.6N	UN0486	II	1.6N		None	62	None	Forbidden	Forbidden	03	25
G	Articles, explosive, n.o.s	1.4S	UN0349	II	1.4S	101	None	62	None	25 kg	100 kg	01	25
G	Articles, explosive, n.o.s	1.4B	UN0350	II	1.4B	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s	1.4C	UN0351	II	1.4C	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s	1.4D	UN0352	II	1.4D	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s	1.4G	UN0353	II	1.4G	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s	1.1L	UN0354	II	1.1L	101	None	62	None	Forbidden	Forbidden	02	25, 14E, 15E
G	Articles, explosive, n.o.s	1.2L	UN0355	II	1.2L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s	1.3L	UN0356	II	1.3L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s	1.1C	UN0462	II	1.1C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.1D	UN0463	II	1.1D	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.1E	UN0464	II	1.1E	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.1F	UN0465	II	1.1F	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s	1.2C	UN0466	II	1.2C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.2D	UN0467	II	1.2D	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.2E	UN0468	II	1.2E	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.2F	UN0469	II	1.2F	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s	1.3C	UN0470	II	1.3C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s	1.4E	UN0471	II	1.4E	101	None	62	None	Forbidden	75 kg	03	25
G	Articles, explosive, n.o.s	1.4F	UN0472	II	1.4F	101	None	62	None	Forbidden	Forbidden	05	25
	*		*		*	*	*		*	*			
	Articles, pyrophoric	1.2L	UN0380	II	1.2L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Articles, pyrotechnic *for technical purposes.*	1.1G	UN0428	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic *for technical purposes.*	1.2G	UN0429	II	1.2G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic *for technical purposes.*	1.3G	UN0430	II	1.3G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic *for technical purposes.*	1.4G	UN0431	II	1.4G		None	62	None	Forbidden	75 kg	02	25
	Articles, pyrotechnic *for technical purposes.*	1.4S	UN0432	II	1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
A, G	Aviation regulated liquid, n.o.s.	9	UN3334		9	A35, A189	155	204		450 L	450 L	A	
A, G	Aviation regulated solid, n.o.s.	9	UN3335		9	A35	155	204		400 kg	400 kg	A	

*		*		*	*	*		*	*				
Barium azide, *dry or wetted with less than 50 percent water, by mass.*	1.1A	UN0224	II	1.1A, 6.1	111, 117	None	62	None	Forbidden	Forbidden	05	25	
*		*		*	*	*		*	*				
Batteries, dry, containing potassium hydroxide solid, *electric storage.*	8	UN3028	III	8	237	None	213	None	25 kg	230 kg	A	52	
*		*		*	*	*		*	*				
Batteries, nickel-metal hydride see Batteries, dry, sealed, n.o.s. *for nickel-metal hydride batteries transported by modes other than vessel.*	9	UN3496		9	340						A	25	
*		*		*	*	*		*	*				
Batteries, wet, filled with acid, *electric storage.*	8	UN2794	III	8	A51	159	159	159	30 kg	No limit	A	146	
Batteries, wet, filled with alkali, *electric storage.*	8	UN2795	III	8	A51	159	159	159	30 kg	No limit	A	52, 146	
*		*		*	*	*		*	*				
Benzyldimethylamine	8	UN2619	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	25, 40	
*		*		*	*	*		*	*				
Black powder, compressed *or* Gunpowder, compressed *or* Black powder, in pellets *or* Gunpowder, in pellets.	1.1D	UN0028	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
Black powder *or* Gunpowder, *granular or as a meal.*	1.1D	UN0027	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
*		*		*	*	*		*	*				
Bombs, photo-flash	1.1F	UN0037	II	1.1F			62	None	Forbidden	Forbidden	05	25	
Bombs, photo-flash	1.1D	UN0038	II	1.1D			62	62	Forbidden	Forbidden	04	25	
Bombs, photo-flash	1.2G	UN0039	II	1.2G			62	62	Forbidden	Forbidden	03	25	
Bombs, photo-flash	1.3G	UN0299	II	1.3G			62	62	Forbidden	Forbidden	03	25	
*		*		*	*	*		*	*				
Bombs, *with bursting charge.*	1.1F	UN0033	II	1.1F			62	None	Forbidden	Forbidden	05	25	
Bombs, *with bursting charge.*	1.1D	UN0034	II	1.1D			62	62	Forbidden	Forbidden	04	25	
Bombs, *with bursting charge.*	1.2D	UN0035	II	1.2D			62	62	Forbidden	Forbidden	04	25	
Bombs, *with bursting charge.*	1.2F	UN0291	II	1.2F			62	None	Forbidden	Forbidden	05	25	
Bombs with flammable liquid, *with bursting charge.*	1.1J	UN0399	II	1.1J			62	None	Forbidden	Forbidden	05	25, 23E	
Bombs with flammable liquid, *with bursting charge.*	1.2J	UN0400	II	1.2J			62	None	Forbidden	Forbidden	05	25, 23E	
Boosters with detonator	1.1B	UN0225	II	1.1B		None	62	None	Forbidden	Forbidden	05	25	
Boosters with detonator	1.2B	UN0268	II	1.2B		None	62	None	Forbidden	Forbidden	05	25	
Boosters, *without detonator.*	1.1D	UN0042	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Boosters, *without detonator*.	1.2D	UN0283	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Boron trifluoride	2.3	UN1008		2.3, 8	2, 238, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Boron trifluoride dimethyl etherate.	4.3	UN2965	I	4.3, 8, 3	A19, T10, TP2, TP7, TP13.	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
	*		*		*	*	*		*	*			
	Bursters, *explosive*	1.1D	UN0043	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene.	4.1	UN2956	III	4.1	159	None	223	None	Forbidden	Forbidden	D	12, 25, 127
	*		*		*	*	*		*	*			
	Calcium hypochlorite, dry, corrosive *or* Calcium hypochlorite mixture, dry, corrosive *with more than 39% available chlorine (8.8% available oxygen)*.	5.1	UN3485	II	5.1, 8	165, 166, A7, A9, IB8, IP2, IP4, IP13, N34, W9.	152	212	None	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
	Calcium hypochlorite, dry *or* Calcium hypochlorite mixture dry *with more than 39% available chlorine (8.8% available oxygen)*.	5.1	UN1748	II	5.1	165, 166, A7, A9, IB8, IP2, IP4, IP13, N34, W9.	152	212	None	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
				III	5.1	165, 171, A7, A9, IB8, IP4, IP13, N34, W9.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142
	Calcium hypochlorite, hydrated, corrosive *or* Calcium hypochlorite, hydrated mixture, corrosive *with not less than 5.5% but not more than 16% water*.	5.1	UN3487	II	5.1, 8	165, IB8, IP2, IP4, IP13, W9.	152	212	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
				III	5.1, 8	165, IB8, IP4, W9.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixture, *with not less than 5.5% but not more than 16% water*.	5.1	UN2880	II	5.1	165, IB8, IP2, IP4, IP13, W9.	152	212	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
				III	5.1	165, 171, IB8, IP4, IP13, W9.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142

Calcium hypochlorite mixture, dry, corrosive *with more than 10% but not more than 39% available chlorine.*	5.1	UN3486	III	5.1, 8	165, A1, A29, IB8, IP3, IP13, N34, W9, W10.	152	213	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 142
*	*		*	*	*	*	*	*				
Calcium hypochlorite mixture, dry, *with more than 10% but not more than 39% available chlorine.*	5.1	UN2208	III	5.1	165, A1, A29, IB8, IP3, IP13, N34, W9, W10.	152	213	240	25 kg	100 kg	D	4, 25, 52, 56, 58, 69, 142
*	*		*	*	*	*	*	*				
Calcium nitrate	5.1	UN1454	III	5.1	34, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	
*	*		*	*	*	*	*	*				
Cartridges, flash	1.1G	UN0049	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
Cartridges, flash	1.3G	UN0050	II	1.3G		None	62	None	Forbidden	75 kg	03	25
Cartridges for weapons, blank.	1.1C	UN0326	II	1.1C		None	62	None	Forbidden	Forbidden	04	25
Cartridges for weapons, blank.	1.2C	UN0413	II	1.2C		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*	*				
Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.3C	UN0327	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.4C	UN0338	II	1.4C		None	62	None	Forbidden	75 kg	02	25
Cartridges for weapons, inert projectile.	1.2C	UN0328	II	1.2C		None	62	62	Forbidden	Forbidden	04	25
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.4S	UN0012	II	1.4S		63	62	None	25 kg	100 kg	01	25
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.4C	UN0339	II	1.4C		None	62	None	Forbidden	75 kg	02	25
Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.3C	UN0417	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
Cartridges for weapons, *with bursting charge.*	1.1F	UN0005	II	1.1F		None	62	None	Forbidden	Forbidden	05	25
Cartridges for weapons, *with bursting charge.*	1.1E	UN0006	II	1.1E		None	62	62	Forbidden	Forbidden	04	25
Cartridges for weapons, *with bursting charge.*	1.2F	UN0007	II	1.2F		None	62	None	Forbidden	Forbidden	05	25
Cartridges for weapons, *with bursting charge.*	1.2E	UN0321	II	1.2E		None	62	62	Forbidden	Forbidden	04	25
Cartridges for weapons, *with bursting charge.*	1.4F	UN0348	II	1.4F		None	62	None	Forbidden	Forbidden	05	25
Cartridges for weapons, *with bursting charge.*	1.4E	UN0412	II	1.4E		None	62	62	Forbidden	75 kg	03	25
Cartridges, oil well	1.3C	UN0277	II	1.3C		None	62	62	Forbidden	Forbidden	04	25
Cartridges, oil well	1.4C	UN0278	II	1.4C		None	62	62	Forbidden	75 kg	02	25
Cartridges, power device	1.3C	UN0275	II	1.3C		None	62	62	Forbidden	75 kg	04	25
Cartridges, power device	1.4C	UN0276	II	1.4C	110	None	62	62	Forbidden	75 kg	02	25
Cartridges, power device	1.4S	UN0323	II	1.4S	110, 347	None	62	62	25 kg	100 kg	01	25
Cartridges, power device	1.2C	UN0381	II	1.2C		None	62	62	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*	*				
Cartridges, signal	1.3G	UN0054	II	1.3G		None	62	None	Forbidden	75 kg	03	25
Cartridges, signal	1.4G	UN0312	II	1.4G		None	62	None	Forbidden	75 kg	02	25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cartridges, signal	1.4S	UN0405	II	1.4S		None	62	None	25 kg	100 kg	01	25
D	Cartridges, small arms	ORM–D			None	222	63	None	None	30 kg gross	Forbidden	A	
D	Cartridges power device *(used to project fastening devices)*.	ORM–D	None		None	222	63	None	None	30 kg gross	Forbidden	A	
	*		*		*	*	*		*	*			
	Cases, cartridge, empty with primer.	1.4S	UN0055	II	1.4S	50	63	62	None	25 kg	100 kg	01	25
	Cases, cartridges, empty with primer.	1.4C	UN0379	II	1.4C	50	None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer.	1.4C	UN0446	II	1.4C		None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer.	1.3C	UN0447	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Cells, containing sodium	4.3	UN3292	II	4.3		189	189	189	25 kg	No limit	A	
	*		*		*	*	*		*	*			
	Charges, bursting, plastics bonded.	1.1D	UN0457	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded.	1.2D	UN0458	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded.	1.4D	UN0459	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, bursting, plastics bonded.	1.4S	UN0460	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, demolition	1.1D	UN0048	II	1.1D		None	62	62	Forbidden	Forbidden	04	25
	Charges, depth	1.1D	UN0056	II	1.1D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Charges, explosive, commercial *without detonator*.	1.1D	UN0442	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, explosive, commercial *without detonator*.	1.2D	UN0443	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, explosive, commercial *without detonator*.	1.4D	UN0444	II	1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, explosive, commercial *without detonator*.	1.4S	UN0445	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, propelling	1.1C	UN0271	II	1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.3C	UN0272	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.2C	UN0415	II	1.2C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.4C	UN0491	II	1.4C		None	62	None	Forbidden	75 kg	02	25
	Charges, propelling, for cannon.	1.3C	UN0242	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon.	1.1C	UN0279	II	1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon.	1.2C	UN0414	II	1.2C		None	62	None	Forbidden	Forbidden	04	25

Charges, shaped, flexible, linear.	1.4D	UN0237	II	1.4D		None	62	None	Forbidden	75 kg	02	25
Charges, shaped, flexible, linear.	1.1D	UN0288	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
Charges, shaped, *without detonator*.	1.1D	UN0059	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
Charges, shaped, *without detonator*.	1.2D	UN0439	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
Charges, shaped, *without detonator*.	1.4D	UN0440	II	1.4D		None	62	None	Forbidden	75 kg	02	25
Charges, shaped, *without detonator*.	1.4S	UN0441	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
Charges, supplementary explosive.	1.1D	UN0060	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*		*		*	*	*		*	*			
Chlorosilanes, flammable, corrosive, n.o.s.	3	UN2985	II	3, 8	T14, TP2, TP7, TP13, TP27.	None	206	243	Forbidden	5 L	B	40
Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1,8,3	T14, TP2, TP7, TP13, TP27.	None	206	243	Forbidden	30 L	C	40, 125
Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	T14, TP2, TP7, TP13, TP27.	None	206	243	Forbidden	30 L	C	40
*		*		*	*	*		*	*			
Components, explosive train, n.o.s.	1.2B	UN0382	II	1.2B	101	None	62	None	Forbidden	Forbidden	05	25
Components, explosive train, n.o.s.	1.4B	UN0383	II	1.4B	101	None	62	None	Forbidden	75 kg	05	25
Components, explosive train, n.o.s.	1.4S	UN0384	II	1.4S	101	None	62	None	25 kg	100 kg	01	25
Components, explosive train, n.o.s.	1.1B	UN0461	II	1.1B	101	None	62	None	Forbidden	Forbidden	05	25
*		*		*	*	*		*	*			
Contrivances, water-activated, *with burster, expelling charge or propelling charge*.	1.2L	UN0248	II	1.2L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Contrivances, water-activated, *with burster, expelling charge or propelling charge*.	1.3L	UN0249	II	1.3L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
*		*		*	*	*		*	*			
Copra	4.2	UN1363	III	4.2	IB8, IP3, IP7	None	213	241	Forbidden	Forbidden	A	13, 25, 119
*		*		*	*	*		*	*			
Cord, detonating, *flexible*	1.1D	UN0065	II	1.1D	102	63(a)	62	None	Forbidden	Forbidden	04	25
Cord, detonating, *flexible*	1.4D	UN0289	II	1.4D		None	62	None	Forbidden	75 kg	02	25
Cord detonating *or* Fuse detonating *metal clad*.	1.2D	UN0102	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
Cord, detonating *or* Fuse, detonating *metal clad*.	1.1D	UN0290	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
Cord, detonating, mild effect *or* Fuse, detonating, mild effect *metal clad*.	1.4D	UN0104	II	1.4D		None	62	None	Forbidden	75 kg	02	25
Cord, igniter	1.4G	UN0066	II	1.4G		None	62	None	Forbidden	75 kg	02	25
*		*		*	*	*		*	*			
Cutters, cable, explosive	1.4S	UN0070	II	1.4S		None	62	62	25 kg	100 kg	01	25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Cyclotetramethylenetetranitramine, desensitized *or* Octogen, desensitized *or* HMX, desensitized.	1.1D	UN0484	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotetramethylenetetranitramine, wetted *or* HMX, wetted *or* Octogen, wetted *with not less than 15 percent water, by mass.*	1.1D	UN0226	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized *or* Hexogen, desensitized *or* RDX, desensitized.	1.1D	UN0483	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotrimethylenetrinitramine, wetted *or* Cyclonite, wetted *or* Hexogen, wetted *or* RDX, wetted *with not less than 15 percent water by mass.*	1.1D	UN0072	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Deflagrating metal salts of aromatic nitroderivatives, n.o.s.	1.3C	UN0132	II	1.3C		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*	*	*		*	*			
	Detonator assemblies, non-electric *for blasting.*	1.1B	UN0360	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonator assemblies, non-electric, *for blasting.*	1.4B	UN0361	II	1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonator assemblies, non-electric, *for blasting.*	1.4S	UN0500	II	1.4S	347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators, electric, *for blasting.*	1.1B	UN0030	II	1.1B		63(f), 63(g)	62	None	Forbidden	Forbidden	05	25
	Detonators, electric, *for blasting.*	1.4B	UN0255	II	1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonators, electric *for blasting.*	1.4S	UN0456	II	1.4S	347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators for ammunition.	1.1B	UN0073	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition.	1.2B	UN0364	II	1.2B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition.	1.4B	UN0365	II	1.4B	103	None	62	None	Forbidden	75 kg	05	25

Detonators for ammunition.	1.4S	UN0366	II	1.4S	347	None	62	None	25 kg	100 kg	01	25
Detonators, non-electric, *for blasting.*	1.1B	UN0029	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
Detonators, non-electric, *for blasting.*	1.4B	UN0267	II	1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
Detonators, non-electric, *for blasting.*	1.4S	UN0455	II	1.4S	347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
*	*		*	*	*	*	*	*				
Diazodinitrophenol, wetted *with not less than 40 percent water or mixture of alcohol and water, by mass.*	1.1A	UN0074	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
*	*		*	*	*	*	*	*				
Dichlorophenyl isocyanates.	6.1	UN2250	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	25, 40
*	*		*	*	*	*	*	*				
Dicyclohexylammonium nitrite.	4.1	UN2687	III	4.1	IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A	25
*	*		*	*	*	*	*	*				
Diethyleneglycol dinitrate, desensitized *with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass.*	1.1D	UN0075	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
*	*		*	*	*	*	*	*				
Dimethyl disulfide	3	UN2381	II	3, 6.1	IB2, T7, TP2, TP13, TP39.	150	202	242	Forbidden	Forbidden	B	40
*	*		*	*	*	*	*	*				
Dinitroglycoluril *or* Dingu	1.1D	UN0489	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*	*				
Dinitrophenol, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0076	II	1.1D, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
*	*		*	*	*	*	*	*				
Dinitrophenolates *alkali metals, dry or wetted with less than 15 percent water, by mass.*	1.3C	UN0077	II	1.3C, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
*	*		*	*	*	*	*	*				
Dinitroresorcinol, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0078	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
*	*		*	*	*	*	*	*				
Dinitrosobenzene	1.3C	UN0406	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*	*				
Dipicryl sulfide, *dry or wetted with less than 10 percent water, by mass.*	1.1D	UN0401	II	1.1D		None	62	None	Forbidden	Forbidden	04	25

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Engines, internal combustion, *or* Engines, fuel cell, *flammable gas powered.*	9	UN3166		9	135, A200	220	220	220	Forbidden	No limit	A	
	Engines internal combustion, *or* Engines, fuel cell, *flammable liquid powered.*	9	UN3166		9	135, A200	220	220	220	No limit	No limit	A	
	*		*		*	*	*		*	*			
G	Environmentally hazardous substance, solid, n.o.s.	9	UN3077	III	9	8, 146, 335, A112, B54, B120, IB8, IP3, N20, T1, TP33.	155	213	240	No limit	No limit	A	
	*		*		*	*	*		*	*			
	Ethyltrichlorosilane	3	UN1196	II	3, 8	A7, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	B	40
	*		*		*	*	*		*	*			
	Explosive, blasting, type A.	1.1D	UN0081	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E, 21E
	Explosive, blasting, type B.	1.1D	UN0082	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type B *or* Agent blasting, Type B.	1.5D	UN0331	II	1.5D	105, 106	None	62	None	Forbidden	Forbidden	03	25, 19E
	Explosive, blasting, type C.	1.1D	UN0083	II	1.1D	123	None	62	None	Forbidden	Forbidden	04	25, 22E
	Explosive, blasting, type D.	1.1D	UN0084	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Explosive, blasting, type E.	1.1D	UN0241	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type E *or* Agent blasting, Type E.	1.5D	UN0332	II	1.5D	105, 106	None	62	None	Forbidden	Forbidden	03	25, 19E
	*		*		*	*	*		*	*			
	Fireworks	1.1G	UN0333	II	1.1G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.2G	UN0334	II	1.2G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.3G	UN0335	II	1.3G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.4G	UN0336	II	1.4G	108	None	62	None	Forbidden	75 kg	02	25
	Fireworks	1.4S	UN0337	II	1.4S	108	None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
W	Fish meal, stabilized *or* Fish scrap, stabilized.	9	UN2216	III	None	155, IB8, IP3, T1, TP33.	155	218	218	No limit	No limit	B	25, 88, 122, 128
	*		*		*	*	*		*	*			
	Fish meal, unstablized *or* Fish scrap, unstabilized.	4.2	UN1374	II	4.2	155, A1, A19, IB8, IP2, IP4, T3, TP33.	None	212	241	15 kg	50 kg	B	18, 25, 128

*	*			*	*	*	*	*					
Flares, aerial	1.3G	UN0093	II	1.3G		None	62	None	Forbidden	75 kg	03	25
Flares, aerial	1.4G	UN0403	II	1.4G		None	62	None	Forbidden	75 kg	02	25
Flares, aerial	1.4S	UN0404	II	1.4S		None	62	None	25 kg	100 kg	01	25
Flares, aerial	1.1G	UN0420	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
Flares, aerial	1.2G	UN0421	II	1.2G		None	62	None	Forbidden	Forbidden	03	25
*	*			*	*	*	*	*					
Flares, surface	1.3G	UN0092	II	1.3G		None	62	None	Forbidden	75 kg	03	25
Flares, surface	1.1G	UN0418	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
Flares, surface	1.2G	UN0419	II	1.2G		None	62	None	Forbidden	Forbidden	03	25
*	*			*	*	*	*	*					
Flash powder	1.1G	UN0094	II	1.1G		None	62	None	Forbidden	Forbidden	03	25
Flash powder	1.3G	UN0305	II	1.3G		None	62	None	Forbidden	Forbidden	03	25
*	*			*	*	*	*	*					
Fracturing devices, explosive, *without detonators for oil wells*.	1.1D	UN0099	II	1.1D		None	62	62	Forbidden	Forbidden	04	25
*	*			*	*	*	*	*					
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing corrosive substances*.	8	UN3477		8	328	230	230	230	5 kg	50 kg	A	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing flammable liquids*.	3	UN3473		3	328	230	230	230	5 kg	50 kg	A	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing hydrogen in metal hydride*.	2.1	UN3479		2.1	328	230	230	230	1 kg	15 kg	B	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing liquefied flammable gas*.	2.1	UN3478		2.1	328	230	230	230	1 kg	15 kg	B	
Fuel cell cartridges *or* Fuel cell cartridges contained in equipment *or* Fuel cell cartridges packed with equipment, *containing water-reactive substances*.	4.3	UN3476		4.3	328	230	230	230	5 kg	50 kg	A	
*	*			*	*	*	*	*					
Fuse, igniter *tubular metal clad*.	1.4G	UN0103	II	1.4G		None	62	None	Forbidden	75 kg	02	25
Fuse, non-detonating *instantaneous or quickmatch*.	1.3G	UN0101	II	1.3G		None	62	None	Forbidden	Forbidden	03	25
Fuse, safety	1.4S	UN0105	II	1.4S		None	62	None	25 kg	100 kg	01	25

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Fuzes, detonating	1.1B	UN0106	II	1.1B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.2B	UN0107	II	1.2B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.4B	UN0257	II	1.4B	116	None	62	None	Forbidden	75 kg	05	25
	Fuzes, detonating	1.4S	UN0367	II	1.4S	116	None	62	None	25 kg	100 kg	01	25
	Fuzes, detonating, *with protective features*.	1.1D	UN0408	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, *with protective features*.	1.2D	UN0409	II	1.2D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, *with protective features*.	1.4D	UN0410	II	1.4D	116	None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.3G	UN0316	II	1.3G		None	62	None	Forbidden	Forbidden	03	25
	Fuzes, igniting	1.4G	UN0317	II	1.4G		None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.4S	UN0368	II	1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
	Gallium	8	UN2803	III	8	T1, TP33	None	162	240	20 kg	20 kg	B	25
	*		*		*	*	*		*	*			
	Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	UN1203	II	3	144, 177, B1, B33, IB2, T4.	150	202	242	5 L	60 L	E	
	*		*		*	*	*		*	*			
	Grenades, *hand or rifle, with bursting charge.*	1.1D	UN0284	II	1.1D			62	None	Forbidden	Forbidden	04	25
	Grenades, *hand or rifle, with bursting charge.*	1.2D	UN0285	II	1.2D			62	None	Forbidden	Forbidden	04	25
	Grenades, *hand or rifle, with bursting charge.*	1.1F	UN0292	II	1.1F			62	None	Forbidden	Forbidden	05	25
	Grenades, *hand or rifle, with bursting charge.*	1.2F	UN0293	II	1.2F			62	None	Forbidden	Forbidden	05	25
	*		*		*	*	*		*	*			
	Grenades, practice, *hand or rifle.*	1.4S	UN0110	II	1.4S			62	None	25 kg	100 kg	01	25
	Grenades, practice, *hand or rifle.*	1.3G	UN0318	II	1.3G			62	None	Forbidden	Forbidden	03	25
	Grenades, practice, *hand or rifle.*	1.2G	UN0372	II	1.2G			62	None	Forbidden	Forbidden	03	25
	Grenades practice, *hand or rifle.*	1.4G	UN0452	II	1.4G			62	None	Forbidden	75 kg	02	25
	*		*		*	*	*		*	*			
	Guanyl nitrosaminoguanylidene hydrazine, wetted *with not less than 30 percent water, by mass.*	1.1A	UN0113	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25

*	*		*	*	*	*	*						
Guanyl nitrosaminoguanyltetrazene, wetted *or* Tetrazene, wetted *with not less than 30 percent water or mixture of alcohol and water, by mass.*	1.1A	UN0114	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25	
*	*		*	*	*	*	*						
Hexanitrodiphenylamine *or* Dipicrylamine *or* Hexyl.	1.1D	UN0079	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
*	*		*	*	*	*	*						
Hexanitrostilbene	1.1D	UN0392	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
*	*		*	*	*	*	*						
Hexolite, *or* Hexotol *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0118	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
*	*		*	*	*	*	*						
Hexotonal	1.1D	UN0393	II	1.1D		None	62	None	Forbidden	Forbidden	04	25	
*	*		*	*	*	*	*						
Hydrogen in a metal hydride storage system *or* Hydrogen in a metal hydride storage system contained in equipment *or* Hydrogen in a metal hydride storage system packed with equipment.	2.1	UN3468		2.1	167	None	311	None	Forbidden	100 kg	D		
*	*		*	*	*	*	*						
1-Hydroxybenzotriazole, anhydrous, *dry or wetted with less than 20 percent water, by mass.*	1.3C	UN0508		1.3C		None	62	None	Forbidden	Forbidden	04	25	
*	*		*	*	*	*	*						
Hypochlorites, inorganic, n.o.s.	5.1	UN3212	II	5.1	349, A9, IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	D	4, 25, 52, 56, 58, 69, 106, 116, 118	
*	*		*	*	*	*	*						
Igniters	1.1G	UN0121	II	1.1G		None	62	None	Forbidden	Forbidden	03	25	
Igniters	1.2G	UN0314	II	1.2G		None	62	None	Forbidden	Forbidden	03	25	
Igniters	1.3G	UN0315	II	1.3G		None	62	None	Forbidden	Forbidden	03	25	
Igniters	1.4G	UN0325	II	1.4G		None	62	None	Forbidden	75 kg	02	25	
Igniters	1.4S	UN0454	II	1.4S		None	62	None	25 kg	100 kg	01	25	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
	*		*		*	*	*		*	*			
G	Isocyanates, toxic, flammable, n.o.s. *or* Isocyanate solutions, toxic, flammable, n.o.s., *flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C.*	6.1	UN3080	II	6.1, 3	IB2, T11, TP2, TP13, TP27.	153	202	243	5 L	60 L	B	25, 40
G	Isocyanates, toxic, n.o.s. *or* Isocyanate solutions, toxic, n.o.s., *flash point more than 61 degrees C and boiling point less than 300 degrees C.*	6.1	UN2206	II	6.1	IB2, T11, TP2, TP13, TP27.	153	202	243	5 L	60 L	E	25, 40
				III	6.1	IB3, T7, TP1, TP13, TP28.	153	203	241	60 L	220 L	E	25, 40
	Isocyanatobenzotrifluorides.	6.1	UN2285	II	6.1, 3	5, IB2, T7, TP2	153	202	243	5 L	60 L	D	25, 40
	*		*		*	*	*		*	*			
	Isosorbide-5-mononitrate	4.1	UN3251	III	4.1	66, 159, IB8	151	223	240	Forbidden	Forbidden	D	12, 25, 40, 84
	*		*		*	*	*		*	*			
D	Jet perforating guns, charged *oil well, with detonator.*	1.1D	NA0124	II	1.1D	55, 56	None	62	None	Forbidden	Forbidden	04	25
D	Jet perforating guns, charged *oil well, with detonator.*	1.4D	NA0494	II	1.4D	55, 56	None	62	None	Forbidden	Forbidden	02	25
	Jet perforating guns, charged, *oil well, without detonator.*	1.4D	UN0494	II	1.4D	55, 114	None	62	None	Forbidden	300 kg	02	25
	Jet perforating guns, charged *oil well, without detonator.*	1.1D	UN0124	II	1.1D	55	None	62	None	Forbidden	Forbidden	04	25
	*		*		*	*	*		*	*			
	Lead azide, wetted *with not less than 20 percent water or mixture of alcohol and water, by mass.*	1.1A	UN0129	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*	*	*		*	*			
	Lead styphnate, wetted *or* Lead trinitroresorcinate, wetted *with not less than 20 percent water or mixture of alcohol and water, by mass.*	1.1A	UN0130	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25

	*		*			*	*	*	*	*	*				
	Lighters, fuse	1.4S	UN0131	II	1.4S		None	62	None	25 kg	100 kg	01	25
	*		*			*	*	*	*	*	*				
	Lithium battery	9	UN3090	II	9	29, 188, 189, 190, A51, A54, A55, A100.	185	185	None	See A100	35 kg	A	
	*		*			*	*	*	*	*	*				
	Lithium batteries, contained in equipment.	9	UN3091	II	9	29, 188, 189, 190, 360, A54, A55, A101, A104.	185	185	None	See A101, A104.	35 kg	A	
	Lithium batteries packed with equipment.	9	UN3091	II	9	29, 188, 189, 190, A54, A55, A101, A103.	185	185	None	See A101, A103..	35 kg	A	
	*		*			*	*	*	*	*	*				
	Lithium hypochlorite, dry *or* Lithium hypochlorite mixture.	5.1	UN1471	II	5.1	A9, IB8, IP2, IP4, N34, T3, TP33.	152	212	240	5 kg	25 kg	A	4, 25, 52, 56, 58, 69, 106, 116
				III	5.1	IB8, IP3, N34, T1, TP33.	152	213	240	25 kg	100 kg	A	4, 25, 52, 56, 58, 69, 106, 116
	*		*			*	*	*	*	*	*				
	Magnesium nitrate	5.1	UN1474	III	5.1	332, A1, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	
	*		*			*	*	*	*	*	*				
	Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, or mixture of alcohol and water, by mass.*	1.1D	UN0133	II	1.1D	121	None	62	None	Forbidden	Forbidden	04	25
	*		*			*	*	*	*	*	*				
	5-Mercaptotetrazol-1-acetic acid.	1.4C	UN0448	II	1.4C		None	62	None	Forbidden	75 kg	02	25
	*		*			*	*	*	*	*	*				
A W	Mercury	8	UN2809	III	8, 6.1	365	164	164	240	35 kg	35 kg	B	40, 97
	*		*			*	*	*	*	*	*				
	Mercury fulminate, wetted *with not less than 20 percent water, or mixture of alcohol and water, by mass.*	1.1A	UN0135	II	1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*			*	*	*	*	*	*				
+	Methacrylonitrile, stabilized.	6.1	UN3079	I	6.1, 3	2, B9, B14, B32, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	12, 25, 40

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
*	*		*		*	*	*		*	*			
	Methyltrichlorosilane	3	UN1250	II	3, 8	A7, B6, B77, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	B	40
*	*		*		*	*	*		*	*			
	Mines *with bursting charge.*	1.1F	UN0136	II	1.1F			62	None	Forbidden	Forbidden	05	25
	Mines *with bursting charge.*	1.1D	UN0137	II	1.1D			62	62	Forbidden	Forbidden	04	25
	Mines *with bursting charge.*	1.2D	UN0138	II	1.2D			62	62	Forbidden	Forbidden	04	25
	Mines *with bursting charge.*	1.2F	UN0294	II	1.2F			62	None	Forbidden	Forbidden	05	25
*	*		*		*	*	*		*	*			
	Naphthalene, crude *or* Naphthalene, refined.	4.1	UN1334	III	4.1	A1, B120,IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A	
*	*		*		*	*	*		*	*			
	Nitro urea	1.1D	UN0147	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*		*	*	*		*	*			
	5-Nitrobenzotriazol	1.1D	UN0385	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*		*	*	*		*	*			
	Nitrocellulose, *dry or wetted with less than 25 percent water (or alcohol), by mass.*	1.1D	UN0340	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 27E
*	*		*		*	*	*		*	*			
	Nitrocellulose, plasticized *with not less than 18 percent plasticizing substance, by mass.*	1.3C	UN0343	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
*	*		*		*	*	*		*	*			
	Nitrocellulose, *unmodified or plasticized with less than 18 percent plasticizing substance, by mass.*	1.1D	UN0341	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 27E
	Nitrocellulose, wetted *with not less than 25 percent alcohol, by mass.*	1.3C	UN0342	II	1.3C		None	62	None	Forbidden	Forbidden	04	25
*	*		*		*	*	*		*	*			
	Nitroglycerin, desensitized *with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass.*	1.1D	UN0143	II	1.1D, 6.1	125	None	62	None	Forbidden	Forbidden	04	25, 21E

*	*		*	*	*	*	*						
Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 10 percent nitroglycerin.*	1.1D	UN0144	II	1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
*	*		*	*	*	*	*						
Nitroguanidine *or* Picrite, *dry or wetted with less than 20 percent water, by mass.*	1.1D	UN0282	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
Nitrostarch, *dry or wetted with less than 20 percent water, by mass.*	1.1D	UN0146	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
Nitrotriazolone *or* NTO	1.1D	UN0490	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
Octolite *or* Octol, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0266	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
Octonal	1.1D	UN0496		1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
D G Other regulated substances, liquid, n.o.s.	9	NA3082	III	9	IB3, T2, TP1	155	203	241	No limit	No limit	A	
*	*		*	*	*	*	*						
Paraformaldehyde	4.1	UN2213	III	4.1	A1, B120, IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A	
*	*		*	*	*	*	*						
Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, *with not less than 7 percent wax by mass.*	1.1D	UN0411	II	1.1D	120	None	62	None	Forbidden	Forbidden	04	25
Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass, or* Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass.*	1.1D	UN0150	II	1.1D	121	None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
Pentolite, *dry or wetted with less than 15 percent water, by mass.*	1.1D	UN0151	II	1.1D		None	62	None	Forbidden	Forbidden	04	25
*	*		*	*	*	*	*						
Phosgene	2.3	UN1076		2.3, 8	1, B7, B46, N86	None	192	314	Forbidden	Forbidden	D	40

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
	*		*		*	*	*		*	*			
	Phosphorous acid	8	UN2834	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	25
	*		*		*	*	*		*	*			
	Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*	9	UN3314	III	9	32, IB8, IP3, IP7.	155	221	221	100 kg	200 kg	E	21, 25, 87, 144
	*		*		*	*	*		*	*			
	Polymeric beads expandable, *evolving flammable vapor.*	9	UN2211	III	9	32, IB8, IP3, IP7, T1, TP33.	155	221	221	100 kg	200 kg	E	21, 25, 87, 144
	*		*		*	*	*		*	*			
	Potassium nitrate	5.1	UN1486	III	5.1	A1, A29, B120 IB8, IP3, T1, TP33, W1.	152	213	240	25 kg	100 kg	A	
	*		*		*	*	*		*	*			
	Powder cake, wetted *or* Powder paste, wetted *with not less than 17 percent alcohol by mass.*	1.1C	UN0433	II	1.1C		None	62	None	Forbidden	Forbidden	4	25
	Powder cake, wetted *or* Powder paste, wetted *with not less than 25 percent water, by mass.*	1.3C	UN0159	II	1.3C		None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Powder, smokeless	1.1C	UN0160	II	1.1C		None	62	None	Forbidden	Forbidden	4	25, 26E
	Powder, smokeless	1.3C	UN0161	II	1.3C		None	62	None	Forbidden	Forbidden	4	25, 26E
	Powder, smokeless	1.4C	UN0509		1.4C		None	62	None	Forbidden	75 kg	2	25
	*		*		*	*	*		*	*			
	Primers, cap type	1.4S	UN0044	II	None		None	62	None	25 kg	100 kg	1	25
	Primers, cap type	1.1B	UN0377	II	1.1B		None	62	None	Forbidden	Forbidden	5	25
	Primers, cap type	1.4B	UN0378	II	1.4B		None	62	None	Forbidden	75 kg	5	25
	*		*		*	*	*		*	*			
	Primers, tubular	1.3G	UN0319	II	1.3G		None	62	None	Forbidden	Forbidden	3	25
	Primers, tubular	1.4G	UN0320	II	1.4G		None	62	None	Forbidden	75 kg	2	25
	Primers, tubular	1.4S	UN0376	II	None		None	62	None	25 kg	100 kg	1	25
	*		*		*	*	*		*	*			
	Projectiles, *inert, with tracer.*	1.4S	UN0345	II	1.4S			62	62	25 kg	100 kg	1	25
	Projectiles, *inert, with tracer.*	1.3G	UN0424	II	1.3G			62	62	Forbidden	Forbidden	3	25
	Projectiles, *inert, with tracer.*	1.4G	UN0425	II	1.4G			62	62	Forbidden	75 kg	2	25
	Projectiles, *with burster or expelling charge.*	1.2D	UN0346	II	1.2D			62	62	Forbidden	Forbidden	4	25
	Projectiles, *with burster or expelling charge.*	1.4D	UN0347	II	1.4D			62	62	Forbidden	75 kg	2	25

Projectiles, *with burster or expelling charge.*	1.2F	UN0426	II	1.2F				62	None	Forbidden	Forbidden	5	25
Projectiles, *with burster or expelling charge.*	1.4F	UN0427	II	1.4F				62	None	Forbidden	Forbidden	5	25
Projectiles, *with burster or expelling charge.*	1.2G	UN0434	II	1.2G				62	62	Forbidden	Forbidden	3	25
Projectiles, *with burster or expelling charge.*	1.4G	UN0435	II	1.4G				62	62	Forbidden	75 kg	2	25
Projectiles, *with bursting charge.*	1.1F	UN0167	II	1.1F				62	None	Forbidden	Forbidden	5	25
Projectiles, *with bursting charge.*	1.1D	UN0168	II	1.1D				62	62	Forbidden	Forbidden	4	25
Projectiles, *with bursting charge.*	1.2D	UN0169	II	1.2D				62	62	Forbidden	Forbidden	4	25
Projectiles, *with bursting charge.*	1.2F	UN0324	II	1.2F				62	None	Forbidden	Forbidden	5	25
Projectiles, *with bursting charge.*	1.4D	UN0344	II	1.4D				62	62	Forbidden	75 kg	2	25
*		*		*	*	*		*		*			
Propellant, liquid	1.3C	UN0495	II	1.3C	37	None		62	None	Forbidden	Forbidden	4	25
Propellant, liquid	1.1C	UN0497	II	1.1C	37	None		62	None	Forbidden	Forbidden	4	25
Propellant, solid	1.1C	UN0498	II	1.1C		None		62	None	Forbidden	Forbidden	4	25, 26E
Propellant, solid	1.3C	UN0499	II	1.3C		None		62	None	Forbidden	Forbidden	4	25, 26E
Propellant, solid	1.4C	UN0501		1.4C		None		62	None	Forbidden	Forbidden	2	25, 24E
*		*		*	*	*		*		*			
Propylene chlorohydrin	6.1	UN2611	II	6.1, 3	IB2, T7, TP2, TP13.	153		202	243	5 L	60 L	A	12, 25, 40
*		*		*	*	*		*		*			
RDX and HMX mixtures, wetted *with not less than 15 percent water by mass or* RDX and HMX mixtures, desensitized *with not less than 10 percent phlegmatizer by mass.*	1.1D	UN0391	II	1.1D		None		62	None	Forbidden	Forbidden	4	25
*		*		*	*	*		*		*			
Release devices, explosive.	1.4S	UN0173	II	1.4S		None		62	62	25 kg	100 kg	1	25
*		*		*	*	*		*		*			
Rivets, explosive	1.4S	UN0174	II	1.4S		None		62	62	25 kg	100 kg	1	25
*		*		*	*	*		*		*			
Rocket motors	1.3C	UN0186	II	1.3C	109	None		62	62	Forbidden	220 kg	4	25
Rocket motors	1.1C	UN0280	II	1.1C	109	None		62	62	Forbidden	Forbidden	4	25
Rocket motors	1.2C	UN0281	II	1.2C	109	None		62	62	Forbidden	Forbidden	4	25
Rocket motors, liquid fueled.	1.2J	UN0395	II	1.2J	109	None		62	None	Forbidden	Forbidden	5	25, 23E
Rocket motors, liquid fueled.	1.3J	UN0396	II	1.3J	109	None		62	None	Forbidden	Forbidden	5	25, 23E
Rocket motors with hypergolic liquids *with or without an expelling charge.*	1.3L	UN0250	II	1.3L	109	None		62	None	Forbidden	Forbidden	5	25, 14E, 15E
Rocket motors with hypergolic liquids *with or without an expelling charge.*	1.2L	UN0322	II	1.2L	109	None		62	None	Forbidden	Forbidden	5	25, 14E, 15E
Rockets, line-throwing	1.2G	UN0238	II	1.2G		None		62	None	Forbidden	Forbidden	3	25
Rockets, line-throwing	1.3G	UN0240	II	1.3G		None		62	None	Forbidden	75 kg	3	25
Rockets, line-throwing	1.4G	UN0453	II	1.4G		None		62	None	Forbidden	75 kg	2	25

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
	Rockets, liquid fueled *with bursting charge.*	1.1J	UN0397	II	1.1J		None	62	None	Forbidden	Forbidden	5	25, 23E
	Rockets, liquid fueled *with bursting charge.*	1.2J	UN0398	II	1.2J		None	62	None	Forbidden	Forbidden	5	25, 23E
	Rockets, *with bursting charge.*	1.1F	UN0180	II	1.1F		None	62	None	Forbidden	Forbidden	5	25
	Rockets, *with bursting charge.*	1.1E	UN0181	II	1.1E		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with bursting charge.*	1.2E	UN0182	II	1.2E		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with bursting charge.*	1.2F	UN0295	II	1.2F		None	62	None	Forbidden	Forbidden	5	25
	Rockets, *with expelling charge.*	1.2C	UN0436	II	1.2C		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with expelling charge.*	1.3C	UN0437	II	1.3C		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with expelling charge.*	1.4C	UN0438	II	1.4C		None	62	62	Forbidden	75 kg	2	25
	Rockets, *with inert head*	1.3C	UN0183	II	1.3C		None	62	62	Forbidden	Forbidden	4	25
	Rockets, *with inert head*	1.2C	UN0502		1.2C		None	62	62	Forbidden	Forbidden	2	25, 5E
	*		*		*	*	*		*	*			
G	Samples, explosive, *other than initiating explosives.*		UN0190	II		113	None	62	None	Forbidden	Forbidden	5	25
	*		*		*	*	*		*	*			
	Seed cake, *containing vegetable oil solvent extractions and expelled seeds, with not more than 10 percent of oil and when the amount of moisture is higher than 11 percent, with not more than 20 percent of oil and moisture combined.*	4.2	UN1386	III	None	IB8, IP3, IP7, N7.	None	213	241	Forbidden	Forbidden	A	13, 25
I	Seed cake *with more than 1.5 percent oil and not more than 11 percent moisture.*	4.2	UN1386	III	None	IB8, IP3, IP7, N7.	None	213	241	Forbidden	Forbidden	E	13, 25
I	Seed cake *with not more than 1.5 percent oil and not more than 11 percent moisture.*	4.2	UN2217	III	None	IB8, IP3, IP7, N7.	None	213	241	Forbidden	Forbidden	A	13, 25
	*		*		*	*	*		*	*			
	Signal devices, hand	1.4G	UN0191	II	1.4G		None	62	None	Forbidden	75 kg	2	25
	Signal devices, hand	1.4S	UN0373	II	1.4S		None	62	None	25 kg	100 kg	1	25
	Signals, distress, *ship*	1.1G	UN0194	II	1.1G		None	62	None	Forbidden	Forbidden	3	25
	Signals, distress, *ship*	1.3G	UN0195	II	1.3G		None	62	None	Forbidden	75 kg	3	25
	Signals, distress, *ship*	1.4G	UN0505		1.4G		None	62	None	Forbidden	75 kg	2	25
	Signals, distress, *ship*	1.4S	UN0506		1.4S		None	62	None	25 kg	100 kg	1	25

*		*		*	*		*		*		*			
Signals, railway track, explosive	1.1G	UN0192	II	1.1G		None	62	None	Forbidden	Forbidden	3	25		
Signals, railway track, explosive	1.4S	UN0193	II	1.4S		None	62	None	25 kg	100 kg	1	25		
Signals, railway track, explosive	1.3G	UN0492		1.3G		None	62	None	Forbidden	Forbidden	3	25		
Signals, railway track, explosive	1.4G	UN0493		1.4G		None	62	None	Forbidden	75 kg	2	25		
*		*		*	*		*		*		*			
Signals, smoke	1.1G	UN0196	II	1.1G		None	62	None	Forbidden	Forbidden	3	25		
Signals, smoke	1.4G	UN0197	II	1.4G		None	62	None	Forbidden	75 kg	2	25		
Signals, smoke	1.2G	UN0313	II	1.2G		None	62	None	Forbidden	Forbidden	3	25		
Signals, smoke	1.3G	UN0487	II	1.3G		None	62	None	Forbidden	Forbidden	3	25		
Signals, smoke	1.4S	UN0507		1.4S		None	62	None	25 kg	100 kg	1	25		
*		*		*	*		*		*		*			
Sodium carbonate peroxyhydrate.	5.1	UN3378	II	5.1	B120, IB8, IP2, IP4, T3, TP33.	152	212	240	5 kg	25 kg	A	13, 25, 75		
			III	5.1	B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	13, 25, 75		
*		*		*	*		*		*		*			
Sodium dinitro-o-cresolate, *dry or wetted with less than 15 percent water, by mass.*	1.3C	UN0234	II	1.3C		None	62	None	Forbidden	Forbidden	4	25, 5E		
*		*		*	*		*		*		*			
Sodium nitrate	5.1	UN1498	III	5.1	A1, A29, B120, IB8, IP3, T1, TP33, W1.	152	213	240	25 kg	100 kg	A			
Sodium nitrate and potassium nitrate mixtures.	5.1	UN1499	III	5.1	A1, A29, B120, IB8, IP3, T1, TP33, W1.	152	213	240	25 kg	100 kg	A			
*		*		*	*		*		*		*			
Sodium perborate monohydrate.	5.1	UN3377	III	5.1	B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	A	13, 25, 75		
*		*		*	*		*		*		*			
Sodium picramate, *dry or wetted with less than 20 percent water, by mass.*	1.3C	UN0235	II	1.3C		None	62	None	Forbidden	Forbidden	4	25, 5E		
*		*		*	*		*		*		*			
Sounding devices, explosive.	1.2F	UN0204	II	1.2F		None	62	62	Forbidden	Forbidden	5	25		
Sounding devices, explosive.	1.1F	UN0296	II	1.1F		None	62	62	Forbidden	Forbidden	5	25		
Sounding devices, explosive.	1.1D	UN0374	II	1.1D		None	62	62	Forbidden	Forbidden	4	25		
Sounding devices, explosive.	1.2D	UN0375	II	1.2D		None	62	62	Forbidden	Forbidden	4	25		
*		*		*	*		*		*		*			
G Substances, explosive, n.o.s.	1.1L	UN0357	II	1.1L		None	62	None	Forbidden	Forbidden	5	25, 14E, 15E		
G Substances, explosive, n.o.s.	1.2L	UN0358	II	1.2L		None	62	None	Forbidden	Forbidden	5	25, 14E, 15E		
G Substances, explosive, n.o.s.	1.3L	UN0359	II	1.3L		None	62	None	Forbidden	Forbidden	5	25, 14E, 15E		

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
G	Substances, explosive, n.o.s.	1.1A	UN0473	II	1.1A	101, 111	None	62	None	Forbidden	Forbidden	5	25
G	Substances, explosive, n.o.s.	1.1C	UN0474	II	1.1C	101	None	62	None	Forbidden	Forbidden	4	25
G	Substances, explosive, n.o.s.	1.1D	UN0475	II	1.1D	101	None	62	None	Forbidden	Forbidden	4	25
G	Substances, explosive, n.o.s.	1.1G	UN0476	II	1.1G	101	None	62	None	Forbidden	Forbidden	3	25
G	Substances, explosive, n.o.s.	1.3C	UN0477	II	1.3C	101	None	62	None	Forbidden	Forbidden	4	25
G	Substances, explosive, n.o.s.	1.3G	UN0478	II	1.3G	101	None	62	None	Forbidden	Forbidden	3	25
G	Substances, explosive, n.o.s.	1.4C	UN0479	II	1.4C	101	None	62	None	Forbidden	75 kg	2	25
G	Substances, explosive, n.o.s.	1.4D	UN0480	II	1.4D	101	None	62	None	Forbidden	75 kg	2	25
G	Substances, explosive, n.o.s.	1.4S	UN0481	II	1.4S	101	None	62	None	25 kg	75 kg	1	25
G	Substances, explosive, n.o.s.	1.4G	UN0485	II	1.4G	101	None	62	None	Forbidden	75 kg	2	25
G	Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s.	1.5D	UN0482	II	1.5D	101	None	62	None	Forbidden	Forbidden	3	25
*	*	*	*	*	*	*	*	*	*	*	*	*	*
D	Sulfur	9	NA1350	III	9	30, B120, IB8, IP2.	None	None	240	No Limit	No Limit	A	25, 74
I	Sulfur	4.1	UN1350	III	4.1	30, B120, IB8, IP3, T1, TP33.	None	None	240	25 kg	100 kg	A	25, 74
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Tetranitroaniline	1.1D	UN0207	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Tetrazol-1-acetic acid	1.4C	UN0407	II	1.4C		None	62	None	Forbidden	75 kg	2	25
	1H-Tetrazole	1.1D	UN0504		1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
*	*	*	*	*	*	*	*	*	*	*	*	*	*
G	Thallium compounds, n.o.s.	6.1	UN1707	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	A	
*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Torpedoes, liquid fueled, *with inert head.*	1.3J	UN0450	II	1.3J			62	None	Forbidden	Forbidden	5	25, 23E
	Torpedoes, liquid fueled, *with or without bursting charge.*	1.1J	UN0449	II	1.1J			62	None	Forbidden	Forbidden	5	25, 23E
	Torpedoes *with bursting charge.*	1.1E	UN0329	II	1.1E			62	62	Forbidden	Forbidden	4	25
	Torpedoes *with bursting charge.*	1.1F	UN0330	II	1.1F			62	None	Forbidden	Forbidden	5	25
	Torpedoes *with bursting charge.*	1.1D	UN0451	II	1.1D			62	62	Forbidden	Forbidden	4	25
*	*	*	*	*	*	*	*	*	*	*	*	*	*
D	Toy Caps	1.4S	NA0337	II	1.4S		None	62	None	25 kg	100 kg	1	25

Tracers for ammunition	1.3G	UN0212	II	1.3G		None	62	None	Forbidden	Forbidden	3	25
Tracers for ammunition	1.4G	UN0306	II	1.4G		None	62	None	Forbidden	75 kg	2	25
*	*		*	*	*	*	*	*				
Trimethylchlorosilane	3	UN1298	II	3, 8	A3, A7, B77, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	5 L	E	40
*	*		*	*	*	*	*	*				
Trinitro-m-cresol	1.1D	UN0216	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
*	*		*	*	*	*	*	*				
Trinitroaniline *or* Picramide.	1.1D	UN0153	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
Trinitroanisole	1.1D	UN0213	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
*	*		*	*	*	*	*	*				
Trinitrobenzene, *dry or wetted with less than 30 percent water, by mass.*	1.1D	UN0214	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
*	*		*	*	*	*	*	*				
Trinitrobenzenesulfonic acid.	1.1D	UN0386	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
Trinitrobenzoic acid, *dry or wetted with less than 30 percent water, by mass.*	1.1D	UN0215	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
*	*		*	*	*	*	*	*				
Trinitrochlorobenzene *or* Picryl chloride.	1.1D	UN0155	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
*	*		*	*	*	*	*	*				
Trinitrofluorenone	1.1D	UN0387	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
*	*		*	*	*	*	*	*				
Trinitronaphthalene	1.1D	UN0217	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
Trinitrophenetole	1.1D	UN0218	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
*	*		*	*	*	*	*	*				
Trinitrophenol *or* Picric acid, *dry or wetted with less than 30 percent water, by mass.*	1.1D	UN0154	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
*	*		*	*	*	*	*	*				
Trinitrophenylmethylnitramine *or* Tetryl.	1.1D	UN0208	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
Trinitroresorcinol *or* Styphnic acid, *dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass.*	1.1D	UN0219	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E
Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass.*	1.1D	UN0394	II	1.1D		None	62	None	Forbidden	Forbidden	4	25, 5E

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
	*		*		*	*	*		*	*			
	Trinitrotoluene and Trinitrobenzene mixtures *or* TNT and trinitrobenzene mixtures *or* TNT and hexanitrostilbene mixtures *or* Trinitrotoluene and hexanitrostilnene mixtures.	1.1D	UN0388	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene *or* TNT mixtures containing trinitrobenzene and hexanitrostilbene.	1.1D	UN0389	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	Trinitrotoluene *or* TNT, *dry or wetted with less than 30 percent water, by mass*.	1.1D	UN0209	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Tritonal	1.1D	UN0390	II	1.1D		None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Urea nitrate, *dry or wetted with less than 20 percent water, by mass*.	1.1D	UN0220	II	1.1D	119	None	62	None	Forbidden	Forbidden	4	25
	*		*		*	*	*		*	*			
	Vehicle, flammable gas powered *or* Vehicle, fuel cell, flammable gas powered.	9	UN3166		9	135, A200	220	220	220	Forbidden	No limit	A	
	Vehicle, flammable liquid powered *or* Vehicle, fuel cell, flammable liquid powered.	9	UN3166		9	135, A200	220	220	220	No limit	No limit	A	
	*		*		*	*	*		*	*			
	Warheads, rocket *with burster or expelling charge*.	1.4D	UN0370	II	1.4D		None	62	62	Forbidden	75 kg	2	25
	Warheads, rocket *with burster or expelling charge*.	1.4F	UN0371	II	1.4F		None	62	None	Forbidden	Forbidden	5	25
	Warheads, rocket *with bursting charge*.	1.1D	UN0286	II	1.1D		None	62	62	Forbidden	Forbidden	4	25
	Warheads, rocket *with bursting charge*.	1.2D	UN0287	II	1.2D		None	62	62	Forbidden	Forbidden	4	25
	Warheads, rocket *with bursting charge*.	1.1F	UN0369	II	1.1F		None	62	None	Forbidden	Forbidden	5	25
	Warheads, torpedo *with bursting charge*.	1.1D	UN0221	II	1.1D		None	62	62	Forbidden	Forbidden	4	25

G	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	4.3, 8	T14, TP2, TP7, TP13.	None	201	243	Forbidden	1 L	D		
	.....	.....	.....	II	4.3, 8	IB1, T11, TP2, TP7.	None	202	243	1 L	5 L	E	85	
	.....	.....	.....	III	4.3, 8	IB2, T7, TP2, TP7.	None	203	242	5 L	60 L	E		
	*		*		*	*	*		*	*				
G	Water-reactive liquid, n.o.s.	4.3	UN3148	I	4.3	T13, TP2, TP7, TP41.	None	201	244	Forbidden	1 L	E	40	
	.....	.....	.....	II	4.3	IB1, T7, TP2, TP7.	None	202	243	1 L	5 L	E	40	
	.....	.....	.....	III	4.3	IB2, T7, TP2, TP7.	None	203	242	5 L	60 L	E	40	
	*		*		*	*	*		*	*				
	Zirconium picramate, *dry or wetted with less than 20 percent water, by mass.*	1.3C	UN0236	II	1.3C	.....	None	62	None	Forbidden	Forbidden	4	25, 5E	
	*		*		*	*	*		*	*				

■ 6. In § 172.102:
■ a. In paragraph (c)(1), special provisions 47, 48, 49, 118, 134, 155, and 237 are revised and special provisions 101, 222, 238, 328, 360, 361, 362 and 365 are added in numerical sequence.
■ b. In paragraph (c)(2), special provisions A60, A100 and A103 are revised and special provisions A51, A189, A191, and A200 are added in numerical sequence.
■ c. In paragraph (c)(3), special provision B120 is added in numerical sequence.
■ d. In paragraph (c)(4), Table 1 is revised.
■ e. Paragraph (c)(7)(iii) is revised.
■ f. In paragraph (c)(8)(ii), TP39, TP40 and TP41 are added in numerical sequence.
■ g. In paragraph (c)(9), W10 is added in numerical sequence.

The additions and revisions read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(1) * * *

47 Mixtures of solids that are not subject to this subchapter and flammable liquids may be transported under this entry without first applying the classification criteria of Division 4.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Except when the liquids are fully absorbed in solid material contained in sealed bags, for single packagings, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. Small inner packagings consisting of sealed packets and articles containing less than 10 mL of a Class 3 liquid in Packing Group II or III absorbed onto a solid material are not subject to this subchapter provided there is no free liquid in the packet or article.

48 Mixtures of solids that are not subject to this subchapter and toxic liquids may be transported under this entry without first applying the classification criteria of Division 6.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. For single packagings, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. This entry may not be used for solids containing a Packing Group I liquid.

49 Mixtures of solids that are not subject to this subchapter and corrosive liquids may be transported under this entry without first applying the classification criteria of Class 8, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. For single packagings, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level.

* * * * *

101 The name of the particular substance or article must be specified.

* * * * *

118 This substance may not be transported under the provisions of Division 4.1 unless specifically authorized by the Associate Administrator (see UN0143 or UN0150 as appropriate).

* * * * *

134 This entry only applies to vehicles powered by wet batteries, sodium batteries, or lithium batteries and equipment powered by wet batteries or sodium batteries that are transported with these batteries installed. For the purpose of this special provision, vehicles are self-propelled apparatus designed to carry one or more persons or goods. Examples of such vehicles are electrically-powered cars, motorcycles, scooters, three- and four-wheeled vehicles or motorcycles, battery-assisted bicycles, lawn tractors, boats, aircraft, wheelchairs and other mobility aids. Examples of equipment are lawnmowers, cleaning machines or model boats and model aircraft. Equipment powered by lithium batteries must be consigned under the entries ''Lithium batteries contained in equipment'' or ''Lithium batteries packed with equipment,'' as appropriate. Self-propelled vehicles that also contain an internal combustion engine must be consigned under the entry ''Engine, internal combustion, flammable gas powered'' or ''Engine, internal combustion, flammable liquid powered'' or ''Vehicle, flammable gas powered'' or ''Vehicle, flammable liquid powered,'' as appropriate. These entries include hybrid electric vehicles powered by both an internal combustion engine and batteries. Additionally, self-propelled vehicles or equipment that contain a fuel cell engine must be consigned under the entries ''Engine, fuel cell, flammable gas powered'' or ''Engine, fuel cell, flammable liquid powered'' or ''Vehicle, fuel cell, flammable gas powered'' or ''Vehicle, fuel cell, flammable liquid powered,'' as appropriate. These entries include hybrid electric vehicles powered by a fuel cell engine, an internal combustion engine, and batteries.

* * * * *

155 Fish meal, fish scrap and krill meal may not be transported if the temperature at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher.

* * * * *

222 Shipments offered for transportation by aircraft may not be reclassed as ORM–D.

237 ''Batteries, dry, containing potassium hydroxide solid, *electric storage''* must be prepared and packaged in accordance with the requirements of § 173.159(a) and (c). For transportation by aircraft, the provisions of § 173.159(b)(2) apply. This entry may only be used for the transport of non-activated batteries that contain dry potassium hydroxide and that are intended to be activated prior to use by the addition of an appropriate amount of water to the individual cells.

238 Neutron radiation detectors:

a. Neutron radiation detectors containing non-pressurized boron trifluoride gas in excess of 1 gram and radiation detection systems containing such neutron radiation detectors as components may be transported by highway, rail, vessel, or cargo aircraft in accordance with the following:

(1) The pressure in each neutron radiation detector must not exceed 105 kPa absolute at 20 °C;

(2) The amount of gas must not exceed 12.8 grams per detector and the amount per outer packaging or per radiation detection system must not exceed 51.2 grams;

(3) Each neutron radiation detector must be of welded metal construction with brazed metal to ceramic feed through assemblies. They must have a minimum burst pressure of 1800 kPa; and

(4) Each neutron radiation detector must be packed in a sealed intermediate plastic liner with sufficient absorbent material to absorb the entire gas contents. Neutron radiation detectors must be packed in strong outer packagings that are capable of withstanding a 1.8 meter (6-foot) drop without leakage. Radiation detection systems containing neutron radiation detectors must also include absorbent material sufficient to absorb the entire gas contents of the neutron radiation detectors. Absorbent material must be surrounded by a liner or liners, as appropriate. They must be packed in strong outer packagings unless neutron radiation detectors are afforded equivalent protection by the radiation detection system.

b. Except for transportation by aircraft, neutron radiation detectors and

radiation detection systems containing such detectors transported in accordance with paragraph (a) of this special provision are not subject to the labeling and placarding requirements of part 172 of this subchapter.

c. When transported by highway, rail, vessel, or as cargo on an aircraft, neutron radiation detectors containing not more than 1 gram of boron trifluoride, including those with solder glass joints, and radiation detection systems containing such detectors, where the neutron radiation detectors meet and are packed in accordance with the requirements of paragraph (a) of this special provision, are not subject to any other requirements of this subchapter.

* * * * *

328 When lithium cells or batteries are contained in the fuel cell system, the item must be described under this entry and the entry ''Lithium batteries, contained in equipment''.

* * * * *

360 Vehicles only powered by lithium batteries must be assigned the identification number UN3171.

361 Capacitors with an energy storage capacity of 0.3 Wh or less are not subject to the requirements of this subchapter. Energy storage capacity means the energy held by a capacitor, as calculated using the nominal voltage and capacitance. This entry does not apply to capacitors that by design maintain a terminal voltage (e.g., asymmetrical capacitors.)

362 This entry applies to liquids, pastes or powders, pressurized with a propellant that meets the definition of a gas in § 173.115. A chemical under pressure packaged in an aerosol dispenser must be transported under UN1950. The chemical under pressure must be classed based on the hazard characteristics of the components in the propellant; the liquid; or the solid. The following provisions also apply:

(a) If one of the components, which can be a pure substance or a mixture, is classed as flammable, the chemical under pressure must be classed as flammable in Division 2.1. Flammable components are flammable liquids and liquid mixtures, flammable solids and solid mixtures or flammable gases and gas mixtures meeting the following criteria:

(i) A flammable liquid is a liquid having a flashpoint of not more than 93 °C (200 °F);

(ii) A flammable solid is a solid that meets the criteria in § 173.124 of this subchapter; or

(iii) A flammable gas is a gas that meets the criteria in § 173.115 of this subchapter.

(b) Gases of Division 2.3 and gases with a subsidiary risk of 5.1 must not be used as a propellant in a chemical under pressure.

(c) Where the liquid or solid components are classed as Division 6.1, packing groups II or III, or Class 8, packing groups II or III, the chemical under pressure must be assigned a subsidiary risk of Division 6.1 or Class 8 and the appropriate identification number must be assigned. Components classed as Division 6.1, packing group I, or Class 8, packing group I, must not be offered for transportation and transported under this description.

(d) A chemical under pressure with components meeting the properties of : Class 1 (explosives); Class 3 (liquid desensitized explosives); Division 4.1 (self-reactive substances and solid desensitized explosives); Division 4.2 (substances liable to spontaneous combustion); Division 4.3 (substances which, in contact with water, emit flammable gases or toxic gases); Division 5.1 (oxidizing substances); Division 5.2 (organic peroxides); Division 6.2 (Infectious substances); or, Class 7 (Radioactive material), must not be offered for transportation under this description.

(e) A description to which Special provision 170 or TP7 is assigned in Column 7 of the § 172.101 Hazardous Materials Table, and therefore requires air to be eliminated from the package vapor space by nitrogen or other means, must not be offered for transportation under this description.

365 For manufactured instruments and articles containing mercury, see UN3506.

(2) * * *

* * * * *

A51 Irrespective of the quantity limitations specified in Column (9A) of the § 172.101 Table or § 175.75(c), the following aircraft batteries may be transported on passenger aircraft as cargo:

a. Wet cell batteries, UN 2794 or UN 2795, up to a limit of 100kg net mass per package;

b. Lithium ion batteries, UN 3090, packages containing a single aircraft battery with a net mass not exceeding 35kg; and

c. Transport in accordance with this special provision must be noted on the dangerous goods transport document.

* * * * *

A60 Sterilization devices, when containing less than 30 mL per inner packaging with not more than 150 mL per outer packaging, may be transported in accordance with the provisions in § 173.4a, irrespective of § 173.4a(b), provided such packagings were first subjected to comparative fire testing. Comparative fire testing between a package as prepared for transport (including the substance to be transported) and an identical package filled with water must show that the maximum temperature measured inside the packages during testing does not differ by more than 200 °C (392 °F). Packagings may include a vent to permit the slow escape of gas (i.e. not more than 0.1 mL/hour per 30 mL inner packaging at 20 °C (68 °F) produced from gradual decomposition.

* * * * *

A100 Primary (non-rechargeable) lithium batteries and cells are forbidden for transport aboard passenger-carrying aircraft. Secondary (rechargeable) lithium batteries and cells are authorized aboard passenger-carrying aircraft provided the net weight of lithium batteries does not exceed 5 kg (11 pounds) per package.

* * * * *

A103 Equipment is authorized aboard passenger-carrying aircraft provided the net weight of lithium batteries does not exceed 5 kg (11 pounds) per package.

* * * * *

A189 Except where the defining criteria of another class or division are met, concentrations of formaldehyde solution:

a. With less than 25 percent but not less than 10 percent formaldehyde, must be described as UN3334, Aviation regulated liquid, n.o.s.; and

b. With less than 10 percent formaldehyde, are not subject to this subchapter.

* * * * *

A191 Notwithstanding the Division 6.1 subsidiary risk for this description, the toxic subsidiary risk label and the requirement to indicate the subsidiary risk on the shipping paper are not required for manufactured articles containing less than 5 kg (11 pounds) of mercury.

* * * * *

A200 These articles must be transported as cargo and may not be carried aboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically authorized in § 175.10.

* * * * *

(3) * * *

* * * * *

B120 The use of flexible bulk containers conforming to the requirements in subpart R and subpart

S of part 178 of this subchapter is permitted.

* * * * *

(4) * * *

TABLE 1—IB CODES (IBC CODES)

IBC code	Authorized IBCs
IB1	*Authorized IBCs:* Metal (31A, 31B and 31N). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized.
IB2	*Authorized IBCs:* Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized.
IB3	*Authorized IBCs:* Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1 and 31HA2, 31HB2, 31HN2, 31HD2 and 31HH2). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized, except for UN2672 (also see Special provision IP8 in Table 2 for UN2672).
IB4	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N).
IB5	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1and 21HZ1).
IB6	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1, 11HZ2, 21HZ1, and 21HZ2). *Additional Requirement:* Composite IBCs 11HZ2 and 21HZ2 may not be used when the hazardous materials being transported may become liquid during transport.
IB7	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1, 11HZ2, 21HZ1, and 21HZ2); Wooden (11C, 11D and 11F). *Additional Requirement:* Liners of wooden IBCs must be sift-proof.
IB8	*Authorized IBCs:* Metal (11A, 11B, 11N, 21A, 21B and 21N); Rigid plastics (11H1, 11H2, 21H1, and 21H2); Composite (11HZ1, 11HZ2, 21HZ1, and 21HZ2); Fiberboard (11G); Wooden (11C, 11D and 11F); Flexible (13H1, 13H2, 13H3, 13H4, 13H5, 13L1, 13L2, 13L3, 13L4, 13M1 or 13M2).
IB9	IBCs are only authorized if approved by the Associate Administrator.

* * * * *

(7) * * *

* * * * *

(iii) T50 When portable tank instruction T50 is indicated in Column (7) of the § 172.101 Hazardous Materials Table, the applicable liquefied compressed gas and chemical under pressure descriptions are authorized to be transported in portable tanks in accordance with the requirements of § 173.313 of this subchapter.

* * * * *

(8) * * *

(ii) * * *

* * * * *

TP39 The portable tank instruction T4 prescribed may continue to be applied until December 31, 2018.

TP40 The portable tank must not be transported when connected with spray application equipment.

TP41 The portable tank instruction T9 may continue to be applied until December 31, 2018.

* * * * *

(9) * * *

* * * * *

W10 When offered for transportation by vessel, the use of Large Packagings (see § 171.8 of this subchapter) is prohibited.

* * * * *

■ 7. In § 172.202, paragraph (a)(6)(vii) is added:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(6) * * *

(vii) For hazardous materials in limited quantities with a 30 kg gross mass limit in Column (9A) or (9B) of the § 172.101 Hazardous Materials Table, where different hazardous materials are packed together in the same outer packaging, the net quantity of each hazardous material followed by the gross mass of the completed package is indicated and:

* * * * *

■ 8. In § 172.203, paragraph (i)(3) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(i) * * *

(3) For a hazardous material consigned under an ''n.o.s.'' entry not included in the segregation groups listed in section 3.1.4 of the IMDG Code (IBR see § 171.7 of this subchapter) but belonging, in the opinion of the consignor, to one of these groups, the appropriate segregation group must be shown in association with the basic description (for example, IMDG Code segregation group—1 Acids). When no segregation group is applicable, there is no requirement to indicate that condition.

* * * * *

■ 9. In § 172.301, paragraph (a)(1) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) *Proper shipping name and identification number.* (1) Except as otherwise provided by this subchapter, each person who offers a hazardous material for transportation in a non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by ''UN'', ''NA'' or ''ID,'' as appropriate) for the material as shown in the § 172.101 Hazardous Materials Table. The identification number marking preceded by ''UN'', ''NA'', or ''ID'' as appropriate must be marked in characters at least 12 mm (0.47 inches) high. Packages with a maximum capacity of 30 liters (8 gallons) or less, 30 kg (66 pounds) maximum net mass, or cylinders with a water capacity of 60 liters (16 gallons) or less must be marked with characters at least 6 mm (0.24 inches) high. Packages with a maximum capacity of 5 liters (1.32 gallons) or 5 kg (11 pounds) or less must be marked in a size appropriate for the size of the package.

(i) *Transitional exception.* For domestic transportation, until January 1, 2017, the identification number

markings are not subject to the minimum size requirements specified in paragraph this (a)(1).

(ii) Exception for permanently marked packagings. For domestic transportation, a packaging manufactured prior to January 1, 2017 and permanently marked (e.g., by embossing or through a heat stamp process) with the appropriate identification number marking may continue in service until the end of its useful life regardless of whether the identification number markings meet the minimum size requirements specified in this paragraph (a)(1).

* * * * *

■ 11. In § 172.312, paragraph (c)(3) is revised to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packagings.

* * * * *

(c) * * *

(3) When offered or intended for transportation by aircraft, packages containing liquid hazardous materials in inner packagings of 120 mL (4 fluid oz.) or less when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents.

* * * * *

■ 12. In § 172.407, paragraph (f) is revised to read as follows;

§ 172.407 Label specifications.

* * * * *

(f) *Exceptions.* Except for materials poisonous by inhalation (See § 171.8 of this subchapter), a label conforming to specifications in the UN Recommendations (IBR, see § 171.7 of this subchapter) may be used in place of a corresponding label that conforms to the requirements of this subpart.

* * * * *

■ 13. In § 172.604, paragraph (d)(2) is revised to read as follows.

§ 172.604 Emergency response telephone number.

* * * * *

(d) * * *

(2) Materials properly described under the following shipping names:

Battery powered equipment.
Battery powered vehicle.
Carbon dioxide, solid.
Castor bean.
Castor flake.
Castor meal.
Castor pomace.
Consumer commodity.
Dry ice.
Engines, internal combustion.
Fish meal, stabilized.
Fish scrap, stabilized.
Krill Meal, PG III.
Refrigerating machine.
Vehicle, flammable gas powered.
Vehicle, flammable liquid powered.
Wheelchair, electric.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 14. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 15. In § 173.4b, paragraph (b)(8) is revised to read as follows:

§ 173.4b De minimus exceptions.

* * * * *

(b) * * *

(8) *Restrictions.* Except as provided in § 175.10, for transportation by aircraft, hazardous material packaged in accordance with this section may not be carried in checked or carry-on baggage by a passenger or crew member.

■ 16. In § 173.12, paragraph (b)(2)(ii)(A) is revised to read as follows:

§ 173.12 Exceptions for shipments of waste materials.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) A UN 1A2, UN 1B2 or UN 1N2 metal drum, a UN 1D plywood drum, a UN 1G fiber drum, or a UN 1H2 plastic drum, tested and marked to at least the Packing Group III performance level for liquids or solids;

* * * * *

■ 17. In § 173.21, paragraph (f)(3)(ii) is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) * * *

(ii) For transportation by vessel, shipments are authorized in accordance with the control temperature requirements in 7.3.7 of the IMDG Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 18. Section § 173.37 is added to read as follows:

§ 173.37 Hazardous Materials in Flexible Bulk Containers.

(a) No person may offer or accept a hazardous material for transportation in a Flexible Bulk Container except as authorized by this subchapter. Each Flexible Bulk Container used for the transportation of hazardous materials must conform to the requirements of its specification and regulations for the transportation of the particular commodity.

(b) *Initial use and reuse of Flexible Bulk Containers.* A Flexible Bulk Container may be reused. Before a Flexible Bulk Container is filled and offered for transportation, the Flexible Bulk Container must be given an external visual inspection by the person filling the Flexible Bulk Container to ensure:

(1) The Flexible Bulk Container is free from corrosion, contamination, cracks, cuts, or other damage that would render it unable to pass the prescribed design type test to which it is certified and marked; and

(2) The Flexible Bulk Container is marked in accordance with requirements in § 178.1010 of this subchapter. Required markings that are missing, damaged or difficult to read must be restored or returned to original condition.

(3) The following components must be examined to determine structural serviceability:

(i) Textile slings;

(ii) Load-bearing structure straps;

(iii) Body fabric; and

(iv) Lock device parts including metal and textile parts are free from protrusions or damage.

(4) The use of Flexible Bulk Containers for the transport of hazardous materials is permitted for a period not to exceed two years from the date of manufacture of the Flexible Bulk Container.

(c) During transportation—

(1) No hazardous material may remain on the outside of the Flexible Bulk Container; and

(2) Each Flexible Bulk Container must be securely fastened to or contained within the transport unit.

(3) If restraints such as banding or straps are used, these straps must not be over-tightened to an extent that causes damage or deformation to the Flexible Bulk Container.

(4) Flexible Bulk Containers must be transported in a conveyance with rigid sides and ends that extend at least two-thirds of the height of the Flexible Bulk Container.

(5) Flexible Bulk Containers must not be stacked for highway or rail transportation.

(6) Flexible Bulk Containers must not be transported in cargo transport units when offered for transportation by vessel.

(7) Flexible Bulk Containers when transported by barge must be stowed in such a way that there are no void spaces between the Flexible Bulk Containers in the barge. If the Flexible Bulk

Containers do not completely fill the barge, adequate measures must be taken to avoid shifting of cargo. The maximum permissible height of the stack of Flexible Bulk Containers must not exceed 3 containers high.

(d) A Flexible Bulk Container used to transport hazardous materials may not exceed 15 cubic meters (530 cubic feet) capacity.

■ 19. In § 173.50, paragraph (b)(6) is revised as follows.

§ 173.50 Class 1—Definitions.

* * * * *

(b) * * *

(6) *Division 1.6*[2] consists of extremely insensitive articles that do not have a mass explosion hazard. This division is comprised of articles that contain only extremely insensitive substances and that demonstrate a negligible probability of accidental initiation or propagation.

[2] The risk from articles of Division 1.6 is limited to the explosion of a single article.

■ 20. In § 173.52, in paragraph (b), in Table 1, the entry in the twelfth row is revised to read as follows:

§ 173.52 Classification codes and compatibility groups of explosives.

* * * * *

(b) * * *

TABLE 1—CLASSIFICATION CODES

Description of substances or article to be classified	Compatibility group	Classification code
* * * * *	*	*
Articles containing only extremely insensitive substances	N	1.6N
* * * * *	*	*

* * * * *

■ 21. In § 173.56 paragraph (h)(2) is revised to read as follows:

* * * * *

(h) * * *

(2) Ammunition for rifle, pistol, shotgun, or tools;

* * * * *

■ 22. In § 173.59:

■ a. The word ''detonating'' is removed from the definition of *Articles, explosive, extremely insensitive (Articles, EEI).*

■ b. The definition of *Auxiliary explosive component, isolated* is added.

■ c. The definition of ''*Cartridges, blank''* is revised.

■ d. The definition of ''*Explosive, extremely insensitive detonating substance (EIDS)''* is removed.

■ e. The definition of ''*Explosive, extremely insensitive substance (EIS)''* is added.

The revision and additions are as follows:

§ 173.59 Description for explosive terms.

* * * * *

Auxiliary explosive component, isolated. A small device that explosively performs an operation related to the article's functioning, other than its main explosive loads' performance. Functioning of the component does not cause any reaction of the main explosive loads contained within the article.

* * * * *

Cartridges, blank. Articles that consist of a cartridge case with a center or rim fire primer and a confined charge of smokeless or black powder, but no projectile. Used in training, saluting, or in starter pistols, tools, etc.

* * * * *

Explosive, extremely insensitive substance (EIS). A substance that has demonstrated through tests that it is so insensitive that there is very little probability of accidental initiation.

* * * * *

■ 23. In § 173.62, in paragraph (c), in the Table of Packing Methods, Packing Instructions 110(a), 111, 112(a), 112(b), 112(c), 113, 114(a), 114(b), 115, 116, 117, 130, 131, 132(a), 132(b), 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143 and 144 are revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	*	* *	*
110(a)	Bags plastics, textile, plastic coated or lined rubber textile, rubberized textile Receptacles wood	Bags plastics, textile, plastic coated or lined rubber textile, rubberized- Receptacles plastics metal wood	Drums. steel (1A1 or 1A2). other metal (1N1 or 1N2). plastics-(1H1 or 1H2).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. The Intermediate packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning 2. Outer packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning. Outer packagings must be constructed and sealed to prevent evaporation of the wetting solution, except when 0224 is being carried dry			
* * *	*	* *	*
111	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0159, inner packagings are not required when metal (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) or plastics (1H1 or 1H2) drums are used as outer packagings	paper, waterproofed plastics textile, rubberized Sheets plastics textile, rubberized Receptacles wood		steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiberboard (1G). plastics (1H1 or 1H2).
112(a)	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN Nos. 0004, 0076, 0078, 0154, 0219 and 0394, packagings must be lead free 2. Intermediate packagings are not required if leakproof drums are used as the outer packaging 3. For UN0072 and UN0226, intermediate packagings are not required	paper, multiwall, water resistant plastics textile textile, rubberized woven plastics Receptacles metal plastics wood	plastics textile, plastic coated or lined Receptacles metal plastics wood	steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
112(b)	Bags	Bags	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
This packing instruction applies to dry solids other than powders PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free 2. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state and a maximum net mass of 30 kg. 3. For UN0222, inner packagings are not required	paper, Kraft paper, multiwall, water resistant plastics textile textile, rubberized plastics woven plastics	(for UN0150 only) plastics textile, plastic coated or lined	woven plastics sift-proof (5H2/3). plastics, film (5H4). textile, sift-proof (5L2). textile, water resistant (5L3). paper, multiwall, water resistant (5M2). Boxes steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D) reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel (1A1 or 1A2). aluminum (1B1 or 1B2). plywood (1D). other metal (1N1 or 1N2). fiber (1G). plastics (1H1 or 1H2).
112(c) This packing instruction applies to solid dry powders.	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free 2. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state. Bags must not exceed a maximum net mass of 30 kg. 3. Inner packagings are not required if drums are used as the outer packaging. 4. At least one of the packagings must be sift-proof	paper, multiwall, water resistant plastics woven plastics Receptacles fiberboard metal plastics wood	paper, multiwall, water resistant with inner lining plastics Receptacles metal plastics wood	steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G).
113	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN0094 and UN0305, no more than 50 g of substance must be packed in an inner packaging 2. For UN0027, inner packagings are not necessary when drums are used as the outer packaging 3. At least one of the packagings must be sift-proof 4. Sheets must only be used for UN0028	paper plastics textile, rubberized Receptacles fiberboard metal plastics wood Sheets paper, kraft paper, waxed		steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum-(1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G).
114(a) This packing instruction applies to wetted solids PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0234, 0235 and 0236, packagings must be lead free 2. For UN0342, inner packagings are not required when metal (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) or plastics (1H1 or 1H2) drums are used as outer packagings 3. Intermediate packagings are not required if leakproof removable head drums are used as the outer packaging	Bags plastics textile woven plastics Receptacles metal plastics wood	Bags plastics textile, plastic coated or lined Receptacles metal plastics Dividing partitions wood	Boxes steel (4A). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2) plywood (1D). fiber (1G). plastics (1H1 or 1H2).
114(b) PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN Nos. 0077, 0132, 0234, 0235 and 0236, packagings must be lead free 2. For UN0160 and UN0161, when metal drums (1A2, 1B2 or 1N2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes, is prevented 3. For UN0160, UN0161, and UN0508, inner packagings are not necessary if drums are used as the outer packaging 4. For UN0508 and UN0509, metal packagings must not be used	Bags paper, kraft plastics textile, sift-proof woven plastics, sift-proof. Receptacles fiberboard metal paper plastics wood woven plastics, sift-proof.	Not necessary	Boxes natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
115	Receptacles	Bags	Boxes

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For liquid explosives, inner packagings must be surrounded with non-combustible absorbent cushioning material in sufficient quantity to absorb the entire liquid content. Metal receptacles should be cushioned from each other. The net mass of explosive per package may not exceed 30 kg when boxes are used as outer packaging. The net volume of explosive in each package other than boxes must not exceed 120 liters 2. For UN 0075, 0143, 0495 and 0497 when boxes are used as the outer packaging, inner packagings must have taped screw cap closures and be not more than 5 liters capacity each. A composite packaging consisting of a plastic receptacle in a metal drum (6HA1) may be used in lieu of combination packagings. Liquid substances must not freeze at temperatures above −15 °C (+5 °F) 3. For UN0144, intermediate packagings are not necessary. Aluminum drums (1B1 and 1B2) and metal, other than steel or aluminum, drums (1N1 and 1N2) must not be used.	metal plastics wood	plastics in metal receptacles Drums ..... metal Receptacles ..... wood	natural wood, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). Specification MC–200 containers may be used for transport by motor vehicle.
116	Bags	Not Necessary	Bags
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0082, 0241, 0331 and 0332, inner packagings are not necessary if leakproof removable head drums are used as the outer packaging 2. For UN 0082, 0241, 0331 and 0332, inner packagings are not required when the explosive is contained in a material impervious to liquid 3. For UN0081, inner packagings are not required when contained in rigid plastic that is impervious to nitric esters 4. For UN0331, inner packagings are not required when bags (5H2), (5H3) or (5H4) are used as outer packagings 5. Bags (5H2 or 5H3) must be used only for UN0082, 0241, 0331 and 0332 6. For UN0081, bags must not be used as outer packagings	Bags paper, water and oil resistant plastics textile, plastic coated or lined woven plastics, sift-proof Receptacles fiberboard, water resistant metal plastics wood, sift-proof Sheets paper, water resistant paper, waxed plastics	Not necessary	Bags. woven plastics (5H1/2/3). paper, multiwall, water resistant (5M2). plastics, film (5H4). textile, sift-proof (5L2). textile, water resistant (5L3). Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2). Jerricans. steel (3A1 or 3A2). plastics (3H1 or 3H2).
117	Not necessary	Not necessary	IBCs.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. This packing instruction may only be used for explosives of UN0082 when they are mixtures of ammonium nitrate or other inorganic nitrates with other combustible substances that are not explosive ingredients. Such explosives must not contain nitroglycerin, similar liquid organic nitrates, liquid or solid nitrocarbons, or chlorates. 2. This packing instruction may only be used for explosives of UN0241 that consist of water as an essential ingredient and high proportions of ammonium nitrate or other oxidizers, some or all of which are in solution. The other constituents may include hydrocarbons or aluminum powder, but must not include nitro-derivatives such as trinitrotoluene. 3. Metal IBCs must not be used for UN0082 and UN 0241. 4. Flexible IBCs may only be used for solids.			metal (11A), (11B), (11N), (21A), (21B), (21N), (31A), (31B), (31N). flexible (13H2), (13H3), (13H4), (13L2), (13L3), (13L4), (13M2). rigid plastics (11H1), (11H2), (21H1), (21H2), (31H1), (31H2). composite (11HZ1), (11HZ2), (21HZ1), (21HZ2), (31HZ1), (31HZ2).
130	Not necessary	Not necessary	Boxes Steel (4A). Aluminum (4B). Other metal (4N). Wood natural, ordinary (4C1). Wood natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). Drums. Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Large Packagings. Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid plastics (50H). Natural wood (50C). Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G).
Particular Packaging Requirements: 1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices. 2. Subject to approval by the Associate Administrator, large explosive articles, as part of their operational safety and suitability tests, subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, may be offered for transportation in accordance with the requirements of this subchapter.			
131	Bags	Not Necessary	Boxes

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0029, 0267 and 0455, bags and reels may not be used as inner packagings 2. For UN 0030, 0255 and 0456, inner packagings are not required when detonators are packed in pasteboard tubes, or when their leg wires are wound on spools with the caps either placed inside the spool or securely taped to the wire on the spool, so as to restrict free moving of the caps and to protect them from impact forces 3. For UN 0360, 0361 and 0500, detonators are not required to be attached to the safety fuse, metal-clad mild detonating cord, detonating cord, or shock tube. Inner packagings are not required if the packing configuration restricts free moving of the caps and protects them from impact forces	paper plastics Receptacles fiberboard metal plastics wood Reels		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2). Aluminum (1B1 or 1B2). other metal (1N1 or 1N2). Plywood (1D). fiber (1G). plastics (1H1 or 1H2).
132(a) For articles consisting of closed metal, plastic or fiberboard casings that contain detonating explosives, or consisting of plastics-bonded detonating explosives	Not necessary	Not necessary	Boxes steel (4A). aluminum (4B). other metal (4N). wood, natural; ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2).
132(b) For articles without closed casings	Receptacles fiberboard metal plastics wood Sheets paper plastics	Not necessary	Boxes steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2).
133 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0043, 0212, 0225, 0268 and 0306 trays are not authorized as inner packagings	Receptacles fiberboard metal plastics wood Trays, fitted with dividing partitions fiberboard plastics wood	Intermediate packagings are only required when trays are used as inner packagings. Receptacles fiberboard metal plastics wood	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2).
134	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
	water resistant Receptacles fiberboard metal plastics wood Sheets fiberboard, corrugated Tubes fiberboard		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums. fiberboard (1G). plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D).
135	Bags paper plastics Receptacles fiberboard metal plastics wood Sheets paper plastics	Not necessary	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2) plywood (1D). fiber (1G). plastics (1H1 or 1H2).
136	Bags plastics textile Boxes. fiberboard plastics wood Dividing partitions in the outer packagings	Not necessary	Boxes. steel (4A). aluminum (4B) other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
137	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0059, 0439, 0440 and 0441, when the shaped charges are packed singly, the conical cavity must face downwards and the package marked "THIS SIDE UP". When the shaped charges are packed in pairs, the conical cavities must face inwards to minimize the jetting effect in the event of accidental initiation	plastics Boxes fiberboard wood Tubes fiberboard metal plastics Dividing partitions in the outer packagings		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
138	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: If the ends of the articles are sealed, inner packagings are not necessary	Plastics		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. fiberboard (1G). plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2).
139	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0065, 0102, 0104, 0289 and 0290, the ends of the detonating cord must be sealed, for example, by a plug firmly fixed so that the explosive cannot escape. The ends of CORD DETONATING flexible must be fastened securely 2. For UN0065 and UN0289, inner packagings are not required when they are fastened securely in coils	plastics Receptacles fiberboard metal plastics wood Reels Sheets paper plastics		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
140	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. If the ends of UN0105 are sealed, no inner packagings are required 2. For UN0101, the packaging must be sift-proof except when the fuse is covered by a paper tube and both ends of the tube are covered with removable caps 3. For UN0101, steel or aluminum boxes or drums must not be used	plastics Reels Sheets paper, kraft plastics Receptacles wood		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G).
141	Receptacles fiberboard metal plastics wood Trays, fitted with dividing partitions plastics wood Dividing partitions in the outer packagings	Not necessary	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
142	Bags paper plastics Receptacles fiberboard metal plastics wood Sheets paper Trays, fitted with dividing partitions plastics	Not necessary	Boxes. steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
143	Bag	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0271, 0272, 0415 and 0491 when metal packagings are used, metal packagings must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes is prevented 2. Composite packagings (6HH2) (plastic receptacle with outer solid box) may be used in lieu of combination packagings	paper, kraft plastics textile textile, rubberized Receptacles fiberboard metal plastics wood Trays, fitted with dividing partitions plastics wood		steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
144	Receptacles	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0248 and UN 0249, packagings must be protected against the ingress of water. When CONTRIVANCES, WATER ACTIVATED are transported unpackaged, they must be provided with at least two independent protective features that prevent the ingress of water	fiberboard metal plastics wood Dividing partitions in the outer packagings		steel (4A). aluminum (4B) other metal (4N). wood, natural, ordinary (4C1) with metal liner. plywood (4D) with metal liner. reconstituted wood (4F) with metal liner. plastics, expanded (4H1). plastics, solid (4H2). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plastics (1H1 or 1H2). plywood (1D).

* * * * *

■ 24. In § 173.63, paragraph (b) is revised to read as follows:

§ 173.63 Packaging exceptions.

* * * * *

(b) *Limited quantities of Cartridges, small arms, Cartridges, power devices, Cartridges for tools, blank, and Cases, cartridge, empty with primer.* (1)(i) Cartridges, small arms, Cartridges, power devices, Cartridges for tools, blank, and Cases, cartridge, empty with primer that have been classed as Division 1.4S explosive may be offered for transportation and transported as limited quantities when packaged in accordance with paragraph (b)(2) of this section. Packages containing such articles may be marked with either the marking prescribed in § 172.315(a) or (b) of this subchapter and offered for transportation and transported by any mode. For transportation by aircraft, the package must conform to the applicable requirements of § 173.27 of this part. In addition, packages containing such articles offered for transportation by aircraft must be marked with the proper shipping name as prescribed in the § 172.101 Hazardous Materials Table of this subchapter. Packages containing such articles are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel. Additionally, packages containing such articles are excepted from the requirements of subparts E (Labeling) and F (Placarding) of part 172 of this subchapter.

(ii) Until December 31, 2012, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges for tools, blank *(used to project fastening devices)''* and reclassed as ''ORM–D–AIR'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010. Additionally, for transportation by aircraft, Cartridges, power devices must be successfully tested under the UN Test Series 6(d) criteria for reclassification as ORM–D–AIR material effective July 1, 2011. Until December 31, 2020, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges, power device *(used to project fastening devices)''* and reclassed as ''ORM–D'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010.

(iii) Cartridges, small arms and Cartridges for tools, blank, and Cases, cartridge empty with primer that may be shipped as a limited quantity or ORM–D material are as follows:

(A) Ammunition for rifle, pistol or shotgun;

(B) Ammunition with inert projectiles or blank ammunition;

(C) Ammunition having no tear gas, incendiary, or detonating explosive projectiles;

(D) Ammunition not exceeding 12.7 mm (50 caliber or 0.5 inch) for rifle or pistol, cartridges or 8 gauge for shotshells;

(E) Cartridges for tools, blank; and

(F) Cases, cartridge, empty with primer.

(2) Packaging for Cartridges, small arms, Cartridges for tools, blank, Cases, cartridge empty with primer as limited quantity or ORM–D material must be as follows:

(i) Ammunition must be packed in inside boxes, or in partitions that fit snugly in the outside packaging, or in metal clips;

(ii) Primers must be protected from accidental initiation;

(iii) Inside boxes, partitions or metal clips must be packed in securely-closed strong outside packagings;

(iv) Maximum gross weight is limited to 30 kg (66 pounds) per package; and

(v) Cartridges for tools, blank, Cases, cartridge, empty with primer, and 22 caliber rim-fire cartridges may be packaged loose in strong outside packagings.

* * * * *

■ 25. In § 173.115, paragraph (k), is revised to read as follows:

* * * * *

(k) For Division 2.2 gases, the oxidizing ability shall be determined by tests or by calculation in accordance with ISO 10156 (including Technical Corrigendum 1) (IBR, see § 171.7 of this subchapter).

* * * * *

■ 26. In § 173.121, paragraph (b)(1)(iii) is revised to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(b) * * *

(1) * * *

(iii) The capacity of the packaging is not more than 30 L (7.9 gallons); except that for transportation by highway, rail or cargo aircraft, the capacity of the package is not more than 100 L (26.3 gallons); and

* * * * *

■ 27. In § 173.158, paragraphs (d)(2), (e), (f)(3), (g), and (h) introductory text are revised to read as follows:

§ 173.158 Nitric Acid.

* * * * *

(d) * * *

(2) In combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4A, 4B, 4N or 4G outer packagings with inner glass packagings of 2.5 L (0.66 gallons) or less capacity cushioned with a non-reactive, absorbent material and packed within a tightly closed intermediate packaging of metal or plastic.

(e) Nitric acid of less than 90 percent concentration, when offered for transportation or transported by rail, highway, or water may be packaged in 4A, 4B, or 4N metal boxes, 4G fiberboard boxes or 4C1, 4C2, 4D or 4F wooden boxes with inside glass packagings of not over 2.5 L (0.66 gallon) capacity each.

(f) * * *

(3) In combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4C1, 4C2, 4D, 4F, 4G, 4A, 4B or 4N outer packagings and plastic inner packagings not over 2.5 L (0.66 gallon) capacity further individually overpacked in tightly closed metal packagings.

(g) Nitric acid of more than 70 percent concentration, when offered for transportation or transported by cargo aircraft only, must be packaged in combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4C1, 4C2, 4D, 4F, 4G, 4A, 4B or 4N outer packagings with glass or earthenware inner packagings of not over 1 L (0.3 gallon) or glass ampoules of not over 0.5 L (0.1 gallon).

(h) Nitric acid of less than 70 percent concentration, when offered for transportation in cargo aircraft only must be packaged in combination packagings with 1A2, 1B2, 1N2, 1D, 1G, 1H2, 3H2, 4C1, 4C2, 4D, 4F, 4G, 4A, 4B or 4N outer packagings with inner packagings of—

* * * * *

■ 28. In § 173.159a, add paragraph (d)(3) to read as follows:

§ 173.159a Exceptions for non-spillable batteries.

* * * * *

(d) * * *

(3) For transport by aircraft, must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.

■ 29. In § 173.160 is revised to read as follows:

§ 173.160 Bombs, smoke, non-explosive (corrosive).

Bombs, smoke, non-explosive may be shipped provided they are without ignition elements, bursting charges, detonating fuses or other explosive components. They must be packaged in metal (4A, 4B, 4N), wooden (4C1, 4C2), plywood (4D), or reconstituted wood (4F), fiberboard (4G) or solid plastic (4H2) boxes, or metal (1A2, 1B2, 1N2), plastic (1H2), plywood drums (1D), or fiber (1G) drums that meet Packing Group II requirements.

■ 30. In § 173.162, paragraphs (a)(1), (a)(2), and (c) are revised to read as follows:

§ 173.162 Gallium.

(a) * * *

(1) In combination packagings intended to contain liquids consisting of glass, earthenware or rigid plastic inner packagings with a maximum net mass of 15 kg (33 pounds) each. The inner packagings must be packed in wood boxes (4C1, 4C2, 4D, 4F), fiberboard boxes (4G), plastic boxes (4H1, 4H2), fiber drums (1G) or steel, metal, other than steel or aluminum, and plastic drums or jerricans (1A1, 1A2, 1N1, 1N2, 1H1, 1H2, 3A2 or 3H2) with sufficient cushioning materials to prevent breakage. Either the inner packagings or the outer packagings must have an inner liner that is leakproof or bags of strong leakproof and puncture-resistant material impervious to the contents and completely surrounding the contents to prevent it from escaping from the package, irrespective of its position.

(2) In packagings intended to contain liquids consisting of semi-rigid plastic inner packagings of not more than 2.5 kg (5.5 pounds) net capacity each, individually enclosed in a sealed, leak-tight bag of strong puncture-resistant material. The sealed bags must be packed in wooden (4C1, 4C2), plywood (4D), reconstituted wood (4F), fiberboard (4G), plastic (4H1, 4H2) or metal, other than steel or aluminum (4N) boxes or in fiber (1G), steel (1A1, 1A2), metal, other than steel or aluminum (1N1, 1N2), or plastic (1H1 or 1H2) drums, that are lined with leak-tight, puncture-resistant material. Bags and liner material must be chemically resistant to gallium.

* * * * *

(c) Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of gallium and packaged so that the quantity of gallium per package does not exceed 1 g (0.35 ounce) are not subject to the requirements of this subchapter. For transportation by aircraft, such articles and apparatuses must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.

■ 31. In § 173.164:

■ a. Paragraphs (a)(1) is revised;

■ b. Paragraph (a)(5) is added;
■ c. Paragraphs (b) and (c)(2) are revised; and
■ d. Paragraph (f) is added.

The revisions and additions read as follows:

§ 173.164 Mercury (metallic and articles containing mercury).

(a) * * *

(1) In inner packagings of earthenware, glass or plastic containing not more than 3.5 kg (7.7 pounds) of mercury, or inner packagings that are glass ampoules containing not more than 0.5 kg (1.1 pounds) of mercury, or iron or steel quicksilver flasks containing not more than 35 kg (77 pounds) of mercury. The inner packagings or flasks must be packed in steel drums (1A1, 1A2), metal, other than steel or aluminum drums (1N1, 1N2), steel jerricans (3A2), wooden boxes (4C1, 4C2), plywood boxes (4D), reconstituted wood boxes (4F), fiberboard boxes (4G), metal, other than steel or aluminum boxes (4N), plastic boxes (4H2), plywood drums (1D) or fiber drums (1G).

* * * * *

(5) When transported as cargo, lamps are excepted from the requirements of this subchapter provided, each lamp contains not more than 1 g of mercury and is packaged so that there is not more than 30 g of mercury per package. Packages must be so designed and constructed such that when dropped from a height of not less than 0.5 meter (1.5 feet) the packages must still be fit for transport and there must be no damage to the contents.

(b) When transported as cargo, manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of mercury and packaged so that the quantity of mercury per package does not exceed 1 g (0.035 ounce) are not subject to the requirements of this subchapter.

(c) * * *

(2) When transported as cargo, thermometers, switches and relays, each containing a total quantity of not more than 15 g (0.53 ounces) of mercury, are excepted from the requirements of this subchapter if installed as an integral part of a machine or apparatus and so fitted that shock of impact damage, leading to leakage of mercury, is unlikely to occur under conditions normally incident to transport.

* * * * *

(f) For vessel transport, manufactured articles or instruments containing less than 0.45 kg (1.0 pound) of mercury are not subject to the requirements of this subchapter.

■ 32. Section 173.165 is revised to read as follows:

§ 173.165 Polyester resin kits.

(a) Polyester resin kits consisting of a base material component (Class 3, Packing Group II or III) and an activator component (Type D, E, or F organic peroxide that does not require temperature control)—

(1) The organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids.

(2)(i) Except for transportation by aircraft, the flammable liquid component must be packaged in suitable inner packagings.

(ii) For transportation by aircraft, a Packing Group II base material is limited to a quantity of 5 L (1.3 gallons) in metal or plastic inner packagings and 1 L (0.3 gallons) in glass inner packagings. A Packing Group III base material is limited to a quantity of 10 L (2.6 gallons) in metal or plastic inner packagings and 2.5 L (0.66 gallons) in glass inner packagings.

(3) If the flammable liquid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(4) The Packing Group assigned will be II or III, according to the criteria for Class 3, applied to the base material. Additionally, polyester resin kits must be packaged in specification combination packagings, based on the performance level required of the base material (II or III) contained within the kit, as prescribed in §§ 173.202 or 173.203 of this subchapter, as appropriate.

(5) For transportation by aircraft, the following additional requirements apply:

(i) Closures on inner packagings containing liquids must be secured by secondary means;

(ii) Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c); and

(iii) The total quantity of activator and base material may not exceed 5 kg (11 lbs) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 10 kg (22 lbs) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (i.e., 1 L equals 1 kg).

(b) Polyester resin kits are eligible for the Small Quantity exceptions in § 173.4 and the Excepted Quantity exceptions in § 173.4a, as applicable.

(c) *Limited quantities.* Limited quantity packages of polyester resin kits are excepted from labeling requirements, unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel, and is eligible for the exceptions provided in § 173.156 of this part. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the general packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight.

(1) For other than transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids. For transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 30 mL (4.22 fluid ounces) net capacity each for liquids or 100 g (17.64 ounces) net capacity each for solids.

(2) Except for transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 5 L (1.3 gallons) net capacity each for a Packing Group II and Packing Group III liquid. For transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 1 L (0.26 gallons) net capacity each for a Packing Group II material. The flammable liquid component must be packed in metal or plastic inner packagings not over 5.0 L (1.3 gallons) net capacity each or glass inner packagings not over 2.5 L (0.66 gallons) net capacity each for a Packing Group III material.

(3) If the flammable liquid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(4) For transportation by aircraft, the following additional requirements apply:

(i) *Closures.* Closures on inner packagings containing liquids must be secured by secondary means as prescribed in § 173.27(d);

(ii) *Liquids.* Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c);

(iii) *Quantity.* The total quantity of activator and base material may not exceed 1 kg (2.2 lbs) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 5 kg (11 lbs) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (i.e., 1 L equals 1 kg);

(iv) *Drop test capability.* Fragile inner packagings must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities must be capable of withstanding a 1.2 m drop on solid concrete in the position most likely to cause damage; and

(v) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface for a duration of 24 hours equivalent to the total weight of identical packages if stacked to a height of 3.0 m (including the test sample).

(d) *Consumer commodities.* Until December 31, 2020, a limited quantity package of polyester resin kits that are also consumer commodities as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 33. In § 173.175, paragraph (g) is added to read as follows:

§ 173.175 Permeation devices.

* * * * *

(g) For transportation by aircraft, permeation devices must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.

■ 34. Section 173.176 is added to read as follows:

§ 173.176 Capacitors.

(a) Capacitors, including capacitors containing an electrolyte that does not meet the definition of any hazard class or division as defined in this part, must conform to the following requirements:

(1) Capacitors not installed in equipment must be transported in an uncharged state;

(2) Each capacitor must be protected against a potential short circuit hazard in transport as follows:

(i) Except for transport by air, when a capacitor's energy storage capacity is less than or equal to 10Wh or when the energy storage capacity of each capacitor in a module is less than or equal to 10 Wh, the capacitor or module must be protected against short circuit or be fitted with a metal strap connecting the terminals; and

(ii) For transport by air, or when the energy storage capacity of a capacitor or a capacitor in a module is more than 10 Wh, the capacitor or module must be fitted with a metal strap connecting the terminals;

(3) Capacitors containing an electrolyte that meets the definition of one or more hazard class or division as defined in this part, must be designed to withstand a 95 kPa (0.95 bar, 14 psi) pressure differential;

(4) Capacitors must be designed and constructed to safely relieve pressure that may build up in use, through a vent or a weak point in the capacitor casing. Any liquid that is released upon venting must be contained by the packaging or by the equipment in which a capacitor is installed; and

(5) Capacitors must be marked with the energy storage capacity in Wh.

(b) Capacitors must be packed in strong outer packagings. For transport by air, capacitors must be securely cushioned within the outer packagings. Capacitors installed in equipment may be offered for transport unpackaged or on pallets, when the capacitors are afforded equivalent protection by the equipment in which they are contained.

(c) Capacitors containing an electrolyte not meeting the definition of any hazard class or division as defined in this part, including when installed in equipment, are not subject to any other requirements of this subchapter.

(d) Capacitors containing an electrolyte that meets the definition of one or more hazard class or division as defined in this part, with an energy storage capacity of 10 Wh or less are not subject to any other requirements of this subchapter, when they are capable of withstanding a 1.2 m (3.9 feet) drop test unpackaged onto a rigid, non-resilient, flat and horizontal surface without loss of contents.

(e) Capacitors containing an electrolyte meeting the definition of one or more hazard class or division as defined in this part, that are not installed in equipment, and with an energy storage capacity of more than 10 Wh are subject to the requirements of this subchapter.

(f) Capacitors installed in equipment and containing an electrolyte meeting the definition of one or more hazard class or division as defined in this part, are not subject to any other requirements of this subchapter, provided the equipment is packaged in a strong outer packaging and in such a manner as to prevent accidental functioning of the capacitors during transport. Large, robust equipment containing capacitors may be offered for transport unpackaged or on pallets when the capacitors are afforded equivalent protection by the equipment in which they are contained.

■ 35. In § 173.181, paragraphs (b) and (c) are revised to read as follows:

§ 173.181 Pyrophoric materials (liquids).

* * * * *

(b) Steel boxes (4A), aluminum boxes (4B), metal boxes, other than steel or aluminum (4N), wooden boxes (4C1, 4C2, 4D, or 4F) or fiberboard boxes (4G); steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), metal drums, other than steel or aluminum (1N1 or 1N2), plywood drums (1D), or fiber drums (1G); or steel jerricans (3A1 or 3A2) or aluminum jerricans (3B1 or 3B2) enclosing not more than four strong, tight metal cans with inner receptacles of glass or metal, not over 1 L (0.3 gallon) capacity each, having positive screwcap closures adequately gasketed. Inner packagings must be cushioned on all sides with dry, absorbent, incombustible material in a quantity sufficient to absorb the entire contents. The strong, tight metal cans must be closed by positive means, not by friction.

(c) Steel drums (1A1 or 1A2), aluminum drums (1B1 or 1B2), metal drums, other than steel or aluminum(1N1 or 1N2) or fiber drums (1G); steel jerricans (3A1 or 3A2) or aluminum jerricans (3B1 or 3B2); or steel boxes (4A), aluminum boxes (4B) or metal boxes, other than steel or aluminum (4N) not exceeding 220 L (58 gallons) capacity each with strong, tight inner metal cans not over 4.0 L (1 gallon) capacity each. The strong, tight metal cans must be closed by positive means, not friction.

■ 36. In § 173.183, paragraph (a) is revised to read as follows:

§ 173.183 Nitrocellulose base film.

* * * * *

(a) In steel drums (1A2), aluminum drums (1B2), other metal drums (4A2), steel jerricans (3A2), aluminum jerricans (3B2), steel, aluminum or other metal (4A, 4B, 4N) boxes, wooden (4C1,

4C2), plywood (4D) or reconstituted wood (4F) boxes or plywood drums (1D) with each reel in a tightly closed metal can, polypropylene canister, or strong cardboard or fiberboard inner packaging with cover held in place by adhesive tape or paper; or

* * * * *

■ 37. In § 173.184, paragraph (b) is revised to read as follows:

§ 173.184 Highway or rail fuse.

* * * * *

(b) Fusees (highway and railway) must be packaged in steel (1A2), aluminum (1B2) or other metal (1N2) drums, steel (3A2) or aluminum (3B2) jerricans, steel (4A), aluminum (4B) or other metal (4N) boxes, wooden (4C1, 4C2), plywood (4D) or reconstituted wood (4F) boxes or in fiberboard boxes (4G), plywood (1D) or fiber (1G) drums. If the fusees are equipped with spikes packagings must have reinforced ends to prevent penetration of spikes through the outer packagings; packages must be capable of passing drop test requirements (§ 178.603 of this subchapter), including at least one drop with spike in a downward position, and other requirements of part 178 of this subchapter, at the Packing Group II performance level.

■ 38. In § 173.186, paragraph (e) is revised to read as follows:

§ 173.186 Matches.

* * * * *

(e) Packagings. Strike-anywhere matches must be tightly packed in securely closed chipboard, fiberboard, wooden, or metal inner packagings to prevent accidental ignition under conditions normally incident to transportation. Each inner packaging may contain no more than 700 strike-anywhere matches and must be packed in outer steel drums (1A1, 1A2), aluminum drums (1B1, 1B2), other metal drums (1N1, 1N2), steel jerricans (3A1, 3A2), aluminum jerricans (3B1, 3B2), steel (4A), aluminum (4N), other metal (4N) boxes, wooden (4C1, 4C2), plywood (4D), reconstituted wood (4F) or fiberboard (4G) boxes, plywood (1D) or fiber (1G) drums. Gross weight of fiberboard boxes (4G) must not exceed 30 kg (66 pounds). Gross weight of other outer packagings must not exceed 45 kg (100 pounds).

■ 39. In § 173.187, paragraphs (a) and (d) are revised to read as follows:

§ 173.187 Pyrophoric solids, metals or alloys, n.o.s.

* * * * *

(a) In steel, aluminum or other metal boxes (4A, 4B or 4N) and contain no more than 15 kg (33 pounds) each.

* * * * *

(d) In steel, aluminum or other metal drums (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) with a gross mass not exceeding 150 kg (331 pounds) per drum.

* * * * *

■ 40. In § 173.188, paragraphs (a)(1) introductory text, (a)(2), and (b)(1) are revised to read as follows:

§ 173.188 White or yellow phosphorus.

* * * * *

(a) * * *

(1) Steel, aluminum or other metal boxes (4A, 4B or 4N) or wooden boxes (4C1, 4C2, 4D, or 4F) with:

* * * * *

(2) Steel, aluminum or other metal drums (1A1, 1B1 or 1N1) not over 250 L (66 gallons) capacity each or steel, aluminum or other metal drums (1A2, 1B2, or 1N2) not over 115 L (30 gallons) capacity each.

(b) * * *

(1) Steel, aluminum or other metal drums (1A2, 1B2 or 1N2) not over 115 L (30 gallons) capacity each, or

* * * * *

■ 41. In § 173.189, paragraph (b) is revised to read as follows:

§ 173.189 Batteries containing sodium or cells containing sodium.

* * * * *

(b) Cells must be protected against short circuit and must consist of hermetically sealed metal casings that fully enclose the hazardous materials and that are so constructed and closed as to prevent the release of the hazardous materials under normal conditions of transport. Cells must be placed in suitable outer packagings with sufficient cushioning material to prevent contact between cells and between cells and the internal surfaces of the outer packaging, and to ensure that no dangerous shifting of the cells within the outer packaging occurs in transport. Cells must be packaged in 1A2, 1B2, 1N2, 1D, 1G, 1H2, 4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2, 3A2, 3B2 or 3H2) outer packagings that meet the requirements of part 178 of this subchapter at the Packing Group II performance level.

* * * * *

■ 42. In § 173.193, in paragraph (a), the first sentence is revised to read as follows:

§ 173.193 Bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures, etc.

(a) Bromoacetone must be packaged as follows in metal boxes (4A, 4B or 4N) or wooden boxes (4C1, 4C2, 4D or 4F) with inner glass receptacles or tubes in hermetically sealed metal receptacles in corrugated fiberboard cartons. * * *

* * * * *

■ 43. In § 173.194, paragraphs (b)(1) and (2) are revised to read as follows:

§ 173.194 Gas identification sets.

* * * * *

(b) * * *

(1) If the poisonous material does not exceed 5 mL (0.2 fluid ounce) if a liquid or 5 g (0.2 ounce) if a solid, it may be packed in glass inner receptacles of not over 120 mL (4.1 fluid ounces) each. Each glass receptacle, cushioned with absorbent material must be packed in a hermetically sealed metal can of not less than 0.30 mm (0.012 inch) wall thickness. Metal cans, surrounded on all sides by at least 25 mm (1 inch) of dry sawdust, must be packed in 4A, 4B or 4N metal boxes or 4C1, 4C2, 4D or 4F wooden boxes. Not more than 100 mL (3.4 fluid ounces) or 100 g (3.5 ounces) of poisonous materials may be packed in one outer box.

(2) If the poisonous material does not exceed 5 mL (0.2 fluid ounce) if a liquid or 20 g (0.7 ounce) if a solid, it may be packed in glass inner receptacles with screw-top closures of not less than 60 mL (2 fluid ounces), hermetically sealed. Twelve bottles containing poisonous material, not to exceed 100 mL (3.4 fluid ounces) or 100 g (3.5 ounces), or both, may be placed in a plastic carrying case, each glass receptacle surrounded by absorbent cushioning and each separated from the other by sponge rubber partitions. The plastic carrying case must be placed in a tightly fitting fiberboard box which in turn must be placed in a tightly fitting 4A, 4B or 4N metal box or 4C1, 4C2, 4D or 4F wooden box.

■ 44. In § 173.196, paragraph (a)(3) is revised to read as follows:

§ 173.196 Category A infectious substances.

(a) * * *

(3) A rigid outer packaging of adequate strength for its capacity, mass and intended use; including, drums (1A1, 1A2, 1B1, 1B2, 1N1, 1N2, 1H1, 1H2, 1D, 1G); boxes (4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2); or jerricans (3A1, 3A2, 3B1, 3B2, 3H1, 3H2). The outer packaging must measure not less than 100 mm (3.9 inches) at its smallest overall external dimension.

* * * * *

■ 45. In § 173.199, paragraph (d)(1) is revised to read as follows:

§ 173.199 Category B infectious substances.

(d) * * *

(1) Ice or dry ice must be placed outside the secondary packaging or in an overpack. Interior supports must be provided to secure the secondary packagings in the original position. If ice is used, the outside packaging must be leakproof or must have a leakproof liner. If dry ice is used, the outside packaging must permit the release of carbon dioxide gas and otherwise meet the provisions in § 173.217. The primary receptacle and secondary packaging must maintain their integrity at the temperature of the refrigerant used, as well as the temperatures and pressures of transport by aircraft they could be subjected to if refrigeration were lost, and sufficient absorbent material must be provided to absorb all liquid, including melted ice.

* * * * *

§ 173.201 [Amended]

■ 46. In § 173.201, in the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

§ 173.202 [Amended]

■ 47. In § 173.202, in the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

§ 173.203 [Amended]

■ 48. In § 173.203, in the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''

§ 173.211 [Amended]

■ 49. Section 173.211 is amended as follows:

■ a. In the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

■ b. In the paragraph (c) list, the wording ''Metal box other than steel or aluminum with liner: 4N'' is added between the entry ''Aluminum box with liner: 4B'' and the entry ''Natural wood box, sift proof: 4C2''.

§ 173.212 [Amended]

■ 50. Section 173.212 is amended as follows:

■ a. In the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

■ b. In the paragraph (c) list, the wording ''Metal box other than steel or aluminum with liner: 4N'' is added between the entry ''Aluminum box with liner: 4B'' and the entry ''Natural wood box: 4C1''.

§ 173.213 [Amended]

■ 51. Section 173.213 is amended as follows:

■ a. In the paragraph (b) list, the wording ''Metal box other than steel or aluminum: 4N'' is added between the entry ''Solid plastic box: 4H2'' and the entry ''Inner packagings:''.

■ b. In the paragraph (c) list, the wording ''Metal box other than steel or aluminum with liner: 4N'' is added between the entry ''Aluminum box with liner: 4B'' and the entry ''Natural wood box, sift proof: 4C2''.

■ 52. In § 173.219, paragraphs (b)(1), (c)(1), and (c)(5) are revised to read as follows:

§ 173.219 Life-saving appliances.

* * * * *

(b) * * *

(1) Division 2.2 compressed or liquefied gases must be packaged in cylinders in accordance with the requirements of this subchapter;

* * * * *

(c) * * *

(1) Division 2.2 compressed or liquefied gases must be packaged in cylinders in accordance with the requirements of this subchapter;

* * * * *

(5) Life-saving appliances containing no hazardous materials other than cylinders of Division 2.2 compressed or liquefied gases with no subsidiary risk, with a capacity not exceeding 120 mL, installed solely for the purpose of activating the appliance, are not subject to the provisions of this subchapter provided they are overpacked in rigid outer packagings with a maximum gross mass of 40 kg. For transportation by aircraft, such appliances must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.

■ 53. In § 173.220, paragraph (d) is revised to read as follows;

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, battery-powered equipment or machinery, fuel cell-powered equipment or machinery.

* * * * *

(d) *Lithium batteries.* Except as provided in § 172.102, Special Provision A101 of this subchapter, vehicles, engines and machinery powered by lithium metal batteries that are transported with these batteries installed are forbidden aboard passenger-carrying aircraft. Lithium batteries contained in vehicles, engines or mechanical equipment must be securely fastened in the battery holder of the vehicle, engine or mechanical equipment and be protected in such a manner as to prevent damage and short circuits (*e.g.,* by the use of non-conductive caps that cover the terminals entirely). Lithium batteries must be of a type that have successfully passed each test in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) as specified in § 173.185 of this subchapter, unless approved by the Associate Administrator. Equipment (other than vehicles, engines or mechanical equipment) containing lithium batteries, must be described as ''Lithium ion batteries contained in equipment'' or ''Lithium metal batteries contained in equipment,'' as appropriate, and transported in accordance with § 173.185 and applicable special provisions.

* * * * *

■ 54. In § 173.221, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 173.221 Polymeric beads, expandable and Plastic molding compound.

(a) Non-bulk shipments of Polymeric beads (or granules), expandable *evolving flammable vapor* and Plastic molding compound *in dough, sheet or extruded rope form, evolving flammable vapor* must be packed in: metal (4A, 4B, or 4N), wooden (4C1 or 4C2), plywood (4D), fiberboard (4G), reconstituted wood (4F), plastic (4H1 or 4H2) boxes, plywood drums (1D) or fiber drums (1G) with sealed inner plastic liners; in vapor tight metal or plastic drums (1A1, 1A2, 1B1, 1B2, 1N1, 1N2, 1H1 or 1H2); in vapor tight metal or plastic jerricans (3A1, 3A2, 3B1, 3B2, 3H1, or 3H2); or packed in non-specification packagings when transported in dedicated vehicles or freight containers. The packagings need not conform to the requirements for package testing in part 178 of this subchapter, but must be capable of containing any evolving gases from the contents during normal conditions of transportation.

* * * * *

(c) For transportation by vessel, the provisions of § 176.907 must be met.

■ 55. In § 173.225, the paragraph (c) ''Organic Peroxide Table'' and the paragraph (e) ''Organic Peroxide IBC Table'' are amended by adding the

entries under ''[ADD]'' and revising entries under ''[REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(c) * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
[ADD]										
* *		*		*	*		*		*	
([3R- (3R, 5aS, 6S, 8aS, 9R, 10R, 12S, 12aR**)]-Decahydro-10-methoxy-3, 6, 9-trimethyl-3, 12-epoxy-12H-pyrano [4, 3-j]-1, 2-benzodioxepin)	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	.....
* *		*		*	*		*		*	
3, 6, 9-Triethyl-3, 6, 9-trimethyl-1, 4, 7-triperoxonane	UN3110	≤17	≥18	.....	≥65	.....	OP8	.....	.....	.....
* *		*		*	*		*		*	
Di-(3, 5, 5-trimethylhexanoyl) peroxide	UN3119	>38–52	≥48	.....	.....	.....	OP8	+10	+15	.....
* *		*		*	*		*		*	
[REVISE]										
* *		*		*	*		*		*	
Diisopropyl peroxydicarbonate	UN3115	≤32	≥68	.....	.....	.....	OP7	−15	−5	.....
* *		*		*	*		*		*	
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3115	>52–82	≥18	.....	.....	.....	OP7	0	+10	.....
* *		*		*	*		*		*	

* * * * *

(e) * * *

ORGANIC PEROXIDE IBC TABLE

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
	[ADD]				
*	* * *	*		*	*
	Diisobutyryl peroxide, not more than 28% as a stable dispersion in water.	31HA1	1000	−20 °C	−10 °C
		31A	1250	−20 °C	−10 °C
	Diisobutyryl peroxide, not more than 42% as a stable dispersion in water.	31HA1	1000	−25 °C	−15 °C
		31A	1250	−25 °C	−15 °C
*	* * *	*		*	*
	[REVISE]				
*	* * *	*		*	*
	Di-(3, 5, 5-trimethylhexanoyl) peroxide, not more than 52% in diluent type A.	31HA1	1000	+10 °C	+15 °C
*	* * *	*		*	*
	1, 1, 3, 3-Tetramethylbutyl peroxyneodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−5 °C	+5 °C
		31HA1	1000	−5 °C	+5 °C
*	* * *	*		*	*

* * * * *

§ 173.226 [Amended]

■ 56. Section 173.226 is amended as follows:

■ a. In the paragraph (c)(1) list, the wording ''Expanded plastic box: 4H2'' is removed and the wording ''Expanded plastic box: 4H1'' is added in its place.

■ b. In the paragraph (c)(1) list, the wording ''Metal box other than steel or aluminum: 4N'' is added after the entry ''Solid plastic box: 4H2''.

■ 57. In § 173.230, paragraphs (e)(2)(ii) and (f)(3) are revised to read as follows:

§ 173.230 Fuel cell cartridges containing hazardous material.

* * * * *

(e) * * *

(2) * * *

(ii) For fuel cell cartridges contained in equipment, the entire fuel cell system must be protected against short circuits and unintentional activation. The equipment must be securely cushioned in the outer packaging.

(f) * * *

(3) For transportation aboard passenger aircraft, for fuel cell cartridges contained in equipment, each fuel cell system and fuel cell cartridge must conform to to IEC 62282–6–100 and IEC 62282–6–100 Amend. 1 (IBR, see § 171.7 of this subchapter) or a standard approved by the Associate Administrator;

* * * * *

■ 58. In § 173.240, paragraph (f) is added to read as follows:

§ 173.240 Bulk packaging for certain low hazard solid materials.

* * * * *

(f) *Flexible Bulk Containers.* Flexible Bulk Containers are authorized subject to the conditions and limitations of this section provided the use of a Flexible Bulk Container is authorized by the inclusion of bulk packaging code B120 in Column (7) of the § 172.101 Hazardous Materials Table of this subchapter and the Flexible Bulk Container conforms to the requirements in subpart S of part 178 of this subchapter. Flexible Bulk Containers may not be used for Packing Group I or II hazardous materials.

■ 59. In § 173.301b, paragraphs (c)(2)(ii) and (d) are revised to read as follows:

§ 173.301b Additional general requirements for shipment of UN pressure receptacles.

* * * * *

(c) * * *

(2) * * *

(ii) By equipping the UN pressure receptacle with a valve cap conforming to the requirements in ISO 11117 and Technical Corrigendum 1 (IBR, see § 171.7 of this subchapter). The cap must have vent-holes of sufficient cross-sectional area to evacuate the gas if leakage occurs at the valve;

* * *

(d) *Non-refillable UN pressure receptacles.* (1) When the use of a valve is prescribed, the valve must conform to the requirements in ISO 13340 (IBR, see § 171.7 of this subchapter).

(2) The receptacles must be transported as an inner package of a combination package;

(3) The receptacle must have a water capacity not exceeding 1.25 L when used for a flammable or toxic gas or 50 liters for receptacles used to contain chemical under pressure; and

(4) The receptacle is prohibited for Hazard Zone A material.

* * * * *

■ 60. In § 173.302a, paragraph (a)(3) is revised to read as follows

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

(a) * * *

(3) DOT 39 *DOT 39 cylinders.* When the cylinder is filled with a Division 2.1 material, the internal volume of the cylinder may not exceed 1.23 L (75 in^3) or 50 L (3050 in^3) for chemical under pressure.

* * * * *

■ 61. In § 173.306, paragraph (j) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(j) *Aerosols and receptacles small, containing gas with a capacity of less than 50 mL.* Aerosols, as defined in § 171.8 of this subchapter, and receptacles, small, containing gas, with a capacity not exceeding 50 mL (1.7 fluid oz.) and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter except that for transport by aircraft, such aerosols and receptacles must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10. The pressure limit may be increased to 2,000 kPa (290 psig) at 55 °C (131 °F) provided the aerosols are transported in outer packages that conform to the packaging requirements of Subpart B of this part. This paragraph (j) does not apply to a self-defense spray (e.g., pepper spray).

* * * * *

■ 62. In § 173.313:

■ a. The section heading is revised;

■ b. The introductory text is revised;

■ c. The table name is revised;

■ d. In the table, the entry for UN3220 is revised; and

■ e. In the table, entries are added for UN3500, UN3501, UN3502, UN3503, UN3504 and UN3505.

The revisions and additions are to read as follows:

§ 173.313 UN Portable Tank Table for Liquefied Compressed Gases and Chemical Under Pressure.

The UN Portable Tank Table for Liquefied Compressed Gases and chemical under pressure is referenced in § 172.102(c)(7)(iii) of this subchapter for portable tanks that are used to transport liquefied compressed gases and chemicals under pressure. The table applies to each liquefied compressed gas and chemical under pressure that are identified with Special Provision T50 in Column (7) of the § 172.101 Hazardous Materials Table. In addition to providing the UN identification number and proper shipping name, the table provides maximum allowable working pressures, bottom opening requirements, pressure relief device requirements, and degree of filling requirements for liquefied compressed gas and chemical under pressure permitted for transportation in a T50 portable tank. In the minimum test pressure column, ''small'' means a portable tank with a diameter of 1.5 meters or less when measured at the widest part of the shell, ''sunshield'' means a portable tank with a shield covering at least the upper third of the shell, ''bare'' means no sunshield or insulation is provided, and ''insulated'' means a complete cladding of sufficient thickness of insulating material necessary to provide a minimum conductance of not more than 0.67 $w/m^2/k$. In the pressure relief requirements column, the word ''Normal'' denotes that a frangible disc as specified in § 178.276(e)(3) of this subchapter is not required.

UN PORTABLE TANK TABLE FOR LIQUEFIED COMPRESSED GASES AND CHEMICALS UNDER PRESSURE

UN No.	Non-refrigerated liquefied compressed gases	Minimum design pressure (bar) small; bare; sunshield; insulated	Openings below liquid level	Pressure relief requirements (*See* § 178.276(e))	Maximum filling density (kg/l)
*	*	* *	*	*	*
3220	Pentafluoroethane or Refrigerant gas R 125.	34.4 ..... 30.8 ..... 27.5 ..... 24.5	Allowed	Normal	0.87
*	*	* *	*	*	*
3500	Chemical under pressure, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c)
3501	Chemical under pressure, flammable, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c)
3502	Chemical under pressure, toxic, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c)
3503	Chemical under pressure, corrosive, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c)
3504	Chemical under pressure, flammable, toxic, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c)
3505	Chemical under pressure, flammable, corrosive, n.o.s.	See MAWP definition in § 178.276(a).	Allowed	§ 178.276(e)(3)	See TP4 in § 172.102(c)

■ 63. In § 173.316, paragraph (a)(8) is redesignated as paragraph (a)(9) and a new paragraph (a)(8) is added to read as follows:

§ 173.316 Cryogenic liquids in cylinders.

(a) * * *

(8) All pressure relief device inlets must under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices must be arranged to ensure that the escaping vapor is discharged unobstructed.

* * * * *

■ 64. In § 173.318, paragraph (b)(7)(vi) is added to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

(b) * * *

(7) * * *

(vi) All pressure relief device inlets must under maximum filling conditions be situated in the vapor space of the closed cryogenic receptacle and the devices must be arranged to ensure that the escaping vapor is discharged unobstructed.

* * * * *

■ 65. Section 173.335 is added to read as follows:

§ 173.335 Chemical under pressure n.o.s.

(a) *General requirements.* A cylinder filled with a chemical under pressure must be offered for transportation in accordance with the requirements of this section and § 172.301. In addition, a DOT specification cylinder must meet the requirements in §§ 173.301a, 173.302, 173.302a, and 173.305, as applicable. UN pressure receptacles must meet the requirements in §§ 173.301b and 173.302b, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

(b) *Filling limits.* Cylinders must be filled so that at 50 °C (122 °F) the non-gaseous phase does not exceed 95% of their water capacity and they are not completely filled at 60 °C (140 °F). When filled, the internal pressure at 65 °C (149 °F) must not exceed the test pressure of the cylinder. The vapor pressures and volumetric expansion of all substances in the cylinders must be taken into account.

(c) *Minimum service pressure.* The minimum service pressure must be in accordance with the design specifications of part 178 of this subchapter for the propellant. In any case the minimum test pressure must not be less than 20 bar.

(d) *Periodic inspection.* The maximum requalification test period for cylinders transporting chemical under pressure n.o.s. is 5 years.

■ 66. In § 173.340, paragraphs (c)(1), (c)(2), and (d) are revised to read as follows:

§ 173.340 Tear gas devices.

* * * * *

(c) * * *

(1) In UN 4A, 4B, or 4N metal boxes or UN 4C1, 4C2, 4D, or 4F metal-strapped wooden boxes. Functioning elements not assembled in grenades or devices must be in a separate compartment of these boxes, or in inner or separate outer boxes, UN 4C1, 4C2, 4D, or 4F, and must be packed and cushioned so that they may not come in contact with each other or with the walls of the box during transportation. Not more than 50 tear gas devices and 50 functioning elements must be packed in one box, and the gross weight of the outer box may not exceed 35 kg (77 pounds).

(2) In UN 1A2, 1B2, 1N2 or 1H2 drums. Functioning elements must be packed in a separate inner packaging or compartment. Not more than 24 tear gas devices and 24 functioning elements must be packed in one outer drum, and the gross weight of the drum may not exceed 35 kg (77 pounds).

* * * * *

(d) Tear gas devices may be shipped completely assembled when offered by or consigned to the U.S. Department of Defense, provided the functioning elements are packed so that they cannot accidentally function. Outer packagings must be UN 4A, 4B, or 4N metal boxes or UN 4C1, 4C2, 4D, or 4F metal-strapped wooden boxes.

PART 175—CARRIAGE BY AIRCRAFT

■ 67. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.45 and 1.53.

■ 68. In § 175.8, paragraph (b)(3) is revised to read as follows:

§ 175.8 Exceptions for operator equipment and items of replacement.

(b) * * *

(3) Aerosols of Division 2.2 only (for dispensing of food products), alcoholic beverages, colognes, liquefied gas lighters, perfumes, and portable electronic devices containing lithium cells or batteries that meet the requirements of § 175.10(a)(18) carried aboard a passenger-carrying aircraft by the operator for use or sale on that specific aircraft. A liquefied gas lighter design must be examined and successfully tested by a person or agency authorized by the Associate Administrator.

* * * * *

■ 69. In § 175.10:

■ a. Paragraphs (a)(14) and (15) and paragraph (a)(18) introductory text are revised;

■ b. Paragraph (a)(18)(iii) is added;

■ c. Paragraphs (a)(19)(vii) and (viii) are revised; and

■ d. Paragraphs (a)(20) through (24) are added.

The revisions and additions read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(14) Electrically powered heat-producing articles (e.g., battery-operated equipment such as diving lamps and soldering equipment) as checked or carry-on baggage only and with the approval of the operator of the aircraft. The heat-producing component, the energy source, or other component (e.g., fuse) must be removed to prevent unintentional functioning during transport. Any battery that is removed must be protected against short circuit by placement in original retail packaging or by otherwise insulating terminals *(e.g.,* by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch).

(15) A wheelchair or other battery-powered mobility aid equipped with a nonspillable battery or a dry sealed battery when carried as checked baggage, provided—

(i) The battery conforms to the requirements of § 173.159a(d) of this subchapter for non-spillable batteries;

(ii) The battery conforms to the requirements of § 172.102(c)(1), Special provision 130 of this subchapter for dry sealed batteries, as applicable;

(iii) Visual inspection including removal of the battery, where necessary, reveals no obvious defects (removal of the battery from the housing should be performed by qualified airline personnel only);

(iv) The battery is disconnected and the battery terminals are protected to prevent short circuits, unless the wheelchair or mobility aid design provides an effective means of preventing unintentional activation, and

(v) The battery is—

(A) Securely attached to the wheelchair or mobility aid;

(B) Is removed and placed in a strong, rigid packaging marked ''NONSPILLABLE BATTERY'' (unless fully enclosed in a rigid housing that is properly marked);

(C) Is removed and placed in a strong, rigid packaging marked with the words ''not restricted'' in accordance with paragraph (c)(2) of § 172.102(c)(1), Special provision 130, of this subchapter; or

(D) Is handled in accordance with paragraph (a)(16)(iv) of this section.

* * * * *

(18) Except as provided in § 173.21 of this subchapter, portable electronic devices (for example, watches, calculating machines, cameras, cellular phones, lap-top and notebook computers, camcorders, etc.) containing cells or batteries (including lithium cells or batteries) and spare batteries and cells for these devices, when carried by passengers or crew members for personal use. Each spare battery must be individually protected so as to prevent short circuits (by placement in original retail packaging or by otherwise insulating terminals, e.g., by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch) and carried in carry-on baggage only. In addition, each installed or spare battery must comply with the following: * * *

(iii) For a non-spillable battery, the battery and equipment must conform to § 173.159(d). Each battery must not exceed a voltage greater than 12 volts and a watt-hour rating of not more than 100 Wh. No more than two individually protected spare batteries may be carried. Such equipment and spare batteries must be carried in checked or carry-on baggage.

(19) * * *

(vii) Each fuel cell and fuel cell cartridge must conform to IEC 62282–6–100 and Amend. 1 (IBR; see § 171.7 of this subchapter) and must be marked with a manufacturer's certification that it conforms to the specification. In addition, each fuel cell cartridge must be marked with the maximum quantity and type of fuel in the cartridge;

(viii) Interaction between fuel cells and integrated batteries in a device must conform to IEC/PAS 62282–6–100 and Amend. 1 (IBR, see § 171.7 of this subchapter). Fuel cells whose sole function is to charge a battery in the device are not permitted; and * * *

(20) Permeation devices for calibrating air quality monitoring equipment when carried in checked baggage provided the devices are constructed and packaged in accordance with § 173.175.

(21) An internal combustion or fuel cell engine or a machine or apparatus containing an internal combustion or fuel cell engine when carried as checked baggage, provided—

(i) The engine contains no liquid or gaseous fuel. An engine may be considered as not containing fuel when the engine components and any fuel lines have been completed drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard and the engine when held in any orientation will not release any liquid fuel;

(ii) The fuel tank contains no liquid or gaseous fuel. A fuel tank may be considered as not containing fuel when the fuel tank and the fuel lines have been completed drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard;

(ii) It is not equipped with a wet battery (including a non-spillable battery), a sodium battery or a lithium battery; and

(iv) It contains no other hazardous materials subject to the requirements of this subchapter.

(22) Non-infectious specimens transported in accordance with § 173.4b(b).

(23) Insulated packagings containing refrigerated liquid nitrogen when carried in checked or carry-on baggage in accordance with the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter), Packing Instruction 202, the packaging specifications in part 6, chapter 5, and special provision A152.

(24) Small cartridges fitted into devices with no more than four small cylinders of carbon dioxide or other suitable gas in in Division 2.2. The water capacity of each cylinder must not exceed 50 mL (equivalent to a 2.8 g carbon dioxide cartridge), with the approval of the operator.

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 70. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 71. In § 176.2, definitions for *Closed cargo transport unit for Class 1 (explosive) materials, Potential or possible sources of ignition, and Protected from sources of heat* are added in alphabetical order to read as follows:

§ 176.2 Definitions.

* * * * *

Closed cargo transport unit for Class 1 (explosive) materials means a freight container or transport vehicle that fully encloses the contents by permanent structures and can be secured to the ship's structure and are, except for the carriage of division 1.4 explosives, structurally serviceable (see § 176.172). Portable magazines conforming to § 176.137 are also considered closed cargo transport units for Class 1. Small compartments such as deck houses and mast lockers are included. Cargo transport units with fabric sides or tops are not closed cargo transport units. The floor of any closed cargo transport unit must either be constructed of wood, close-boarded or so arranged that goods are stowed on sparred gratings, wooden pallets or dunnage.

* * * * *

Potential or possible sources of ignition means, but is not limited to, open fires, machinery exhausts, galley uptakes, electrical outlets and electrical equipment including those on refrigerated or heated cargo transport units unless they are of a type designed to operate in a hazardous environment.

* * * * *

Protected from sources of heat means that packages and cargo transport units must be stowed at least 2.4 m from heated ship structures, where the surface temperature is liable to exceed 131°F (55°C). Examples of heated structures are steam pipes, heating coils, top or side walls of heated fuel and cargo tanks, and bulkheads of machinery spaces. In addition, packages not loaded inside a cargo transport unit and stowed on deck must be shaded from direct sunlight. The surface of a cargo transport unit can heat rapidly when in direct sunlight in nearly windless conditions and the cargo may also become heated. Depending on the nature of the goods in the cargo transport unit, and the planned voyage, precautions must be taken to ensure that exposure to direct sunlight is reduced.

* * * * *

■ 72. In § 176.63, paragraphs (a), (b), and (e) are revised to read as follows:

§ 176.63 Stowage locations.

(a) The table in § 172.101 of this subchapter specifies generally the locations authorized for stowage of the various hazardous materials on board vessels. This part prescribes additional requirements with respect to the stowage of specific hazardous materials in addition to those authorized in § 172.101 of this subchapter. This section sets forth the basic physical requirements for the authorized locations. Hazardous materials offered for transport as limited quantities are allocated stowage category A and are not subject to any of the specific stowage requirements indicated in column 10B in § 172.101 of this subchapter for the material being transported.

(b) To qualify as ''on deck'' stowage, the location must be on the weather deck. If the location is in a house on the weather deck, the location must have a permanent structural opening to the atmosphere, such as a door, hatch, companionway or manhole, and must be vented to the atmosphere. The location may not have any structural opening to any living quarters, cargo, or other compartment unless the opening has means for being closed off and secured. Any deck house containing living quarters, a steering engine, a refrigerating unit, a refrigerated stowage box, or a heating unit may not be used unless that area is isolated from the cargo stowage area by a permanent, and tight, metallic bulkhead. Stowage in a shelter or 'tween deck is not considered to be ''on deck''. A barge that is vented to the atmosphere and is stowed on deck on a barge-carrying ship is considered to be ''on deck''. When an entry in § 172.101 of this subchapter requires ''on-deck'' stowage and is qualified by the requirement ''protected from sources of heat'', the stowage must be protected from the direct rays of the sun by means of structural erections or awnings except that such protection is not required for shipment in portable tanks.

* * * * *

(e) Notwithstanding the stowage provisions given in the table in § 172.101 of this subchapter, empty packages containing residue, including IBCs and large packages, may be stowed ''on deck'' or ''under deck'' in a mechanically ventilated cargo space. However, empty pressure receptacles containing residue that carry a label of class 2.3 must be stowed ''on deck'' and waste aerosols must be stowed in accordance with the table in § 172.101 of this subchapter.

* * * * *

■ 73. In § 176.76, paragraph (a)(11) is added to read as follows:

§ 176.76 Transport vehicles, freight containers, and portable tanks containing hazardous materials.

(a) * * *

(11) When packages are secured with banding or straps, these restraints must not be over-tightened to cause damage or deformation of the packages or the securing points (such as D-rings) within the freight container or transport vehicle.

* * * * *

■ 74. In § 176.83 paragraphs (m)(1) through (3) are revised to read as follows:

§ 176.83 Segregation.

* * * * *

(m) * * *

(1) For the purpose of segregation, materials having certain similar chemical properties have been grouped together in segregation groups. The segregation groups (such as ''acids'', ''chlorates'', ''permanganates'') and the entries allocated to each of these groups include the substances identified in section 3.1.4 of the IMDG Code (IBR, see § 171.7 of this subchapter). When column (10B) of the § 172.101 Table refers to a numbered stowage provision set forth in § 176.84(b) such as ''Stow 'away from' acids'', that particular stowage/segregation requirement applies to all the materials allocated to the respective segregation group.

(2) Not all hazardous materials falling within a segregation group are listed by name in the regulations. These materials are shipped under ''n.o.s.'' entries. Although these ''n.o.s.'' entries are not listed themselves in the above groups, the person who offers a hazardous material for transportation must decide whether allocation under a segregation group is appropriate.

(3) The segregation groups described above do not address materials that fall outside the classification criteria of the hazardous materials regulations, although it is recognized that some non-hazardous materials have certain chemical properties similar to hazardous materials listed in the segregation groups. A person who offers a hazardous material for transportation or the person responsible for packing the materials into a cargo transport unit who does have knowledge of the chemical properties of such non-hazardous materials may identify a relevant segregation group and apply the segregation requirements for that segregation group.

■ 75. In § 176.84:

■ a. Paragraph (a) is revised;

■ b. In the table of provisions in paragraph (b), Stowage provisions 19, 48, and 50 are removed and Stowage provisions 25 and 128 are revised; and

■ c. In paragraph (c)(2), stowage provisions 7E, 8E and 20E are removed, and Stowage provision 26E is revised.

The revisions read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

(a) *General.* When Column 10B of the § 172.101 Table refers to a numbered or alpha-numeric stowage provision for water shipments, the meaning and requirements of that provision are set forth in this section. Terms in quotation marks are defined in § 176.83. Other terms used in the table in this section such as ''acids'', ''chlorates'' and ''permanganates'' indicate different chemical groups referred to here as segregation groups. Materials falling within a segregation group are considered to have certain similar chemical properties and, although not exhaustive in nature, the materials belonging to each group include those substances identified in section 3.1.4 of the IMDG Code (IBR, see § 171.7 of this subchapter) as set forth in § 176.83(m).

(b) Table of provisions:

Code	Provisions
* * * * *	
25	Protected from sources of heat
* * * * *	
128	Stow in accordance with the IMDG Code, Sub-section 7.6.2.7.2 (incorporated by reference; see § 171.7 of this subchapter).
* * * * *	

* * * * *

(c) * * *

Notes	Provisions
* * * * *	
26E	For closed cargo transport units, a non-metallic lining is required when not in effectively sealed, sift-proof packages.
* * * * *	

■ 76. In § 176.116, paragraph (a) is revised and (f) is removed and reserved.

§ 176.116 General stowage conditions for class 1 (explosive) materials.

* * * * *

(a) *Stowage Location:* (1) Class 1 (explosive) materials must be stowed in a cool part of the ship and must be kept as cool as practicable while on board. Class 1 (explosives) must be stowed as far away as practicable from any potential source of heat or ignition.

(2) With the exception of division 1.4 (explosive) materials, Class 1 (explosive) materials may not be positioned closer to the ship's side than a distance equal to one eighth of the beam or 2.4 m (8 feet), whichever is less.

(3) Except where the consignment of Class 1 (explosive) materials consists only of explosive articles, the wearing of shoes or boots with unprotected metal nails, heels, or tips of any kind is prohibited.

* * * * *

§ 176.128 [Removed and Reserved]

■ 77. Remove and reserve § 176.128.

§ 176.130 [Removed and Reserved]

■ 78. Remove and reserve § 176.130.

§ 176.133 [Removed and Reserved]

■ 79. Remove and reserve § 176.133.

§ 176.134 [Removed and Reserved]

■ 80. Remove and reserve § 176.134.

§ 176.136 [Removed and Reserved]

■ 81. Remove and reserve § 176.136.

■ 82. In § 176.138, paragraph (b) is revised to read as follows:

§ 176.138 Deck stowage.

* * * * *

(b) Class 1 (explosives) may not be stowed within a horizontal distance of 6 m (20 feet) from any source of heat and any possible sources of ignition. With the exception of division 1.4 (explosive) materials, Class 1 (explosives) materials may not be stowed within a horizontal distance of 12 m (39 feet) from the bridge, accommodation areas, and lifesaving appliances.

* * * * *

■ 83. In § 176.144:

■ a. Note 1 in Table (a) is revised; and

■ b. Paragraph (d) is revised.

The revisions read as follows:

§ 176.144 Segregation of Class 1 (explosive) materials.

* * * * *

(a) * * *

Notes: 1. Explosive articles in compatibility group G, other than fireworks, may be stowed with articles of compatibility groups C, D, and E, provided no explosive substances are carried in the same compartment, magazine or cargo transport unit.

* * * * *

(d) If some of the Class 1 (explosive) materials in a stowage mixture require non-metallic lining of the closed cargo transport unit, Class 1 (explosive) materials requiring ordinary stowage may be stowed in the same closed cargo transport. When a closed cargo transport unit is used for such substances that require non-metallic lining of the closed cargo transport unit, the other Class 1 (explosive) materials stowed therein must have no exposed parts of any ferrous metal or aluminum alloy, unless separated by a partition.

* * * * *

■ 84. In § 176.146, paragraphs (a) and (b) are revised and paragraph (c) is removed and reserved.

The revisions read as follows:

§ 176.146 Segregation from non-hazardous materials.

(a) Except as required by paragraph (b) of this section, Class 1 (explosive) materials need not be segregated from other cargo of a non-dangerous nature.

(b) Readily combustible materials may not be stowed in the same compartment or hold as Class 1 (explosive) materials other than those in compatibility group S.

* * * * *

■ 85. In § 176.170, paragraph (a) is revised and paragraph (c) is removed and resereved.

The revision reads as follows:

§ 176.170 Transport of Class 1 (explosive) materials in freight containers.

(a) When Class 1 (explosive) materials are stowed in a freight container, the freight container, for the purposes of this subpart, may be regarded as a closed transport unit for class 1 or a magazine but not a separate compartment.

* * * * *

■ 86. In § 176.200, paragraph (c) is revised to read as follows:

§ 176.200 General stowage requirements.

* * * * *

(c) When cylinders of Class 2 (compressed gas) materials being transported by vessel are stowed in a vertical position they must be stowed in a block and cribbed or boxed-in with suitable sound lumber and the box or crib dunnaged to provide clearance from a steel deck at least 10 cm (3.9 inches) off any metal deck. Pressure receptacles in the box or crib must be braced to prevent any shifting of the pressure receptacles. The box or crib (gas rack) must be securely chocked and lashed to prevent movement in any direction.

* * * * *

■ 87. Section 176.210 is revised to read as follows:

§ 176.210 On deck stowage requirements.

Cylinders of Class 2 (compressed gas) materials being transported by vessel must be protected from sources of heat. A tarpaulin covering the cylinders is not acceptable if it comes in contact with them.

■ 88. Section 176.230 is revised to read as follows:

§ 176.230 Stowage of Division 2.1 (flammable gas) materials.

Division 2.1 (flammable gas) materials transported in Specification 106A or 110A multi-unit car tanks must be stowed on deck only, and must be protected from sources of heat.

■ 89. In § 176.305, paragraph (a) is revised to read as follows:

§ 176.305 General stowage requirements.

(a) A Class 3 (flammable) or combustible liquid must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.

* * * * *

■ 90. In § 176.400, paragraphs (a) and (b) are revised to read as follows:

§ 176.400 Stowage of Division 1.5, Class 4 (flammable solids) and Class 5 (oxidizers and organic peroxides) materials.

(a) Class 4 (flammable solid) material and Division 5.2 (organic peroxide) material must be kept as cool as reasonably practicable, protected from sources of heat, and away from potential sources of ignition.

(b) Division 5.2 (organic peroxide) material must be stowed away from living quarters or access to them. Division 5.2 (organic peroxide) material not requiring temperature control must be protected from sources of heat, including radiant heat and strong sunlight, and must be stowed in a cool, well-ventilated area.

* * * * *

■ 91. In § 176.600, paragraph (d) is revised to read as follows:

§ 176.600 General stowage requirements.

* * * * *

(d) Each package of Division 2.3 (poisonous gas) material or Division 6.1 (poison) material that also bears a FLAMMABLE LIQUID or FLAMMABLE GAS label must be stowed in a mechanically ventilated space, kept as cool as reasonably practicable, and be protected from sources of heat and stowed away from potential sources of ignition.

■ 92. The heading for Subpart O is revised to read as follows:

Subpart O—Detailed Requirements for Cotton and Vegetable Fibers, Motor Vehicles, Polymeric Beads, and Plastic Molding Compounds

■ 93. Section 176.907 is added to read as follows:

§ 176.907 Polymeric Beads and Plastic Molding Compounds.

(a) When transported in cargo transport units, the cargo transport units must provide an adequate exchange of air in the unit. This adequate exchange of air may be accomplished by utilizing a ventilated container, an open-top container, or a container in one door off operation. When cargo transport units with venting devices are used these devices should be kept clear and operable. If mechanical devices are used for ventilation, they must be explosion-proof.

(b) As an alternative to the options presented in paragraph (a) of this section to ensure an adequate exchange of air; a refrigerated cargo transport unit may be used.

(c) The requirements in paragraph (a) and (b) of this section do not apply if the hazardous material is:

(1) Packed in hermetically sealed packagings or IBC's which conform to packing group II performance level for liquid dangerous goods with a total pressure in the packaging (i.e., the vapor pressure of the material plus the partial pressure of air or other inert gases, less 100kPa (15 psia)) at 55 °C (131 °F), determined on the basis of the hazardous material not completely filling the receptacle at a temperature of 55 °C (131 °C) or less at a filling temperature of 15 ° C (59 °F), will not exceed two-thirds of the marked test pressure.

(2) [Reserved]

(d) Cargo transport units must be marked with a warning mark including the words ''CAUTION—MAY CONTAIN FLAMMABLE VAPOR'' or ''CAUTION—MAY CONTAIN FLAMMABLE VAPOUR'' with lettering having a height of at least 25 mm (1 inch). The mark must be affixed to each access point in a location where it will be easily seen by persons prior to opening or entering the cargo transport unit and must remain on the cargo transport unit until the following provisions are met:

(1) The cargo transport unit has been completely ventilated to remove any hazardous concentrations of vapor or gas;

(2) The immediate vicinity of the cargo transport unit is clear of any source of ignition; and

(3) The hazardous materials have been unloaded.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 94. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 95. In § 178.71, paragraph (d)(2) is revised to read as follows:

* * * * *

(d) * * *

(2) Service equipment must be configured or designed to prevent damage that could result in the release of the pressure receptacle contents during normal conditions of handling and transport. Manifold piping leading to shut-off valves must be sufficiently flexible to protect the valves and the piping from shearing or releasing the pressure receptacle contents. The filling and discharge valves and any protective caps must be secured against unintended opening. The valves must conform to ISO 10297 (IBR, *see* § 171.7 of this subchapter), or ISO 13340 (IBR, *see* § 171.7 of this subchapter) for non-refillable pressure receptacles, and be protected as specified in § 173.301b(f) of this subchapter.

* * * * *

■ 96. In § 178.274:

■ a. In paragraph (f)(1)(v), the second sentence is revised;

■ b. Paragraph (f)(1)(vi) is redesignated as paragraph (f)(1)(vii); and

■ c.New paragraph (f)(1)(vi) is added.

The addition and revisions read as follows:

§ 178.274 Specifications for UN portable tanks.

* * * * *

(f) * * *

(1) * * *

(v) * * * For spring loaded pressure relief devices, the rated flow capacity must be determined according to ISO 4126–1 (including Technical Corrigendum 1) and ISO 4126–7 (IBR, see § 171.7 of this subchapter);

(vi) The cross sectional flow areas of the spring loaded pressure relief devices, frangible discs, and fusible elements in mm^2; and

* * * * *

■ 97. In § 178.512, the section heading, paragraph (a), and paragraph (b) introductory text are revised to read as follows:

§ 178.512 Standards for steel, aluminum or other metal boxes.

(a) The following are identification codes for steel, aluminum, or other metal boxes:

(1) 4A for a steel box;

(2) 4B for an aluminum box; and

(3) 4N for an other metal box.

(b) Construction requirements for steel, aluminum or other metal boxes are as follows:

* * * * *

■ 98. In § 178.603, revise the second entry in the table in paragraph (a) and revise paragraph (b) to read as follows:

§ 178.603 Drop test.

(a) * * *

Packaging	Number of tests (samples)	Drop orientation of samples
* * *	*	* * *
Boxes of natural wood, Plywood boxes, Reconstituted wood boxes, Fiberboard boxes, Plastic boxes, Steel, aluminum or other metal boxes, Composite packagings that are in the shape of a box.	Five—(one for each drop).	First drop: Flat on the bottom (using the first sample). Second drop: Flat on the top (using the second sample). Third drop: Flat on the long side (using the third sample). Fourth drop: Flat on the short side (using the fourth sample). Fifth drop: On a corner (using the fifth sample).
* * *	*	* * *

(b) Exceptions. For testing of single or composite packagings constructed of stainless steel, nickel, or monel at periodic intervals only (i.e., other than design qualification testing), the drop test may be conducted with two samples, one sample each for the two drop orientations. These samples may have been previously used for the hydrostatic pressure or stacking test. Exceptions for the number of steel, aluminum and other metal packaging samples used for conducting the drop test are subject to the approval of the Associate Administrator.

* * * * *

■ 99. In § 178.705, paragraph (a)(3) is revised to read as follows:

§ 178.705 Standards for metal IBCs.

(a) * * *

(3) 31A, 31B, 31N for liquids.

* * * * *

■ 100. In § 178.910, paragraph (a)(1) introductory text is revised and paragraph (b) is added to read as follows:

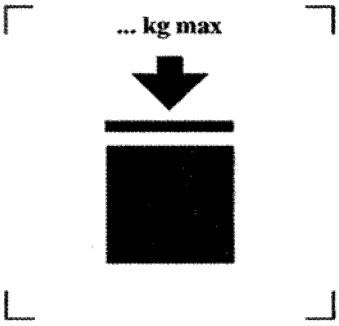
§ 178.910 Marking of Large Packagings.

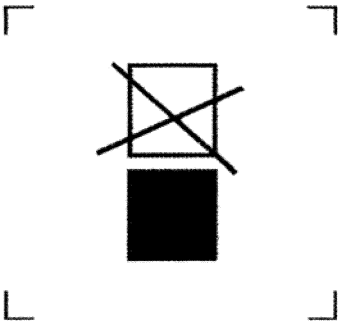
(a) * * *

(1) Mark every Large Packaging in a durable and clearly visible manner. The marking may be applied in a single line or in multiple lines provided the correct sequence is followed with the information required by this section, in letters, numerals, and symbols of at least 12 mm in height. This minimum marking size requirement applies only to large packages manufactured after January 1, 2014. The following information is required in the sequence presented:

* * * * *

(b) All Large Packages manufactured, repaired or remanufactured after January 1, 2015 must be marked with the symbol applicable to a Large Package designed for stacking or not designed for stacking, as appropriate. The symbol must be not less than 100 mm by 100 mm as follows:





■ 101. In § 178.980, paragraphs (e)(2) and (3) are redesignated as paragraphs (e)(3) and (4), respectively, and a new paragraph (e)(2) is added to read as follows:

§ 178.980 Stacking test.

* * * * *

(e) * * *

(2) For fiberboard or wooden Large Packagings, there may be no loss of contents and no permanent deformation that renders the whole Large Packaging, including the base pallet, unsafe for transportation.

* * * * *

■ 102. Subpart R is added to read as follows:

Subpart R—Flexible Bulk Container Standards

Sec.

178.1000 Purpose and scope.
178.1005 Flexible Bulk Container identification code.
178.1010 Marking of Flexible Bulk Containers.
178.1015 General Flexible Bulk Container standards.
178.1020 Period of use for transportation of hazardous materials in Flexible Bulk Containers.

Subpart R—Flexible Bulk Container Standards

§ 178.1000 Purpose and scope.

(a) This subpart prescribes requirements for Flexible Bulk Containers (FBCs) intended for the transportation of hazardous materials. FBC standards in this subpart are based on the UN Model Regulations.

(b) Terms used in this subpart are defined in § 171.8 of this subchapter.

§ 178.1005 Flexible Bulk Container identification code.

The Flexible Bulk Container code designation is BK3.

§ 178.1010 Marking of Flexible Bulk Containers.

(a) The manufacturer must:

(1) Mark every Flexible Bulk Container in a durable and clearly visible manner. The marking may be applied in a single line or in multiple lines provided the correct sequence is followed with the information required by this section. The following information is required in the sequence presented:

(i) Except as provided in § 178.503(e)(1)(ii), the United Nations packaging symbol as illustrated in § 178.503(e)(1)(i).

(ii) The code number designating the Flexible Bulk Container design type according to § 178.1005. The letter ''W'' must follow the Flexible Bulk Container design type identification code on a Flexible Bulk Container when the Flexible Bulk Container differs from the requirements in subpart R of this part, or is tested using methods other than those specified in this subpart, and is approved by the Associate Administrator in accordance with § 178.1035;

(iii) The capital letter Z identifying that the Flexible Bulk Container meets Packing Group III performance standard under which the design type has been successfully tested.

(iv) The month (designated numerically) and year (last two digits) of manufacture;

(v) The country authorizing the allocation of the mark. The letters ''USA'' indicate that the Flexible Bulk Container is manufactured and marked in the United States in compliance with the provisions of this subchapter.

(vi) The name and address or symbol of the manufacturer or the approval agency certifying compliance with subpart R and subpart S of this part. Symbols, if used, must be registered with the Associate Administrator.

(vii) The stacking test load in kilograms (kg). For Flexible Bulk Containers not designed for stacking the figure ''0'' must be shown.

(viii) The maximum permissible gross mass in kg.

(2) The following is an example of symbols and required markings for a Flexible Bulk container suitable for stacking; stacking load: 1,000 kg; maximum gross mass: 2,500 kg.

BK3/Z/02 12/USA/M9399/1000/2500

(b) [Reserved]

§ 178.1015 General Flexible Bulk Container standards.

(a) Each Flexible Bulk Containers must be sift-proof and completely closed during transport to prevent the release of contents and waterproof.

(b) Parts of the Flexible Bulk Container that are in direct contact with hazardous materials:

(1) Must not be affected or significantly weakened by those hazardous materials.

(2) Must not cause a dangerous effect with the dangerous goods (e.g., catalyzing a reaction or reacting with the hazardous materials).

(3) Must not allow permeation of the hazardous materials that could constitute a danger under conditions normally incident to transportation.

(c) Filling and discharge devices must be so constructed as to be protected against damage during transport and handling. The filling and discharge devices must be capable of being secured against unintended opening.

(d) Slings of the Flexible Bulk Container, if fitted with such, must withstand pressure and dynamic forces which can be expected under conditions normally incident to transportation.

(e) Handling devices must be strong enough to withstand repeated use.

(f) A venting device must be fitted to Flexible Bulk Containers intended to transport hazardous materials that may develop dangerous accumulation of gases within the Flexible Bulk Container. Any venting device must be designed so that external foreign substances are prevented from entering the Flexible Bulk Container through the venting device under conditions normally incident to transportation.

§ 178.1020 Period of use for transportation of hazardous materials in Flexible Bulk Containers.

The use of Flexible Bulk Containers for the transport of hazardous materials is permitted for a period of time not to exceed two years from the date of manufacture of the Flexible Bulk Container.

■ 103. Subpart S is added to read as follows:

Subpart S—Testing of Flexible Bulk Containers

Sec.
178.1030 Purpose and scope.
178.1035 General requirements.
178.1040 Preparation of Flexible Bulk Containers for testing.
178.1045 Drop test.
178.1050 Top lift test.
178.1055 Stacking test.
178.1060 Topple test.
178.1065 Righting test.
178.1070 Tear test.

Subpart S——Testing of Flexible Bulk Containers

§ 178.1030 Purpose and scope.

This subpart prescribes certain testing requirements for Flexible Bulk Containers identified in subpart R of this part.

§ 178.1035 General requirements.

(a) *General.* The test procedures prescribed in this subpart are intended to ensure that Flexible Bulk Containers containing hazardous materials can withstand normal conditions of transportation. These test procedures are considered minimum requirements. Each packaging must be manufactured and assembled so as to be capable of successfully passing the prescribed tests and to conform to the requirements of § 173.24 of this subchapter while in transportation.

(b) *Responsibility.* The Flexible Bulk Container manufacturer is responsible for ensuring each Flexible Bulk Containers is capable of passing the prescribed tests. To the extent a Flexible Bulk Container's assembly function, including final closure, is performed by the person who offers a hazardous material for transportation, that person is responsible for performing the function in accordance with §§ 173.22 and 178.2 of this subchapter.

(c) *Definitions.* For the purpose of this subpart:

(1) *Flexible Bulk Container design type* refers to a Flexible Bulk Container that does not differ in structural design, size, material of construction and packing.

(2) *Design qualification testing* is the performance of the drop, topple, righting, tear, stacking, and top-lift tests prescribed in this subpart, for each different Flexible Bulk Container design

type, at the start of production of that packaging.

(3) *Periodic design requalification test* is the performance of the applicable tests specified in paragraph (c)(2) of this section on a Flexible Bulk Container design type, to requalify the design for continued production at the frequency specified in paragraph (e) of this section.

(4) *Production inspection* is the inspection that must initially be conducted on each newly manufactured Flexible Bulk Container.

(5) *Different Flexible Bulk Container design type* is one that differs from a previously qualified Flexible Bulk Container design type in structural design, size, material of construction, wall thickness, or manner of construction, but does not include:

(i) A packaging that differs in surface treatment;

(ii) A packaging that differs only in its lesser external dimensions (*i.e.,* height, width, length) provided materials of construction and material thickness or fabric weight remain the same;

(d) *Design qualification testing.* The packaging manufacturer must achieve successful test results for the design qualification testing at the start of production of each new or different Flexible Bulk Container design type. Application of the certification mark by the manufacturer constitutes certification that the Flexible Bulk Container design type passed the prescribed tests in this subpart.

(e) *Periodic design requalification testing.* (1) Periodic design requalification must be conducted on each qualified Flexible Bulk Container design type if the manufacturer is to maintain authorization for continued production. The Flexible Bulk Container manufacturer must achieve successful test results for the periodic design requalification at sufficient frequency to ensure each packaging produced by the manufacturer is capable of passing the design qualification tests. Design requalification tests must be conducted at least once every 24 months.

(2) Changes in the frequency of design requalification testing specified in paragraph (e)(1) of this section are authorized if approved by the Associate Administrator.

(f) *Test samples.* The manufacturer must conduct the design qualification and periodic tests prescribed in this subpart using random samples of packagings, in the numbers specified in the appropriate test section.

(g) *Proof of compliance.* In addition to the periodic design requalification testing intervals specified in paragraph (e) of this section, the Associate Administrator, or a designated representative, may at any time require demonstration of compliance by a manufacturer, through testing in accordance with this subpart, to ensure packagings meet the requirements of this subpart. As required by the Associate Administrator, or a designated representative, the manufacturer must either:

(1) Conduct performance tests or have tests conducted by an independent testing facility, in accordance with this subpart; or

(2) Make a sample Flexible Bulk Container available to the Associate Administrator, or a designated representative, for testing in accordance with this subpart.

(h) *Record retention.* Following each design qualification test and each periodic retest on a Flexible Bulk Container, a test report must be prepared. The test report must be maintained at each location where the Flexible Bulk Container is manufactured and each location where the design qualification tests are conducted, for as long as the Flexible Bulk Container is produced and for at least two years thereafter, and at each location where the periodic retests are conducted until such tests are successfully performed again and a new test report produced. In addition, a copy of the test report must be maintained by a person certifying compliance with this part. The test report must be made available to a user of a Flexible Bulk Container or a representative of the Department upon request. The test report, at a minimum, must contain the following information:

(1) Name and address of test facility;

(2) Name and address of applicant (where appropriate);

(3) A unique test report identification;

(4) Date of the test report;

(5) Manufacturer of the packaging;

(6) Description of the flexible bulk container design type (e.g., dimensions materials, closures, thickness, etc.), including methods of manufacture (e.g., blow molding) and which may include drawing(s) and/or photograph(s);

(7) Maximum capacity;

(8) Characteristics of test contents (e.g., particle size for solids);

(9) Mathematical calculations performed to conduct and document testing (e.g., drop height, test capacity, outage requirements, etc.);

(10) Test descriptions and results; and

(11) Signature with the name and title of signatory.

§ 178.1040 Preparation of Flexible Bulk Containers for testing.

(a) Except as otherwise provided in this subchapter, each Flexible Bulk Container must be closed in preparation for testing and tests must be carried out in the same manner as if prepared for transportation. All closures must be installed using proper techniques and torques.

(b) If the material to be transported is replaced for test purposes by a non-hazardous material, the physical properties (grain, size, viscosity) of the replacement material used that might influence the results of the required tests must correspond as closely as possible to those of the hazardous material to be transported. It is permissible to use additives, such as bags of lead shot, to achieve the requisite total package mass, so long as they do not affect the test results.

§ 178.1045 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all Flexible Bulk Container design types and performed periodically as specified in § 178.1035(e) of this subpart.

(b) *Special preparation for the drop test.* Flexible Bulk Containers must be filled to their maximum permissible gross mass.

(c) *Test method.* (1) A sample of all Flexible Bulk Container design types must be dropped onto a rigid, non-resilient, smooth, flat and horizontal surface. This test surface must be large enough to be immovable during testing and sufficiently large enough to ensure that the test Flexible Bulk Container falls entirely upon the surface. The test surface must be kept free from local defects capable of influencing the test results.

(2) Following the drop, the Flexible Bulk Container must be restored to the upright position for observation.

(d) *Drop height.* (1) For all Flexible Bulk Containers, drop heights are specified as follows: Packing group III: 0.8 m (2.6 feet)

(2) Drop tests are to be performed with the solid to be transported or with a non-hazardous material having essentially the same physical characteristics.

(e) *Criteria for passing the test.* For all Flexible Bulk Container design types there may be no loss of the filling substance. However a slight discharge (e.g., from closures or stitch holes) upon impact is not considered a failure of the Flexible Bulk Container provided that no further leakage occurs after the container has been restored to the upright position.

§ 178.1050 Top lift test.

(a) *General.* The top lift test must be conducted for the qualification of all of

Flexible Bulk Containers design types to be lifted from the top.

(b) *Special preparation for the top lift test.* Flexible Bulk Container design types must be filled to six times the maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* (1) A Flexible Bulk Container must be lifted in the manner for which it is designed until clear of the floor and maintained in that position for a period of five minutes.

(2) If not tested as indicated in paragraph (c)(1) of this section, a Flexible Bulk Container design type must be tested as follows:

(i) Fill the Flexible Bulk Container to 95% full with a material representative of the product to be shipped.

(ii) Suspend the Flexible Bulk Container by its lifting devices.

(iii) Apply a constant downward force through a specially designed platen. The platen will be a minimum of 60 percent and a maximum of 80 percent of the cross sectional surface area of the Flexible Bulk Container.

(iv) The combination of the mass of the filled Flexible Bulk Container and the force applied through the platen must be a minimum of six times the maximum net mass of the Flexible Bulk Container. The test must be conducted for a period of five minutes.

(v) Other equally effective methods of top lift testing and preparation may be used with approval of the Associate Administrator.

(d) *Criteria for passing the test.* For all Flexible Bulk Containers design types designed to be lifted from the top, there may be no damage to the Flexible Bulk Container or its lifting devices that renders the Flexible Bulk Container unsafe for transport, and no loss of contents.

§ 178.1055 Stacking test.

(a) *General.* The stacking test must be conducted for the qualification of all Flexible Bulk Containers design types.

(b) *Special preparation for the stacking test.* All Flexible Bulk Containers design types must be loaded to their maximum permissible gross mass.

(c) *Test method.* (1) All Flexible Bulk Containers must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load that is four times the design type maximum gross weight for a period of at least twenty-four hours.

(2) For all Flexible Bulk Containers, the load must be applied by one of the following methods:

(i) Four Flexible Bulk Containers of the same type loaded to their maximum permissible gross mass and stacked on the test Flexible Bulk Container;

(ii) The calculated superimposed test load weight loaded on either a flat plate or a reproduction of the base of the Flexible Bulk Container, which is stacked on the test Flexible Bulk Container.

(d) *Criteria for passing the test.* There may be no deterioration that renders the Flexible Bulk Container unsafe for transportation and no loss of contents during the test or after removal of the test load.

§ 178.1060 Topple test.

(a) *General.* The topple test must be conducted for the qualification of all Flexible Bulk Containers design types.

(b) *Special preparation for the topple test.* Flexible Bulk Container design types must be filled to their maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* Samples of all Flexible Bulk Container design types must be toppled onto any part of its top by lifting the side furthest from the drop edge upon a rigid, non-resilient, smooth, flat and horizontal surface. This test surface must be large enough to be immovable during testing and sufficiently large enough to ensure that the test Flexible Bulk Container falls entirely upon the surface. The test surface must be kept free from local defects capable of influencing the test results.

(d) *Topple height.* (1) For all Flexible Bulk Containers, topple heights are specified as follows: Packing group III: 0.8 m (2.6 feet).

(e) *Criterion for passing the test.* For all Flexible Bulk Container design types there may be no loss of the filling substance. However a slight discharge (e.g., from closures or stitch holes) upon impact is not considered a failure of the Flexible Bulk Container.

§ 178.1065 Righting test.

(a) *General.* The righting test must be conducted for the qualification of all Flexible Bulk Containers design types designed to be lifted from the top or side.

(b) *Special preparation for the righting test.* Flexible Bulk Container design types must be filled to not less than 95% of their capacity and to their maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* A sample Flexible Bulk Container design type must be tested; the Flexible Bulk Container should start lying on its side and then must be lifted at a speed of at least 0.1m/s (0.328 ft/s) to an upright position clear of the floor, by no more than half of the lifting devices.

(d) *Criterion for passing the test.* For all Flexible Bulk Container design types there must be no damage that renders the Flexible Bulk Container unsafe for transport or handling.

§ 178.1070 Tear test.

(a) *General.* The tear test must be conducted for the qualification of all of Flexible Bulk Containers design types.

(b) *Special preparation for the tear test.* Flexible Bulk Container design types must be filled its maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* (1) A Flexible Bulk Container design type must be placed on the ground and a 300 mm (11.9 in) cut shall be made. This 300 mm (11.9 in) cut must:

(i) Completely penetrate all layers of the Flexible Bulk Container on a wall with a wide face.

(ii) Be made at a 45° angle to the principal axis of the Flexible Bulk Container, halfway between the bottom surface and the top level of the contents.

(2) The Flexible Bulk Container after being cut according to the provisions of § 178.1070(c)(1), must be subjected to a uniformly distributed superimposed load equivalent to twice the maximum gross mass of the package. This load must be applied for at least fifteen minutes. Flexible Bulk Containers that are designed to be lifted from the top or the side must, after removal of the superimposed load, be lifted clear of the floor and maintained in that position for a period of fifteen minutes.

(d) *Criterion for passing the test.* For all Flexible Bulk Container design types, the cut must not spread more than an additional 25% of its original length.

Issued in Washington, DC, on December 20, 2012 under authority delegated in 49 CFR part 106.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2012–31243 Filed 12–31–12; 4:15 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176 and 178

[Docket No. PHMSA–2009–0126 (HM–215K)]

RIN 2137–AE83

Hazardous Materials: Harmonization With the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This document responds to administrative appeals generated as a result of certain amendments adopted in an international harmonization final rule published on January 19, 2011. The January 19, 2011 final rule amended the Hazardous Materials Regulations (HMR) by revising, removing or adding proper shipping names, the hazard class of a material, packing group assignments, special provisions, packaging authorizations, packaging sections, air transport quantity limitations, and vessel stowage requirements. The amendments were necessary to align the HMR with recent revisions to international standards for the transport of hazardous materials by all modes. In this final rule, PHMSA amends the HMR as a result of administrative appeals submitted in response to various amendments adopted in the January 19, 2011 final rule. This document also addresses recent actions taken by the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) regarding certain lithium ion battery-powered mobility aids (e.g., wheelchairs, travel scooters) offered by passengers for air transport and passenger notification of hazardous materials restrictions by operators. Further, this final rule adopts amendments to the HMR as a result of two administrative appeals submitted by an appellant in response to a final rule published February 2, 2010, that revised shipper responsibilities related to packaging design variation, manufacturer notification, and recordkeeping requirements for certain packaging types.

DATES: *Effective:* January 1, 2013.

ADDRESSES: *Privacy Act:* Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at U.S. Department of Transportation, Docket Operations (M–30), 1200 New Jersey Avenue SE., Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Stevens or Vincent Babich, Standards and Rulemaking Division, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC. 20590–0001.

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I. Background

PHMSA published a final rule under Docket PHMSA–2009–0126 (HM–215K) on January 19, 2011 [76 FR 3308] that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to align with various international standards. The final rule adopted amendments to the HMR regarding hazard communication, hazard classification including packing group assignment, packaging authorization, air transport quantity limitations, and various other international harmonization-related topics. The amendments were necessary to align the HMR with the latest revisions to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Organization's Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (TDG Regulations), and the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations (UN Model Regulations) to facilitate the seamless transportation of hazardous materials internationally, to, from, and within the United States. In this final rule, PHMSA is adopting amendments in response to administrative appeals filed in accordance with 49 CFR 106.110–130 regarding revisions to the HMR adopted in the January 19, 2011 final rule and to public comments submitted in response to corresponding amendments proposed in a notice of proposed rulemaking (NPRM) published on May 25, 2012 [77 FR 31274], also under this docket (PHMSA–2009–0126). Additionally, this document addresses recent actions taken by the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) regarding certain lithium ion battery-powered mobility aids (e.g., wheelchairs, travel scooters) offered by passengers for air transport and notification to passengers on hazardous materials restrictions an operator must provide at the point of ticket purchase and flight check-in. Further, PHMSA is adopting amendments to the HMR as a result of two administrative appeals submitted by an appellant in response to a final rule published February 2, 2010 [75 FR 5376] under Docket PHMSA–06–25736 (HM–231) that revised shipper responsibilities related to packaging design variation and manufacturer notification recordkeeping requirements for certain packaging types.

II. Administrative Appeals and Public Comments Submitted in Response to HM–215K Rulemaking Actions

This final rule addresses administrative appeals submitted in response to the January 19, 2011 final rule and public comments submitted in response to the May 25, 2012 NPRM from the following companies and organizations:

Administrative appeals submitted in response to the January 19, 2011 final rule:
American Coatings Association (ACA).
Association of Hazmat Shippers, Inc. (AHS).
Dangerous Goods Advisory Council, Inc. (DGAC).
Fuel Cell and Hydrogen Energy Association (FCHEA).
Healthcare Distribution Management Association (HDMA).
Patton Boggs, LLP, on behalf of Lilliputian Systems, Inc. (LSI).
PPG Industries (PPG).
Public comments submitted in response to the May 25, 2012 NPRM:
Amadeus IT Group, S.A. (Amadeus).
Air Line Pilots Association International (ALPA).
Airlines for America (A4A).
Alaska Airlines (Alaska).
American Coatings Association (ACA).
American Veterinary Distributors Association (AVDA).
Association of Hazmat Shippers, Inc. (AHS).
Brookstone.
Broward Fire Equipment and Service, Inc. (Broward).
ChemTel, Inc. (ChemTel).
Consumer Healthcare Products Association (CHPA).
Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA).
Dangerous Goods Advisory Council, Inc. (DGAC).
Food Marketing Institute (FMI).
Fuel Cell and Hydrogen Energy Association (FCHEA).
Healthcare Distribution Management Association (HDMA).
HMT Associates, L.L.C. (HMT).
Integrated Support Services (ISS).
Intel Corporation (Intel).
Interactive Travel Services Association (ITSA).
International Air Transport Association (IATA).
International Vessel Operators Dangerous Goods Association (IVODGA).
Patton Boggs, LLP, on behalf of Lilliputian Systems, Inc. (LSI).
Ministry of Commerce, Peoples Republic of China (P.R. China).
National Association of Chain Drug Stores (NACDS).
National Association of Fire Equipment Distributors (NAFED).
Safety Specialists, Inc. (SSI).
UPS.
Urethane Supply Company (USC).
URS Corporation (URS).
Utility Solid Waste Activities Group (USWAG).

A. Transportation of ORM–D Material

A number of administrative appeals concern issues related to our adoption of the international system for the transportation of limited quantity material. Specifically, some appellants are concerned with the eventual phase-out of our domestic system for the transportation of limited quantity material reclassed as other regulated material (ORM–D) (i.e., the ORM–D system). Under certain conditions, the HMR and international standards allow lesser quantities of relatively low risk hazardous materials (i.e., limited quantity material) to be afforded relief from some of the requirements generally applicable to hazardous materials transported by all modes. For example, a limited quantity material is not generally required to be packaged in a Department of Transportation (DOT) or United Nations (UN) standard packaging. Most regulatory amendments resulting from adoption of the international system and the eventual phase-out of the ORM–D system involve revisions to hazard communication requirements, material quantity limitations, and the types of material authorized.

1. Phase-Out of the ORM–D System

PHMSA revised the HMR to phase out its system of reclassing and transporting limited quantity material as ORM–D. Under this system, a limited quantity of hazardous material that also meets the definition of a ''consumer commodity'' may be reclassed as ORM–D and is eligible for additional exceptions from regulation. See § 171.8 for the definition of ''consumer commodity.'' The January 19, 2011 final rule amended the HMR by phasing out the ORM–D system beginning January 1, 2013, for material transported by aircraft and, beginning January 1, 2014, for material transported by all other modes of transportation (e.g., motor vehicle). ACA and HDMA appealed our decision to phase out the ORM–D system arguing that we did so ''without any debate or consideration of [1] the type of materials that use this exception; [2] the costs incurred by the regulated community; and [3] the safety benefits.'' ACA claimed that many companies and organizations, including itself, asked for a separate rulemaking to address these issues. ACA is also concerned that although we provided a summary of comments against the phase-out in the preamble to the final rule, PHMSA did not discuss arguments raised in the comments. It stated we arbitrarily concluded that because there would be no immediate phase-out of the current ORM–D system, there would not be a sizeable impact to companies on the basis that they would have sufficient time to adjust to the eventual phase-out. ACA asked us to reconsider the decision to not move forward in a separate rulemaking and to fully consider the effects of phasing out the ORM–D system. Additionally, HDMA requested that PHMSA allow for up to a 10-year phase-out based on the longevity of its packaging systems (i.e., totes) currently in use. According to HDMA, such totes are permanently marked with the ''Consumer commodity, ORM–D'' marking.

PHMSA response.

The HMR have long recognized the relatively low risk posed by the transportation of certain hazardous materials such as limited quantities or consumer commodities. Considerable efforts have been made internationally to harmonize multi-modal standards with regard to the transport of limited quantities, including consumer commodities. PHMSA held public meetings on this issue in February 2006 and again in March 2008 to discuss potential impacts on domestic stakeholders. Additionally, this issue was discussed during our pre-UN public meetings held in 2006 and 2007. There was considerable domestic interest in pursuing further harmonization internationally due to the potential for substantial savings in transportation costs and improved transportation efficiency. In the advance notice of proposed rulemaking (ANPRM) (October 21, 2009; 74 FR 53982) and NPRM (August 24, 2010; 75 FR 52070), we invited comments on this issue with regard to aligning the HMR with the UN Model Regulations for the domestic and international transport of limited quantities and consumer commodities. Of particular concern were any negative impacts on the domestic transportation of consumer commodities reclassed as ORM–D materials. While some changes adopted in the UN Model Regulations were similar to those currently in the HMR regarding limited quantities and consumer commodities (e.g., inner packaging limits and non-specification outer packagings allowed), some changes were not (e.g., marking, labeling, package gross mass). We stated that depending on the comments received and our own evaluation, we may determine that the significance of any amendments on the issue may warrant a separate rulemaking action. In the January 19, 2011 final rule, we concluded a separate rulemaking was not in the best interest of the hazardous material transportation community particularly when it involves international transportation. Further,

creating a single global system for packaging, hazard communication, and transportation of limited quantity material would facilitate the domestic and international flow of hazardous material trade and any further delay in the phase-out would not be useful. Little or no quantification of any negative impact, including costs to domestic shippers and carriers alike, was provided in response to the ANPRM or NPRM. However, the Healthcare Distribution Management Association (HDMA) did provide some cost data related to its unique practice of reusing totes permanently embossed with the ORM–D marking. Some commenters also argued against any phase-out based on the historically safe transportation of limited quantity material under the ORM–D system. Further, commenters stated that PHMSA should not adopt the international system simply based on the opportunity to align the HMR with international standards.

Allowing dual systems indefinitely for offering and transporting packages of limited quantity material would likely cause confusion and place unreasonable burdens on carriers and some shippers to train their hazmat employees to recognize and comply with both systems. We believe adopting a single global system for the transportation of limited quantity material will greatly improve safety and efficiency by decreasing the aforementioned potential for delays and confusion during transportation, and by removing the burden of providing training in dual systems used to communicate the transportation of limited quantity material. However, we recognize the need to provide sufficient time for domestic shippers and carriers to adjust to the revised system and are sympathetic to the concerns expressed by ACA, HDMA and others regarding this need. Therefore, in the NPRM we proposed to authorize the ORM–D classification and the use of packagings marked ''Consumer commodity, ORM–D'' until December 31, 2015 for domestic highway, rail, and vessel transportation.

Based on the merits of public comment received, we are extending authorization of the ORM–D classification and the use of packagings marked ''Consumer commodity, ORM–D'' until December 31, 2020 for domestic highway, rail, and vessel transportation.

2. Overpacks Containing Limited Quantity or ORM–D Material

In the January 19, 2011 final rule, PHMSA revised the regulation for overpacks (as defined in § 171.8) by requiring the ''OVERPACK'' marking on an overpack containing limited quantity packaging if all markings are not visible. DGAC expressed concern over the manner in which the language in the requirement is phrased, and indicated that it implies all markings on each packaging in the overpack must be visible. DGAC noted that this is not consistent with the UN Model Regulations which states the overpack ''shall be marked with the word ''OVERPACK'' and the marking required by this Chapter unless the markings representative of all dangerous goods in the overpack are visible.'' See 3.4.11 of the 16th Revised Edition of the UN Model Regulations. It is DGAC's understanding that this requirement refers to the limited quantity marking and not to all markings that may be required by the UN Model Regulations. Its understanding is that use of the term ''representative'' communicates a requirement that only one limited quantity package marking needs to be visible to represent all limited quantity packaging. DGAC requested that PHMSA revise the overpack requirements in § 173.25(a)(6) to be consistent with the UN Model Regulations.

PHMSA response.

The HMR do not currently require that every individual mark (or label) on each package contained in an overpack be visible. For example, as stated in § 173.25(a)(2), an overpack must be marked with the proper shipping name and identification number (when applicable) for each hazardous material contained in the overpack, unless marking and labels representative of each hazardous material in the overpack are visible. We recommend where packages are stacked and/or banded on a pallet as part of an overpack, the packages should be positioned, when possible, so that the markings and labels are visible on the outside of the overpack. However, this does not mean that every package marking (or label) must be visible or the overpack must be marked accordingly. With regard to the ''OVERPACK'' marking requirement for overpacks containing limited quantity and ORM packages, in this final rule we are accepting DGAC's appeal and are adopting, as proposed, the revision of § 173.25(a)(6) to clarify that not all limited quantity and ORM markings must be visible and that the marking requirement is only applicable to the limited quantity and ORM mark itself. Additionally, a new § 173.25(a)(7) is adopted as proposed and is added for clarity to separate limited quantity and ORM overpack marking requirements from excepted quantity overpack marking requirements.

B. Use of the Square-On-Point and ID Number Limited Quantity Marking

Formerly, § 172.315 excepted for other than transportation by aircraft, a package containing a limited quantity substance or article from being marked with the proper shipping name if it was marked with a square-on-point limited quantity marking containing the UN identification (ID) number of the limited quantity substance or article. In the January 19, 2011 final rule, we provided a one-year transition period to authorize continued use of this marking before the revisions to the limited quantity markings become effective. ACA, DGAC, and PPG all stated the one-year transition period does not allow sufficient time to deplete stock(s) of packagings pre-printed with the square-on-point mark containing the ID number, and requested an extension of three- to five-years. Specifically, ACA requested a three- to five-year timeframe while DGAC and PPG ask for a three-year timeframe. ACA, DGAC, and PPG maintained that without a longer transition period, shippers will be forced to remark packaging at their cost and there is no impact to safety by allowing continued use of the existing marking. Appellants also pointed out this alternative limited quantity marking communicates more information than the newly adopted markings or the original ORM–D markings. They stated that PHMSA already provides for a two- to three-year transition period for the phase-out of the ORM–D marking, depending on the mode of transportation. In addition, commenters also requested that, for clarification, any transition periods be included in § 171.14 (transitional provisions) and § 172.300 (marking applicability).

PHMSA response.

We agree that shippers should be provided with the same transition period to continue using the square-on-point mark containing the UN identification (ID) number that was provided for the continued use of the ORM–D marking(s). In the administrative appeal final rule (HM–215K; RIN 2137–AE76), we granted the appeals submitted by ACA, DGAC, and PPG and revised § 172.315 accordingly to extend the transition period to December 31, 2013. The administrative final rule also authorized, for domestic air transportation, use of the square-on-point mark containing the ID number to continue until December 31, 2012.

Based on the merits of public comment received, we are extending authorization of the ORM–D

classification and the use of packagings marked ''Consumer commodity, ORM–D'' until December 31, 2020 for domestic highway, rail and vessel transportation. However, in this final rule we are only extending authorization to continue using the square-on-point mark containing the UN identification (ID) number until January 1, 2015, as proposed in the May 25, 2012 NPRM, for other than transportation by aircraft.

C. Fuel Cell Cartridges Transported in Passenger Checked Baggage

In the January 19, 2011 final rule, we revised the 49 CFR 175.10 passenger exceptions to allow passengers and crew members to place certain spare fuel cell cartridges containing a flammable liquid (Class 3) or corrosive material (Class 8) in checked baggage. We limited the fuel cell cartridge chemistries allowed in checked baggage by excluding fuel cell cartridges containing Divisions 2.1 (flammable gas) and 4.3 (dangerous when wet) material. Although this is inconsistent with the ICAO Technical Instructions, we believed that the prohibition should include spare fuel cell cartridges containing Division 2.1 materials. Flammable gases are generally prohibited from transportation on passenger-carrying aircraft as cargo. When combined with the uncertainty of the effect of baggage handling on the durability of these products when stowed in a passenger's checked baggage, the safety risks posed are of concern. In their administrative appeals, FCHEA and LSI requested that PHMSA revise § 175.10 to align with the ICAO Technical Instructions and allow spare fuel cell cartridges containing Division 2.1 flammable gas to be carried in checked baggage.

PHMSA response.

In the May 25, 2012 NPRM, we granted the appeal for reconsideration by providing additional opportunity for public comment on the issue. In response, one commenter (ALPA) opposed lifting the prohibition on spare fuel cell cartridges containing Division 2.1 flammable gas for carriage in checked baggage. The remaining commenters (IATA, P.R. China, Intel, DGAC, FCHEA, LSI, and Brookstone) all support lifting the U.S. prohibition and recommend alignment with the ICAO Technical Instructions. Points leading to the Department's decision are:

- Passenger authorizations for hazardous materials are outside the scope of the traditional hazardous materials transportation regulatory system. Many of the critical safety requirements of the HMR that would apply to these items when in transportation as cargo do not apply to passengers, for example, hazard communication, pilot notifications and cargo stowage requirements for hazardous materials.
- Passengers are not trained to recognize potential hazards. Although passengers pack, handle, and (in many cases) should communicate the hazardous materials carried onboard to an air carrier, the HMR does not require training for passengers. In most instances, passengers are unlikely to be aware of the safety implications if certain commodities are subject to improper packaging or handling.
- Recognition of the limitations of fire suppression and detection systems. We recognize that aircraft fire detection and suppression systems do not prevent fires nor are they designed to completely extinguish fires.
- Article Design Management. One example DOT may consider in the future could be similar to is its approach in regulating portable oxygen concentrators (POCs). That is, before any POC design is allowed onboard aircraft, the design must be tested and demonstrate a certain level safety prior to being authorized onboard passenger-carrying aircraft.
- Cumulative risk of additional passenger authorizations. We believe that when new passenger authorizations are granted consideration must be given to the cumulative risk of the new authorization combined with existing authorizations.

Accordingly, we deny Lilliputian's administrative appeal that requests the HMR be revised to allow spare Division 2.1 fuel cell cartridges in checked baggage.

D. Consumer Commodity by Air

In the January 19, 2011 final rule, PHMSA adopted requirements for certain consumer commodities intended for transportation by aircraft in new § 173.167. The new description and identification number (ID8000) are consistent with the consumer commodity entry in the ICAO Technical Instructions in Packing Instruction Y963. In its appeal submitted in response to the final rule, DGAC expressed concerns that the alignment between the two standards was not consistent. For example, DGAC pointed out that absorbent material requirements and stack test criteria were not included in the § 173.167 packaging section.

PHMSA response.

DGAC is correct in its assessment of the inconsistencies that exist between the consumer commodity provisions adopted in the HMR and the ICAO Technical Instructions. Therefore, we are adopting the language proposed in DGAC's administrative appeal, and revising § 173.167 accordingly. (See the detailed discussion of revisions to § 173.167 in Section V.)

E. Incident Reporting for Limited Quantity Material

The detailed hazardous materials incident reporting requirements of the HMR allow for exceptions from these requirements. Specifically, § 171.16(d)(2) excepts, under certain conditions, the unintentional release of a hazardous material properly classed as ORM–D and a PG III material in Class or Division 3, 4, 5, 6.1, 8, or 9, from the written reporting requirements. ACA indicated in its appeal that the reporting requirements as they apply to limited quantity material should be reviewed based on the eventual phase-out of the ORM–D hazard class and suggested the exception for ORM–D material should be extended to limited quantity packagings.

PHMSA response.

We agree with ACA that relief from incident reporting previously provided to ORM–D material should continue to be provided for such materials now transported as limited quantities. In the May 25, 2012 NPRM, we did not propose to extend the exception from incident reporting to limited quantity Class 7 (radioactive) material, instruments, and articles due to the unique nature of the hazard and because this type of material was never authorized to be reclassed and transported as ORM–D. Additionally, we stated this exception was not applicable to air transportation. Thus, the amendment is adopted as proposed.

F. Materials of Trade

Materials of Trade (MOTs) are hazardous materials, other than hazardous waste, that are carried on a motor vehicle: (1) To protect the health and safety of the motor vehicle operator or passengers, such as insect repellant or a fire extinguisher; (2) To support the operation or maintenance of a motor vehicle (including its auxiliary equipment), such as a spare battery or gasoline; or (3) To directly support a principal business of a private motor carrier (including vehicles operated by a rail carrier) that is other than transportation by motor vehicle—for example, landscaping, pest control, painting, plumbing, or welding services. The MOTS exceptions of the HMR generally allow certain hazardous material articles and substances, including ORM–D, to be transported by motor vehicle as part of a business

operation under less regulation without compromising safety.

In the May 25, 2012 NPRM, PHMSA proposed to apply the same eligibility to limited quantity packages as it currently does to ORM–D packages as MOTS. PHMSA believes that because small quantities of a limited number of low-risk materials are eligible in a properly prepared and marked limited quantity package, allowing such packages as MOTS will not compromise transportation safety. One commenter, ChemTel, opposes such authorization on the basis that because the package is not marked with a common name, it somehow compromises safety. On the other hand, USWAG fully supports the concept of limited quantity packages being eligible for transportation as MOTS.

PHMSA response.

Similar to the applicability of written incident reporting exceptions to limited quantity material, our review of the HMR indicated that we did not amend the MOTS exceptions under the January 19, 2011 final rule to reflect the eventual phase-out of the ORM–D system. Similar to the revisions to the written incident reporting requirements, we believe there is no impact to safety in authorizing limited quantity material to be transported as MOTS in the same manner as always provided for ORM–D. Most materials reclassed as ORM–D are limited quantity material themselves; an ORM–D is a limited quantity material that also meets the definition of a ''consumer commodity.'' See § 171.8 for the definition of ''consumer commodity.''

In this final rule, we are applying the MOTS exceptions to limited quantity packages consistent with the exception provided to ORM–D material. Additionally, we are clarifying that exceptions for limited quantity material also include limited quantity material authorized under § 173.63(b) for certain Division 1.4S explosives, § 173.306 for compressed gases, and § 173.309 for certain fire extinguishers.

III. Recent Changes to Part 8 of the ICAO Technical Instructions

At the 23rd Meeting of the ICAO Dangerous Goods Panel (DGP), held October 11–21, 2011, the DGP recommended amending Part 8 of the ICAO Technical Instructions applicable to passengers and crew members and the hazardous materials (dangerous goods) they may introduce aboard an aircraft in either checked or carry-on baggage, or on one's person. Such provisions form the basis of exceptions for passengers, crewmembers, and air operators provided in § 175.10 of the HMR. One recommendation adopted by the DGP addressed concerns over wheelchairs and other mobility aids found activated after flight. Additionally, the DGP addressed the absence of any reference to mobility aids powered by nickel metal hydride batteries, and wheelchairs and other mobility aids specifically designed to allow its battery or batteries to be removed from the device and carried aboard the aircraft by a passenger within a protective bag or pouch. In this final rule, PHMSA is adopting, as proposed, amendments to the HMR that address the potential for unintended activation of all stowed devices on an aircraft and provide for the intentional removal of a lithium ion battery from a device and its stowage in the passenger cabin. As explained in the May 25 NPRM, PHMSA intends to address remaining Part 8 and § 175.10 revisions, including wheelchairs and other mobility aids powered by nickel metal hydride batteries, in a separate rulemaking under Docket PHMSA–2012–0027 (HM–215L).

The ICAO Technical Instructions and the HMR limit lithium ion batteries used to power portable electronic devices and medical devices to 160 watt-hours and 25 grams aggregate equivalent lithium content, respectively. Additionally, the ICAO Technical Instructions and the HMR limit to carry-on baggage only any spare lithium ion batteries used to power portable electronic devices and medical devices. At its 23rd Meeting, the DGP was informed of lithium ion batteries developed for wheelchairs and other mobility aids which did not exceed 160 watt-hours (13.5 grams aggregate equivalent lithium content). Subsequently, the DGP adopted a proposal introduced by the International Air Transport Association (IATA) to include spare lithium ion batteries for battery-powered wheelchairs and other mobility aids in Part 8 consistent with the provisions for spare lithium ion batteries used to power portable electronic devices and medical devices. In this final rule, PHMSA is adopting as proposed similar provisions and revising § 175.10(a)(17) accordingly.

The DGP was also informed of new mobility aid designs which require the lithium ion battery to be removed from the device to permit efficient and effective stowage and transport of the mobility aid in the cargo compartment of the aircraft. The DGP agreed it would be safer to require that the removed lithium ion battery be carried in the passenger cabin rather than being stowed as checked baggage with the mobility aid. Subsequently, at the same meeting, the DGP was informed of mobility aid designs equipped with lithium ion batteries, which required removal for stowage (e.g., collapsible), that exceed the 160 watt-hour limit (13.5 grams aggregate equivalent lithium content). The DGP Panel therefore adopted an upper limit of 300 watt-hours (25 grams aggregate equivalent lithium content) for batteries which must be removed and carried aboard in the passenger cabin. The DGP Panel agreed that when applicable, the battery must be removed by the user. Because the HMR currently places an upper limit on such batteries to 25 grams aggregate equivalent lithium content (300 watt-hours), no corresponding revision to § 175.10(a)(17) of the HMR is necessary.

In this final rule, PHMSA is adopting amendments to the HMR that are consistent with the ICAO DGP/23 Panel recommendations. This final rule also clarifies and corrects some related amendments adopted in the original January 19, 2011 final rule. See the discussion of specific amendments adopted in § 175.10 under the ''V. Section-by-Section Review of Changes'' section of this rulemaking.

IV. Administrative Appeal Submitted in Response to the HM–231 Final Rule

In this final rule, PHMSA responds to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions) and required shippers to maintain a packaging's manufacturer notification (including closure instructions) for 365 days subsequent to offering the package for transportation. The final rule also revised § 178.2(c) to strengthen manufacturer notification requirements and to allow them greater flexibility in how they provide the notification. The final rule was effective on October 1, 2010.

On March 3, 2010, we received an administrative appeal from DGAC requesting that PHMSA delay the effective date of the final rule for two years to provide sufficient time for packaging manufacturers to review their current packaging design manufacturer notification (including closure instructions) for compliance with the new requirement to ensure closure instructions provide a repeatable method of closing the packaging consistent with the way it was closed prior to performing qualification testing on the packaging design.

We did not grant the DGAC administrative appeal in our September 30, 2010 final rule (75 FR 60333) that responded to a petition for rulemaking and several other administrative appeals. Specifically, we did not grant DGAC's request for a two-year extension of the effective date. However, we did agree that aligning the review and preparation of a packaging's manufacturer notification with its periodic retest merited consideration because it would facilitate the packaging manufacturer's and distributor's compliance with new packaging manufacturer notification requirements adopted in the rule. Thus, in the September 30, 2010 final rule, we revised the recordkeeping requirement from 365 days to a two-year period for combination packagings and a one-year period for single packagings consistent with a typical packaging design's periodic retest frequency.

DGAC submitted a follow-up administrative appeal objecting to our revision in the September 30, 2010 final rule to the recordkeeping requirement for manufacturer notification and requested that PHMSA return the recordkeeping duration to the 365 days adopted under the February 2, 2010 final rule. DGAC stated that while the preamble discussion in the September 30, 2010 final rule recognized its concerns in the initial appeal, the regulatory response did not grant its request for the extension of the effective date and, instead, created a recordkeeping requirement of two years that is more difficult to comply with than the original one-year (365-day) requirement in the February 2, 2010 final rule. DGAC claimed there is no need for a shipper to retain a copy of a packaging's manufacturer notification (including closure instructions) for longer than 365 days. DGAC also asked whether the words ''supporting documentation'' were intentionally omitted from the September 30, 2011 final rule revision to 49 CFR 178.601(g)(1). Further, DGAC requested that PHMSA amend 49 CFR 171.14 to extend the effective date of the February 2, 2010 final rule to October 1, 2011.

PHMSA response.

Although not clearly stated in both final rules, it was our intent that the new manufacturer notification requirements apply to all applicable hazardous materials packagings manufactured on or after October 1, 2010. Packagings manufactured before this date should already conform to HMR performance standards for their design type in effect at the time of manufacture. As we stated in the February 2, 2010 final rule, we revised this regulation to address an increase in hazardous materials releases as a result of improperly closed packagings. In our opinion, review of existing manufacturer notifications for packaging designs that should already be in compliance with the HMR would involve much less effort than DGAC described in its administrative appeal. We also believe sufficient time has elapsed since the February 2, 2010 final rule was published to complete this task and any additional time is not warranted.

Therefore, in this final rule, we are denying DGAC's appeal to extend the effective date of the rule. However, we are amending § 178.2(c)(1)(ii) of the HMR based on DGAC's request to revert to the original recordkeeping retention duration for manufacturer notification to the 365-day period adopted in the February 2, 2010 final rule. Additionally, PHMSA is amending § 173.22(a)(4)(ii) as proposed to require a shipper who sells or transfers a packaging or closes and offers a package for transportation to retain manufacturer notification (including closure instructions) for a period of 90 days once a package is offered to the initial carrier for transportation in commerce. Subsequent downstream offerors of a filled and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instructions).

Additionally, in this final rule, PHMSA is adopting as proposed the clarification that only bulk packagings and cylinders manufactured in accordance with Part 178 of the HMR are excepted from the manufacturer notification (including closure instructions) retention requirements specified in § 173.22(a)(4) if such information is permanently embossed or printed on the packaging. This exception was only provided with such packagings in mind and was originally adopted as a result of public comment.

For clarification, we did not revise § 178.601(g)(1) in the September 30, 2010 final rule as DGAC asserts; we did correct punctuation in §§ 178.601(g)(8)(xiii)(C) and (g)(8)(xiii)(D), which do not include references to supporting documentation. Moreover, we note that the requirement for supporting documentation adopted in the February 2, 2010 final rule remains in § 178.601(g)(1) with the statement that the method used to determine whether the inner packaging, including closure, of a Variation 1 packaging maintains an equivalent level of performance to the originally tested packaging design must be ''documented in writing by the person certifying compliance and retained in accordance with paragraph (l)'' of § 178.601.

V. Section-by-Section Review of Changes

Part 171

Section 171.16

This section prescribes written hazardous material incident reporting requirements. In this final rule, we are adopting as proposed the revision to the paragraph (d) exceptions to reflect the eventual phase-out of the ORM–D system on December 31, 2020 and extending the exception provided for materials classed as ORM–D to hazardous materials authorized for transportation as limited quantity materials under Subparts C through E and Subpart G of Part 173 of the HMR. PHMSA notes that this exception is not applicable to air transportation. See section II.E for a comprehensive discussion of the adopted changes.

Part 172

Section 172.102

Section 172.102 prescribes special provisions associated with certain descriptions in the HMT. Special provision 18 is applicable to fire extinguishers. Because the text is now included in § 173.309, this Special provision is redundant and is being removed in this final rule.

Section 172.200

Section 172.200 prescribes the applicability of shipping paper requirements for the transportation of hazardous materials. In the January 19, 2011 final rule, paragraph (b)(3) was revised to remove the exceptions for ORM–D material in conformance with revisions made to the limited quantity requirements. In this final rule, we are adopting revisions to the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020 in response to the appeal submitted by HDMA. Additionally, we are adopting revisions to paragraph (b)(3) that correct the shipping paper applicability for vessel shipments of ORM–D material that was inadvertently adopted in the January 19, 2011 final rule. Further, we emphasize that limited quantity shipments offered for transportation by air or vessel are required to be accompanied by shipping papers as adopted in the January 19, 2011 final rule.

Section 172.315

Section 172.315 prescribes the requirements for marking packages which contain limited quantity material.

Based on administrative appeals submitted and requests to make the requirements for limited quantity marking more clear, we are adopting as proposed the revisions to § 172.315 that permit the continued use of alternative limited quantity markings (i.e., square-on-point with Identification Number) marking for the same duration as proposed in the May 25, 2012 NPRM, that is, until December 31, 2015. The expiration date for the square-on-point with Identification Number marking remains December 31, 2012 for air transportation.

Section 172.316

Section 172.316 prescribes marking requirements for packages containing materials classed as ORM–D and ORM–D–AIR. As adopted in the January 19 final rule, the marking prescribed in this section will no longer be authorized for limited quantities effective January 1, 2014. In this final rule, we are adopting as proposed the revisions to the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020 in response to the appeal submitted by HDMA. The expiration date for the ORM–D–AIR hazard class marking remains December 31, 2012 for air transportation.

Part 173

Section 173.6

Section 173.6 prescribes exceptions from certain requirements of the HMR for the transportation of hazardous materials defined as materials of trade (MOTS) when transported by motor vehicle. See § 171.8. In this final rule, we are adopting as proposed the revision to paragraph (d) exceptions that reflects the phase-out of the ORM–D system on December 31, 2020 and applying the exception provided ORM–D material to hazardous materials authorized for transportation as a limited quantity under subparts C through E and subpart G of part 173 of the HMR. See section II.F for a comprehensive discussion of these adopted amendments.

Section 173.22

Section 173.22 prescribes shipper responsibilities. In this final rule, PHMSA is responding to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions). The amendments adopted required shippers to maintain a packaging's manufacturer notification (including closure instructions) for 365 days subsequent to offering the package for transportation.

In this final rule, PHMSA is adopting as proposed the revisions to § 173.22(a)(4) by clarifying that only bulk packagings and cylinders manufactured in accordance with Part 178 of the HMR are excepted from the manufacturer notification (including closure instructions) retention requirements specified in § 173.22(a)(4) (shipper responsibilities) if such information is permanently embossed or printed on the packaging. Additionally, PHMSA is amending § 173.22(a)(4)(ii) as proposed to require a person who sells or transfers a packaging or closes and offers a package for transportation to retain manufacturer notification (including closure instructions) for a period of 90 days once a package is offered to the initial carrier for transportation in commerce. Subsequent downstream offerors of a filled and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instructions). See Section III of this preamble for a more comprehensive discussion of these amendments.

Section 173.25

Section 173.25 prescribes requirements for the transportation of authorized packages in overpacks used for protection or convenience of handling or to consolidate packages. In this final rule, we are adopting as proposed the revisions to § 173.25(a)(6) by clarifying that all markings on each package containing a limited quantity or ORM–D material in an overpack are not required to be visible, but rather, that markings representative of each hazardous material in the overpack must be visible as specified in § 173.25(a)(2) and (a)(3). Additionally, we are adopting as proposed the correction of an error in the January 19, 2011 final rule and revising paragraphs (a)(6) and the new (a)(7) applicable to overpacked packages of limited quantities, ORM–D, and excepted quantity materials to reaffirm that an overpack is only required to be marked with the word ''OVERPACK'' if specification markings, when required, are not visible.

Section 173.63

Section 173.63 prescribes packaging exceptions for certain Division 1.4S explosive articles authorized for reclassification and transport as ORM–D. Currently, such articles in Division 1.4S may be reclassed as ORM–D and offered for transportation until December 31, 2013. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020.

Section 173.144

Section 173.144 defines ''Other Regulated Materials, ORM–D.'' In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020.

Sections 173.150, 173.151, 173.152, 173.153, 173.154, and 173.155

Sections 173.150 through 173.155 prescribe exceptions for certain Class 3, 8 and 9 and Division 2.1, 2.2, 4.1, 4.2, 5.1, 5.2, 6.1 hazardous materials under the HMR. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020. This is accomplished by revising each of these sections' consumer commodity paragraphs, where applicable.

Section 173.156

Section 173.156 prescribes exceptions for the Other Regulated Materials, ORM–D hazard class. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020.

Section 173.161

Section 173.161 prescribes packaging requirements for chemical kits and first aid kits containing small amounts of hazardous materials. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020.

Section 173.165

In the January 19, 2011 final rule, a new § 173.165 was added to prescribe packaging and other requirements for ''Polyester resin kits, UN3269'' formerly contained in § 172.102, special provision 40, and § 173.152(b)(4) of the HMR. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2020.

Section 173.167

In the January 19, 2011 final rule, a new § 173.167 was added to indicate authorized materials and quantity limits for articles and substances that may be described as ''ID8000, Consumer commodity,'' and are eligible for transport by aircraft and authorized transportation by all modes. This final rule addresses inconsistencies with the ICAO Technical Instructions brought to our attention in appeals submitted in response to the January 19, 2011 final rule. For example, DGAC pointed out that absorbent material requirements and stack test criteria were not included in the § 173.167 packaging section. Additionally, HMT correctly asserts that Packing Instruction Y963 in the ICAO Technical Instructions only requires that friction-type closures be secured by positive and not secondary means. COSTHA, HMT, and DGAC correctly state that Consumer commodities prepared under the requirements of § 173.167 should not be subject to Subpart B of Part 173. For other than applicable § 173.27(f)(2) provisions, PHMSA agrees. Further, DGAC and HMT suggest the HMR be revised to be consistent with the ICAO Technical Instructions by using the words ''glass,'' ''earthenware,'' and ''brittle plastic'' instead of use of the undefined term ''fragile'' as proposed in § 173.167(a)(3) and (a)(5). We agree and are replacing the word ''fragile'' with the terms used in ICAO Technical Instructions.

Section 173.230

Section 173.230 prescribes the requirements for fuel cells offered for transportation by all modes. As published in the January 19, 2011 final rule, in paragraph (g) of this section, PHMSA adopted limited quantity provisions for such articles by aircraft consistent with the ICAO Technical Instructions. In paragraph (h), PHMSA also adopted a prohibition of reclassification to ''Consumer commodity, ORM–D–AIR'' for transportation by aircraft. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class, for other than air transportation, from December 31, 2013, to December 31, 2020.

Section 173.306

Section 173.306 prescribes requirements for limited quantity of compressed gases. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class in paragraph (i)(2) from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM–D hazard class, for other than air transportation, from December 31, 2013, to December 31, 2020.

Section 173.309

Section 173.309 prescribes requirements for fire extinguishers. In this final rule, we are adopting revisions to the entire section for clarity. First, we are relocating the limited quantity requirements and exceptions from paragraph (b) as proposed to new paragraph (d) as we typically indicate regulation first in most sections followed by any exceptions to that regulation. Second, we are relocating regulatory text from § 172.102(c)(1) Special provision 18 to revised paragraph (a) which prescribes the conditions when specification cylinders may be described, offered, and transported in commerce as fire extinguishers. Third, in the May 25 NPRM, we solicited public comment on whether we should consider allowing UN specification cylinders as fire extinguishers in § 173.309. Because we did not receive any comments related to this issue in support or opposition, we are not adopting revisions to this section related to UN pressure vessels at this time. Lastly, we are revising new paragraph (d) by excepting a limited quantity package of fire extinguishers from shipping papers when transported by highway or rail if marked in accordance with § 172.315. This exception is provided in addition to the existing HMR exceptions from labeling (unless offered for transportation by aircraft), placarding, and Parts 174 and 177 carrier requirements for limited quantity packages of fire extinguishers.

In general, commenters were very supportive of the revisions proposed in the May 25, 2012 NPRM (Broward, ISS, and NAFED). However, Broward and NAFED shared concerns related to scenarios where fire extinguishers were transported in private carriage without an outer packaging. This scenario typically occurs when the articles are being transported to and from a service facility for recharging, hydrostatic testing, and maintenance. In their comments, they request PHMSA allow the practice if the articles are properly secured in the vehicle and are marked and labeled as required by the HMR.

PHMSA response. The scenario the commenters describe would be eligible for the Materials of Trade (MOTS) exceptions under § 173.6. Provided each fire extinguisher did not exceed 100 kg (220 lbs) and the aggregate gross weight of all fire extinguishers on the vehicle did not exceed 200 kg (440 lbs), users may use the MOTS exceptions to transport the fire extinguishers unpackaged as prescribed in § 173.6(b)(5). Additionally, the fire extinguishers are required to be marked and labeled in accordance with the HMR as prescribed in § 173.6(c)(3). Users may also transport a combination of MOTS-eligible articles and substances and other hazardous materials on the same motor vehicle, provided the MOTS limits themselves are not exceeded.

Lastly, in its comments ISS offered formatting suggestions to aid the reader and to clearly distinguish the limited quantity exceptions in § 173.309(d) intended for all fire extinguishers from those fully regulated provisions for fire extinguishers in § 173.309(a), (b), and (c). PHMSA appreciates the recommendations and, in this final rule, revises the section accordingly.

Part 175

Section 175.10

Lithium ion battery-powered mobility aids. In the January 19, 2011 final rule, we amended the HMR to align with international standards by designating paragraphs (a)(17) and (a)(18) as paragraphs (a)(18) and (a)(19), and by adding a new paragraph (a)(17) that authorized a mobility aid such as a wheelchair, powered by a lithium ion battery, to be transported aboard a passenger-carrying aircraft.

For consistency with the wheelchair or other battery-powered mobility aid provisions in § 175.10(a)(15) and (a)(16), and the provisions provided for the carriage of portable electronic devices powered by lithium ion batteries in § 175.10(a)(17) (now § 175.10(a)(18)), the final rule merged applicable provisions for the transportation of lithium ion battery-powered mobility aids into a new § 175.10(a)(17). In the final rule, we stated that removal of the battery may be necessary based on results of the required visual inspection or if the mobility aid was to be offered to the operator as checked baggage. It was not our intent to require an operator or passenger to remove a properly secured lithium ion battery from a mobility aid that was not specifically designed to allow its batteries to be removed. Furthermore, it is the operator's responsibility to determine if the wheelchair or other mobility aid is designed to have its battery removed by the user. Information provided by the user or visual inspection may be used in this process. Accordingly, revisions to certain amendments adopted in § 175.10(a)(17) of the final rule are required and are as follows:

- A mobility aid such as a wheelchair, powered by a lithium ion battery, must be transported as checked baggage aboard an aircraft. This requirement is consistent with the 14 CFR Part 382 provisions under the Air Carrier Access Act (ACAA);
- Provided the wheelchair or other mobility aid is not specifically designed to allow its lithium ion battery to be removed, battery removal is not required;
- If the battery is to remain installed, a wheelchair or other mobility aid may be loaded and stowed in any orientation determined by the operator necessary to prevent unintentional activation of the mobility aid or short circuiting of the battery and is as equally protected as the upright orientation would provide;
- The wheelchair or other mobility aid must be protected from damage by the movement of baggage, mail, service items, or other cargo; and
- As adopted in the January 19, 2011 final rule, a lithium ion battery specifically designed to be removed from a mobility aid (e.g., collapsible) by the user and any spare batteries must be transported in carry-on baggage in accordance with paragraph (vii). The carry-on battery must not exceed 25 grams aggregate equivalent lithium content and a maximum of one spare battery not exceeding 25 grams aggregate equivalent lithium content or two spares not exceeding 13.5 grams aggregate equivalent lithium content each may be carried on.

Lithium battery-powered medical devices. URS commented in response to the May 25, 2012 NPRM regarding such articles also excepted from regulatory requirements under Part 8 of the ICAO Technical Instructions. Because amendments regarding such articles were not proposed in the May 25, 2012 NPRM, PHMSA cannot align with the ICAO Technical Instructions in this final rule.

Section 175.25

Section 175.25 prescribes the notification that operators must provide to passengers regarding restrictions on the types of hazardous material they may or may not carry aboard an aircraft on their person or in checked or carry-on baggage. The January 19, 2011 final rule revised provisions in § 175.25 applicable to notification and acknowledgement of the types of hazardous materials that a passenger may or may not carry aboard an aircraft by updating the ticketing and flight check-in provisions of the HMR based on current technologies used to perform such functions.

Subsequent to issuance of the final rule, the PHMSA and FAA received several administrative appeals, and, at the August 16, 2012 public meeting, received written and oral comments requesting additional time for affected entities to implement the new provisions in a more effective and cooperative manner.

PHMSA and FAA agree that a delay in the compliance date of the revised § 175.25 is warranted, particularly if a delay supports the implementation of more effective methods for increasing passenger awareness of, and compliance with, the HMR. Therefore, PHMSA and FAA provide this notification of extending the compliance date until January 1, 2015. Additionally, we acknowledge that notification of interested parties is necessary if we wish to gain widespread support of the collaborative approach to implementing effective and value-added solutions as discussed during the August 16, 2012 public meeting on this issue.

Part 176

Section 176.905

Section 176.905 prescribes specific requirements for motor vehicles or mechanical equipment powered by internal combustion engines that are offered for transportation and transported by vessel. In the January 19, 2011 final rule, PHMSA did not revise the paragraph (i) introductory text to clarify that if any of the exceptions criteria were met, the articles were excepted from the requirements of the HMR. We are providing that clarification in this final rule. In addition, PHMSA is adopting as proposed the removal of a heading for each exception criterion in paragraph (i). These headings are not necessary and have resulted in confusion among the regulated community as some of the headings were perceived to be inconsistent with the IMDG Code.

Part 178

Section 178.2

Section 178.2 prescribes HMR applicability and responsibility required of packaging manufacturers. In this final rule, PHMSA responds to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions). The amendments adopted required shippers to maintain a packaging manufacturer's notification (including closure instructions) for 365 days subsequent to offering the package for transportation. The final rule also revised § 178.2(c) to strengthen manufacturer notification requirements and to allow manufacturers greater flexibility in how they provide the notification. The final rule was effective on October 1, 2010.

In response to a misunderstanding of an administrative appeal, PHMSA revised the recordkeeping requirement from 365 days to a two-year period for combination packagings and a one-year period for single packagings consistent with a typical packaging design's periodic retest frequency. Subsequently, DGAC submitted another administrative appeal requesting PHMSA revise the notification retention requirements in § 178.2(c)(1)(ii) to the original one year from date of issuance. Therefore, in this final rule, we are adopting as proposed,

amendments to the HMR based on DGAC's request to revert to the original recordkeeping retention duration for manufacturer notification to one year.

Section 178.601

This section prescribes the general requirements for the testing of non-bulk packagings and packages. Paragraph (c)(4)(v) was revised in a final rule published on October 5, 2012 [77 FR 60935] under Docket PHMSA 2012–0080 (HM–244E) entitled ''Hazardous Materials: Minor Editorial Corrections and Clarifications (RRR). In the final rule, we explained that the term ''different packaging'' is defined in paragraph (c)(4) and that because paragraph (c)(4)(v) of the definition excluded packagings which differ only in a lesser design height from the category of a ''different packaging,'' for purposes of clarification, we were revising the paragraph to link the exclusion to the authorized packaging variations that allow a packaging to be manufactured at a lesser design height. We provided the link by adding a reference to the variations in paragraph (g)(3) for single packagings, and to (g)(4) for combination packagings.

While our intent was to afford clarification by providing a reader-friendly link to reference the variations in paragraph (g)(3) for single packagings and to paragraph (g)(4) for combination packagings, we received appeals from the Dangerous Goods Advisory Council (DGAC). The appellant stated that by incorporating such a revision, PHMSA, among other subtle differences such as a reduction in the size of marking requirements, placed additional restrictions on packagings that differ only in a lesser design height. The appellant further stated that such revisions constitute a substantive change which requires an opportunity for public notice and comment in accordance with the Administrative Procedure Act. Based on the response we received and upon further review, we are granting this appeal by revising this paragraph to its language prior to the publication of HM–244E, and will consider revisiting the issue at a later time.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule responds to the administrative appeal of certain amendments adopted in final rule PHMSA–2009–0126 (HM–215K) published on January 19, 2011 (76 FR 3308). Additionally, it responds to the administrative appeal of certain amendments adopted in a final rule PHMSA–2006–25736 (HM–231) published on February 2, 2010 (75 FR 5376).

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, E.O. 13563 supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

This final rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, radiopharmaceutical companies, and training companies. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by U.S. manufacturers of hazardous materials. A regulatory evaluation is available for review in the public docket for this rulemaking.

In most instances, the amendments adopted in this rulemaking reduce compliance costs of the regulated community, and these changes are possible without reducing public safety. Although we were not able to quantify all of the costs and benefits for most of the amendments, the net benefits of those we were able to quantify are approximately $3.5 million per year. The following table summarizes the costs and benefits of the amendments adopted:

SUMMARY OF COSTS AND BENEFITS

Issue addressed by amendments to HMR	Costs	Benefits	Net benefit
Domestic transportation of ORM–D material.	Extending the effective date of eliminating the ORM–D system will result in minor short-term costs on shippers and carriers who will have to recognize and comply with two marking systems over a longer transition period.	Extending the effective date of eliminating the ORM–D system will allow companies to deplete stocks of hazard communication materials and pre-printed packaging with the ORM–D markings on them. Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	$7.3 million over the first two years.
Use of the Square-on-Point and ID Number Limited Quantity Marking.	Extending the effective date of eliminating the revised limited quantity marking system will result in minor short-term costs on shippers and carriers who will have to recognize and comply with two marking systems over a longer transition period.	Extending the effective date of eliminating the revised limited quantity marking system will allow companies to deplete stocks of hazard communication materials and pre-printed packaging with the ORM–D markings on them. Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	Positive.

SUMMARY OF COSTS AND BENEFITS—Continued

Issue addressed by amendments to HMR	Costs	Benefits	Net benefit
Consumer Commodity Transport by Aircraft.	No costs are anticipated as the proposal provides clarification and guidance for existing requirements adopted in the January 19, 2011 Final Rule.	Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	Positive.
Incident Reporting for Limited Quantity Material.	No costs are anticipated	Increased exceptions for written reporting requirements will reduce the regulatory burden on shippers/carriers of limited quantity materials.	Positive.
Materials of Trade Exceptions.	No costs are anticipated	Increased materials of trade exceptions will reduce the regulatory burden on shippers/carriers of limited quantity materials.	Positive.
Recordkeeping Requirements for Manufacturer Notification*.	Costs are expected to be negligible	Reduced costs that shippers will incur as a result of having to retain records for only 90 days as opposed to 730 days.	$3.3 million per year.

* Administrative appeals submitted in response to the HM–231 Final Rule.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). The amendments adopted in this final rule preempt State, local and Indian tribe requirements and do not impose regulation having substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements for certain subjects. The subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses all the covered subject items above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to incorporate revisions to the HMR based on administrative appeals submitted in response to the January 19, 2011 final rule, effective January 1, 2011. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is April 8, 2013.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We have completed an assessment and placed it in the docket for this rulemaking.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of proposed rules on small entities are properly considered.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements adopted in this final rule. PHMSA has developed burden estimates to reflect the changes adopted in this final rule, and estimates the information collection and recordkeeping burden as adopted in this final rule to be as follows:

• This final rule reduces the OMB Control Number 2137–0572 information collection burden by $1,654,384 annually. PHMSA has submitted the revised information collection and recordkeeping requirements to OMB for approval.

G. Regulatory Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified

Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. In the January 19, 2011 final rule, we developed an initial assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings concluded that there are no significant environmental impacts associated with the final rule. Consistency in the regulations for the transportation of hazardous materials aids in shippers' understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, an environmental assessment was included with the January 19, 2011 final rule available in the public docket. Further, we do not see any additional environmental impacts associated with the amendments proposed in the May 25, 2012 NPRM and adopted unchanged in this final rule regarding the administrative appeals submitted to PHMSA in response to the January 19 final rule. Lastly, we did not receive any public comment related to the potential environmental impact of the proposals made in the May 25, 2012 NPRM.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html*.

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of this final rule to ensure that it does not exclude imports that meet this objective. Accordingly, this rulemaking is consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is amending Title 49, Subtitle B, Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.16, paragraph (d)(2) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(d) * * *

(2) An unintentional release of a hazardous material when:

(i) The material is—

(A) A limited quantity material packaged under authorized exceptions in the § 172.101 Hazardous Materials Table of this subchapter excluding Class 7 (radioactive) material; or

(B) A Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(ii) The material is released from a package having a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(iii) The total amount of material released is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; and

(iv) The material is not—

(A) Offered for transportation or transported by aircraft;

(B) A hazardous waste; or

(C) An undeclared hazardous material;

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

§ 172.102 [Amended]

■ 4. In § 172.102, in paragraph (c)(1), Special provision 18 is removed.

■ 5. In § 172.200, paragraph (b)(3) is revised to read as follows:

§ 172.200 Applicability.

* * * * *

(b) * * *

(3) A limited quantity package unless the material is offered for transportation by aircraft or vessel and, until December 31, 2020, a package of ORM–D material authorized by this subchapter on October 1, 2010, when offered for transportation by highway, rail or vessel.

* * * * *

■ 6. In § 172.315, paragraph (d) is revised to read as follows:

§ 172.315 Limited quantities.

* * * * *

(d) *Transitional exceptions* (1) *Alternative markings.* Except for transportation by aircraft and until December 31, 2014, a package containing a limited quantity may continue to be marked in accordance with the requirements of this section in effect on October 1, 2010 (i.e., square-on-point with identification number only) as an alternative to the marking required by paragraph (a) of this section.

(2) *ORM–D marked packaging.* Except for transportation by aircraft and until December 31, 2020, a packaging marked in accordance with § 172.316 of this part is not required to be marked with the limited quantity marking required by paragraph (a) of this section. For transportation by aircraft and until December 31, 2012, a packaging marked in accordance with § 172.316(a)(1) is not required to be marked with the limited quantity ''Y'' marking required by paragraph (b) of this section.

■ 7. In § 172.316, paragraph (a)(2) is revised to read as follows:

§ 172.316 Packagings containing materials classed as ORM–D.

(a) * * *

(2) Until December 31, 2020, ORM–D for an ORM–D material that is packaged in accordance with §§ 173.63, 173.150 through 173.156 and 173.306.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 8. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 9. In § 173.6, paragraph (a)(6) is added to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(a) * * *

(6) A limited quantity package prepared in accordance with §§ 173.27, 173.63(b), 173.150, 173.151(b) and (c), 173.152, 173.153, 173.154, 173.155, 173.161, 173.165, 173.167, 173.306(i), and 173.309(b) of this subchapter. Division 4.3 substances must be prepared in accordance with paragraph (a)(3) of this section. Class 7 (radioactive) substances, instruments and articles are not authorized under the provisions of this section.

* * * * *

■ 10. In § 173.22, paragraph (a)(4) is revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(4)(i) For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with § 178.2 of this subchapter.

(ii) For other than a bulk package or a cylinder, a person must retain a copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter). For a bulk package or a cylinder, a person must retain a copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter), unless permanently embossed or printed on the package. A copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter), unless permanently embossed or printed on the package when applicable, must be made available for inspection by a representative of the Department upon request for at least 90 days once the package is offered to the initial carrier for transportation in commerce. Subsequent offerors of a filed and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instructions).

(iii) When applicable, a person must retain a copy of any supporting documentation used to determine an equivalent level of performance under the selective testing variation in § 178.601(g)(1) of this subchapter. Such documentation is to be retained by the person certifying compliance with § 178.601(g)(1) as specified in § 178.601(l).

* * * * *

■ 11. In § 173.25, paragraph (a)(6) is revised and paragraph (a)(7) is added to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

(6) *Limited quantities and ORM material.* The overpack is marked with a limited quantity marking prescribed in § 172.315 of this subchapter or, the ORM marking prescribed in § 172.316 of this subchapter, unless a limited quantity or ORM marking representative of the hazardous material in the overpack is visible.

(7) *Excepted quantities.* The overpack is marked with the required marking of § 173.4a of this part unless visible.

* * * * *

■ 12. In § 173.63, paragraph (b)(1)(ii) is revised to read as follows:

§ 173.63 Packaging exceptions.

* * * * *

(b) * * *

(1) * * *

(ii) Until December 31, 2012, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges, power device (*used to project fastening devices*)'' and reclassed as ''ORM–D–AIR'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010. Additionally, for transportation by aircraft, Cartridge, power devices must be successfully tested under the UN Test Series 6(d) criteria for reclassification as ORM–D–AIR material effective July 1, 2011. Until December 31, 2020, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges, power device (*used to project fastening devices*)'' and reclassed as ''ORM–D'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010.

* * * * *

■ 13. Section 173.144 is revised to read as follows:

§ 173.144 Other Regulated Material (ORM)—Definitions.

Until December 31, 2020 and for the purposes of this subchapter, ''ORM–D material'' means a material such as a consumer commodity, cartridges, small arms or cartridges, power devices which, although otherwise subject to the regulations of this subchapter, presents a limited hazard during transportation due to its form, quantity and packaging. The article or substance must be a material for which exceptions are

provided in Column (8A) of the § 172.101 Hazardous Materials Table.

■ 14. In § 173.150, paragraph (c) is revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

■ 15. In § 173.151, paragraphs (b) and (c) are revised to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(b) *Limited quantities of Division 4.1.* Limited quantities of flammable solids (Division 4.1) in Packing Groups II and III and, where authorized by this section, charcoal briquettes (Division 4.2) in Packing Group III, are excepted from labeling requirements unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. If authorized for transportation by aircraft, the package must also conform to applicable requirements of § 173.27 of this part (*e.g.,* authorized materials, inner packaging quantity limits and closure securement) and only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel, and is eligible for the exceptions provided in § 173.156 of this part. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. Except for transportation by aircraft, the following combination packagings are authorized:

(1) For flammable solids in Packing Group II, inner packagings not over 1.0 kg (2.2 pounds) net capacity each, packed in a strong outer packaging.

(2) For flammable solids in Packing Group III, inner packagings not over 5.0 kg (11 pounds) net capacity each, packed in a strong outer packaging.

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package (including Charcoal briquettes (NA1361)) containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010. For transportation by aircraft, the maximum net mass for Charcoal briquettes (NA1361) is 25 kg per package.

* * * * *

■ 16. In § 173.152, paragraph (c) is revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 17. In § 173.153, paragraph (c) is revised to read as follows:

§ 173.153 Exceptions for Division 6.1 (poisonous material).

* * * * *

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package of poisonous material in Packing Group III or a drug or medicine in Packing Group II or III that is also a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 18. In § 173.154, paragraph (c) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive material).

* * * * *

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

■ 19. In § 173.155, paragraph (c) is revised to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

* * * * *

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 20. Section 173.156 is revised to read as follows:

§ 173.156 Exceptions for limited quantity and ORM.

(a) Exceptions for hazardous materials shipments in the following paragraphs are permitted only if this section is referenced for the specific hazardous material in the § 172.101 Table or in a packaging section in this part.

(b) Packagings for limited quantity and ORM–D are specified according to hazard class in §§ 173.150 through 173.155, 173.306 and 173.309(b). In addition to exceptions provided for limited quantity and ORM–D materials elsewhere in this part, the following are provided:

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for packages of limited quantity materials marked in accordance with § 172.315 of this subchapter, or, until December 31, 2020, materials classed and marked as ORM–D and described as a Consumer commodity, as defined in § 171.8 of this subchapter, when—

(i) Unitized in cages, carts, boxes or similar overpacks;

(ii) Offered for transportation or transported by:

(A) Rail;

(B) Private or contract motor carrier; or

(C) Common carrier in a vehicle under exclusive use for such service; and

(iii) Transported to or from a manufacturer, a distribution center, or a retail outlet, or transported to a disposal facility from one offeror.

(2) The 30 kg (66 pounds) gross weight limitation does not apply to packages of limited quantity materials marked in accordance with § 172.315 of this subchapter, or, until December 31, 2020, materials classed and marked as ORM–D and described as a Consumer commodity, as defined in § 171.8 of this subchapter, when offered for transportation or transported by highway or rail between a manufacturer, a distribution center, and a retail outlet provided—

(i) Inner packagings conform to the quantity limits for inner packagings specified in §§ 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306 (a) and (b), and 173.309(b), as appropriate;

(ii) The inner packagings are packed into corrugated fiberboard trays to prevent them from moving freely;

(iii) The trays are placed in a fiberboard box which is banded and secured to a wooden pallet by metal, fabric, or plastic straps, to form a single palletized unit;

(iv) The package conforms to the general packaging requirements of subpart B of this part;

(v) The maximum net quantity of hazardous material permitted on one palletized unit is 250 kg (550 pounds); and

(vi) The package is properly marked in accordance with § 172.315 or, until December 31, 2020, § 172.316 of this subchapter.

■ 21. In § 173.161, paragraph (d)(2) is revised to read as follows:

§ 173.161 Chemical kits and first aid kits.

* * * * *

(d) * * *

(2) Consumer commodities. Until December 31, 2020, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

■ 22. In § 173.165, paragraph (c) is revised to read as follows:

§ 173.165 Polyester resin kits.

* * * * *

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 23. Section 173.167 is revised to read as follows:

§ 173.167 Consumer commodities.

(a) Effective January 1, 2013, a ''consumer commodity'' (see § 171.8 of this subchapter) when offered for transportation by aircraft may only include articles or substances of Class 2 (non-toxic aerosols only), Class 3 (Packing Group II and III only), Division 6.1 (Packing Group III only), UN3077, UN3082, UN3175, UN3334, and UN3335, provided such materials do not have a subsidiary risk and are authorized aboard a passenger-carrying aircraft. Consumer commodities are excepted from the specification outer packaging requirements of this subchapter. Packages prepared under the requirements of this section are excepted from labeling and shipping papers when transported by highway or rail. Except for § 173.27(f)(2), packages prepared under the requirements of this section are not subject to Subpart B of this part. Additionally, packages prepared under the requirements of this section may be offered for transportation and transported by all modes. As applicable, the following apply:

(1) *Inner and outer packaging quantity limits.* (i) Non-toxic aerosols, as defined in § 171.8 of this subchapter and constructed in accordance with § 173.306 of this part, in non-refillable, non-metal containers not exceeding 120 mL (4 fluid ounces) each, or in non-refillable metal containers not exceeding 820 mL (28 ounces) each, except that flammable aerosols may not exceed 500 mL (16.9 ounces) each;

(ii) Liquids, in inner packagings not exceeding 500 mL (16.9 ounces) each. Liquids must not completely fill an inner packaging at 55 °C;

(iii) Solids, in inner packagings not exceeding 500 g (1.0 pounds) each; or

(iv) Any combination thereof not to exceed 30 kg (66 pounds) gross weight as prepared for shipment.

(2) *Closures.* Friction-type closures must be secured by positive means. The body and closure of any packaging must be constructed so as to be able to adequately resist the effects of temperature and vibration occurring in conditions normally incident to air transportation. The closure device must be so designed that it is unlikely that it can be incorrectly or incompletely closed.

(3) *Absorbent material.* Inner packagings must be tightly packaged in strong outer packagings. Absorbent and cushioning material must not react dangerously with the contents of inner packagings. Glass or earthenware inner packagings containing liquids of Class 3 or Division 6.1, sufficient absorbent material must be provided to absorb the entire contents of the largest inner packaging contained in the outer packaging. Absorbent material is not required if the glass or earthenware inner packagings are sufficiently protected as packaged for transport that it is unlikely a failure would occur and, if a failure did occur, that it would be unlikely that the contents would leak from the outer packaging.

(4) *Drop test capability.* Breakable inner packagings (e.g., glass, earthenware, or brittle plastic) must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities as prepared for transport must be capable of withstanding a 1.2 m drop on solid concrete in the position most likely to cause damage.

(5) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface for a duration of 24 hours equivalent to the total weight of identical packages if stacked to a height of 3.0 m (including the test sample).

(b) When offered for transportation by aircraft:

(1) Packages prepared under the requirements of this section are to be marked as a limited quantity in accordance with § 172.315(b)(1) and labeled as a Class 9 article or substance, as appropriate, in accordance with subpart E of part 172 of this subchapter; and

(2) Pressure differential capability: Except for UN3082, inner packagings intended to contain liquids must be capable of meeting the pressure differential requirements (75 kPa) prescribed in § 173.27(c) of this part. The capability of a packaging to withstand an internal pressure without leakage that produces the specified pressure differential should be determined by successfully testing design samples or prototypes.

■ 24. In § 173.230, paragraph (h) is revised to read as follows:

§ 173.230 Fuel cell cartridges containing hazardous material.

* * * * *

(h) *Consumer commodities.* Until December 31, 2020, for other than transportation by aircraft, a limited quantity that conforms to the provisions of paragraph (g) of this section and is also a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D. In addition to the exceptions provided by paragraph (g) of this section, shipments of ORM–D materials are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the materials meet the definition of a hazardous substance, hazardous waste, marine pollutant, or are offered for transportation by aircraft, and are eligible for the exceptions provided in § 173.156 of this part.

* * * * *

■ 25. In § 173.306, paragraph (i)(2) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(i) * * *

(2) Consumer commodities. Until December 31, 2020, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

■ 26. Section 173.309 is revised to read as follows:

§ 173.309 Fire extinguishers.

(a) Specification 3A, 3AA, 3E, 3AL, 4B, 4BA, 4B240ET or 4BW (§§ 178.36, 178.37, 178.42, 178.46, 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinders are authorized for manufacture and use as fire extinguishers under the following conditions:

(1) Extinguishing agents must be nonflammable, non-poisonous, non-corrosive, and commercially free from corroding components;

(2) Each fire extinguisher must be charged with a nonflammable, non-poisonous, dry gas that has a dew-point at or below minus 46.7 °C (minus 52 °F) at 101 kPa (1 atmosphere) and is free of corroding components, to not more than the service pressure of the cylinder;

(3) A fire extinguisher may not contain more than 30% carbon dioxide by volume or any other corrosive extinguishing agent; and

(4) Each fire extinguisher must be protected externally by suitable corrosion-resisting coating.

(5) Specification 3E and 4BA cylinders must be packed in strong non-bulk outer packagings. The outside of the combination packaging must be marked with an indication that the inner packagings conform to the prescribed specifications.

(b) Specification 2P or 2Q (§§ 178.33 and 178.33a of this subchapter) inner non-refillable metal packagings are authorized as fire extinguishers subject to the following conditions:

(1) Extinguishing agents must be nonflammable, non-poisonous, and non-corrosive as defined in this subchapter;

(2) The liquid portion of the gas plus any additional liquid or solid may not completely fill the packaging at 55 °C (130 °F);

(3) Pressure in the packaging must not exceed 1250 kPa (181 psig) at 55 °C (130 °F). If the pressure exceeds 920 kPa (141 psig) at 55 °C (130 °F), but does not exceed 1100 kPa (160 psig) at 55 °C (130 °F), a specification DOT 2P inner metal packaging must be used; if the pressure exceeds 1100 kPa (160 psig) at 55 °C (130 °F), a specification DOT 2Q inner metal packaging must be used. The metal packaging must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 55 °C (130 °F);

(4) Each completed inner packaging filled for shipment must have been heated until the pressure in the container is equivalent to the equilibrium pressure of the contents at 55 °C (130 °F) without evidence of leakage, distortion, or other defect; and

(5) Specification 2P and 2Q cylinders must be packed in strong non-bulk outer packagings. The outside of the combination packaging must be marked with an indication that the inner packagings conform to the prescribed specifications.

(c) Non-specification cylinders are authorized as fire extinguishers subject to the following conditions:

(1) Extinguishing agents must be nonflammable, non-poisonous, and non-corrosive as defined in this subchapter;

(2) The internal volume of each cylinder may not exceed 18 L (1,100 cubic inches). For fire extinguishers not exceeding 900 mL (55 cubic inches) capacity, the liquid portion of the gas plus any additional liquid or solid must not completely fill the container at 55 °C (130 °F). Fire extinguishers exceeding 900 mL (55 cubic inches) capacity may not contain any liquefied compressed gas;

(3) Each fire extinguisher manufactured on and after January 1, 1976, must be designed and fabricated with a burst pressure of not less than six times its charged pressure at 21 °C (70 °F) when shipped;

(4) Each fire extinguisher must be tested, without evidence of failure or damage, to at least three times its charged pressure at 21 °C (70 °F) but not less than 825 kPa (120 psig) before initial shipment, and must be marked to indicate the year of the test (within 90 days of the actual date of the original test) and with the words ''MEETS DOT REQUIREMENTS.'' This marking is considered a certification that the fire extinguisher is manufactured in accordance with the requirements of this section. The words ''This extinguisher meets all requirements of 49 CFR 173.306'' may be displayed on fire extinguishers manufactured prior to January 1, 1976;

(5) Each non-specification fire extinguisher must be packaged as an inner packaging within a combination outer packaging. Examples of acceptable outer packagings for non-specification fire extinguishers include large cartons, racks, cages or other suitable enclosures; and

(6) For any subsequent shipment, each fire extinguisher must be in compliance with the retest requirements of the Occupational Safety and Health Administration Regulations of the Department of Labor, 29 CFR 1910.157.

(d) Limited quantities: Fire extinguishers otherwise conforming to paragraph (a), (b), or (c) of this section and are charged with a limited quantity of compressed gas to not more than 1660 kPa (241 psig) at 21 °C (70 °F) are excepted from shipping papers (except when offered for transportation by aircraft or vessel), labeling (except when offered for transportation by aircraft), placarding, the specification packaging requirements of this subchapter, and are eligible for the exceptions provided in § 173.156 when offered for transportation in accordance with this paragraph (d). Limited quantity shipments conforming to this paragraph are not subject to parts 174 and 177 of this subchapter when transported by highway or rail. In addition, limited quantity packages of fire extinguishers are subject to the following conditions, as applicable:

(1) Extinguishing agents must be nonflammable, non-poisonous, and non-

corrosive as defined in this subchapter; and

(2) Packages must be marked as specified for limited quantities in § 172.315 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

■ 27. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.45 and 1.53.

■ 28. In § 175.10, paragraph (a)(17) is revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(17) A wheelchair or other mobility aid equipped with a lithium ion battery, when carried as checked baggage, provided—

(i) The lithium ion battery must be of a type that successfully passed each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter), as specified in § 173.185 of this subchapter, unless approved by the Associate Administrator;

(ii) The operator must verify that:

(A) Visual inspection of the wheelchair or other mobility aid reveals no obvious defects;

(B) Battery terminals are protected from short circuits (e.g., enclosed within a battery housing);

(C) The battery must be securely attached to the mobility aid; and

(D) Electrical circuits are isolated;

(iii) The wheelchair or other mobility aid must be loaded and stowed in such a manner to prevent its unintentional activation and its battery must be protected from short circuiting;

(iv) The wheelchair or other mobility aid must be protected from damage by the movement of baggage, mail, service items, or other cargo;

(v) Where a lithium ion battery-powered wheelchair or other mobility aid is specifically designed to allow its battery to be removed by the user (e.g., collapsible):

(A) The battery must be removed from the wheelchair or other mobility aid according to instructions provided by the wheelchair or other mobility aid owner or its manufacturer;

(B) The battery must be carried in carry-on baggage only;

(C) Battery terminals must be protected from short circuits (by placement in original retail packaging or otherwise insulating the terminal e.g. by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch);

(D) The battery must not exceed 25 grams aggregate equivalent lithium content; and

(E) A maximum of one spare battery not exceeding 25 grams aggregate equivalent lithium content or two spares not exceeding 13.5 grams aggregate equivalent lithium content each may be carried;

(vi) The pilot-in-command is advised either orally or in writing, prior to departure, as to the location of the lithium ion battery or batteries aboard the aircraft.

* * * * *

■ 29. In § 175.25, paragraphs (b) and (c)(1) are revised to read as follows:

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

* * * * *

(b) *Ticket purchase.* An aircraft operator must ensure that information on the types of hazardous materials specified in paragraph (a) of this section a passenger is permitted and forbidden to transport aboard an aircraft is provided at the point of ticket purchase. During the purchase process, regardless if the process is completed remotely (*e.g.,* via the Internet or phone) or when completed at the airport, with or without assistance from another person (*e.g.,* automated check-in facility), the aircraft operator must ensure that information on the types of hazardous materials a passenger is forbidden to transport aboard an aircraft is provided to passengers. Information may be in text or in pictorial form and, effective January 1, 2015, must be such that the final ticket purchase cannot be completed until the passenger or a person acting on the passenger's behalf has indicated that it understands the restrictions on hazardous materials in baggage.

(c) * * *

(1) Effective January 1, 2015, when the flight check-in process is conducted remotely (*e.g.,* via the Internet or phone) or when completed at the airport, without assistance from another person (*e.g.,* automated check-in kiosk), the aircraft operator must ensure that information on the types of hazardous materials a passenger is forbidden to transport aboard an aircraft is provided to passengers. Information may be in text or in pictorial form and should be such that the check in process cannot be completed until the passenger or a person acting on the passenger's behalf has indicated that it understands the restrictions on hazardous materials in baggage.

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 30. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 31. In § 176.905, paragraph (i) is revised to read as follows:

§ 176.905 Stowage of motor vehicles or mechanical equipment.

* * * * *

(i) Exceptions—A vehicle or mechanical equipment is excepted from the requirements of this subchapter if any of the following are met:

(1) The vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint less than 38 °C (100 °F), the fuel tank is empty, and the engine is run until it stalls for lack of fuel;

(2) The vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint of 38 °C (100 °F) or higher, the fuel tank contains 418 L (110 gallons) of fuel or less, and there are no fuel leaks in any portion of the fuel system;

(3) The vehicle or mechanical equipment is stowed in a hold or compartment designated by the administration of the country in which the vessel is registered as specially designed and approved for vehicles and mechanical equipment and there are no signs of leakage from the battery, engine, fuel cell, compressed gas cylinder or accumulator, or fuel tank, as appropriate. For vehicles with batteries connected and fuel tanks containing gasoline transported by U.S. vessels, *see* 46 CFR 70.10–1 and 90.10–38;

(3) The vehicle or mechanical equipment is electrically powered solely by wet electric storage batteries (including nonspillable batteries) or sodium batteries; or

(4) The vehicle or mechanical equipment is equipped with liquefied petroleum gas or other compressed gas fuel tanks, the tanks are completely emptied of liquefied or compressed gas and the positive pressure in the tank does not exceed 2 bar (29 psig), the line from the fuel tank to the regulator and the regulator itself is drained of all traces of liquefied or compressed gas, and the fuel shut-off valve is closed.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 32. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 33. In § 178.2, paragraph (c)(1)(ii) is revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(c) * * *

(1) * * *

(ii) Retain copies of each written notification for at least one year from date of issuance; and

* * * * *

■ 34. In § 178.601, paragraph (c)(4)(v) is revised to read as follows:

§ 178.601 General requirements.

* * * * *

(c) * * *

(4) * * *

(v) Packagings which differ from the design type only in their lesser design height; or

* * * * *

Issued in Washington, DC, on December 20, 2012 under authority delegated in 49 CFR part 1.

Cynthia Quarterman,

Administrator.

[FR Doc. 2012–31242 Filed 12–31–12; 4:15 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, and 175

[Docket No. PHMSA–2009–0095 (HM–224F)]

RIN 2137–AE44

Hazardous Materials: Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking; request for additional comment.

SUMMARY: In this document, PHMSA is seeking additional comment on the impact of changes to the requirements for the air transport of lithium cells and batteries that have been adopted into the 2013–2014 International Civil Aviation Organization Technical Instructions on the Transport of Dangerous Goods by Air (ICAO Technical Instructions), and subsequently incorporated by reference in a final rule published elsewhere in this issue of the **Federal Register**. PHMSA is considering the long-term impacts of permitting shippers and carriers to choose between compliance with the existing HMR, or compliance with the ICAO Technical Instructions 2013–2014 edition, when transporting batteries domestically by air. Incorporation by reference of the 2013–2014 Edition of the ICAO Technical Instructions will allow each shipper and carrier to choose the method of compliance that is most appropriate for its operation; likewise, each shipper and carrier will have the responsibility to ensure that the proper method of compliance is chosen for each shipment, since the chosen method may not comply with the ICAO Technical Instructions. PHMSA is seeking supplemental comments to our January 11, 2010, Notice of Proposed Rulemaking (NPRM) and our April 11, 2012, request for additional comment in light of the publication of the HM–215L final rule. Specifically, PHMSA is seeking comment on whether to require mandatory compliance with the 2013–2014 ICAO Technical Instructions for all shipments of lithium batteries by air, both foreign and domestic. Based on the comments received, PHMSA may issue a final rule to revise the HMR to reflect the lithium battery provisions specified in the 2013–2014 Edition of the ICAO Technical Instructions.

DATES: Comments must be received by March 8, 2013.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2009–0095 (HM–224F) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see ADDRESSES).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.gpo.gov/fdsys/pkg/FR–2000–04–11/pdf/00–8505/pdf.*

FOR FURTHER INFORMATION CONTACT: Charles E. Betts or Kevin A. Leary, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553; Michael Locke, Program Development Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–1074.

SUPPLEMENTARY INFORMATION:

Background

HM–224F Notice of Proposed Rulemaking (NPRM)

On January 11, 2010, PHMSA, in consultation with the Federal Aviation Administration (FAA), issued a Notice of Proposed Rulemaking (NPRM) under Docket HM–224F (75 FR 1302, RIN 2137–AE44) proposing to amend requirements in the Hazardous Materials Regulations (HMR) on the transportation of lithium cells and batteries, including lithium cells and batteries packed with or contained in equipment.

HM–224 Request for Additional Comment

In the spring of 2012, the ICAO Dangerous Goods Panel incorporated into the 2013–2014 Edition of the ICAO Technical Instructions certain changes applicable to the air transport of lithium cells and batteries. Accordingly, on April 11, 2012, PHMSA issued a subsequent notice requesting additional comment on the expected costs and benefits of adopting these changes into the HMR (77 FR 21714). While the commenters supported harmonization of the HMR with the 2013–2014 ICAO Technical Instructions, several commenters expressed uncertainty whether the requirements in 2013–2014 ICAO Technical Instructions were replacing the proposals in PHMSA's January 11, 2010 NPRM.

As a result of changes to the ICAO Technical Instructions over the past two years, and the statutory prohibition contained within the FAA Modernization and Reform Act of 2012 (§ 828, Pub. L. 112–95; 126 Stat. 133 (Feb 14, 2012), PHMSA is no longer considering many of the provisions in the January 11, 2010 notice of proposed rulemaking.

PHMSA received many comments on issues related to harmonization with ICAO Technical Instructions in its April 2012 notice; PHMSA will respond to all of those comments, as well as the comments on the January 2010 NPRM, in this same docket at a later date. However, in order to focus the comments in this notice on the few remaining issues where we would like to receive additional information, we are not seeking further comment on the following issues at this time:

—Replacing the equivalent lithium content requirements for lithium ion cells and batteries with Watt-hours consistent with international standards;

—Provisions for ''small'' and ''medium'' size lithium cells and batteries;

—Provisions for shipments of prototype lithium ion batteries in vehicles;

—Provisions for shipments of ''small production'' and prototype lithium cells and batteries consistent with the IMDG Code and ICAO Technical Instructions;

—Provisions for the transport of damaged, defective and recalled lithium batteries; and

—Harmonization of the relevant lithium battery proper shipping names and descriptions listed in the Hazardous Materials Table with those listed in the IMDG Code and ICAO Technical Instructions.

HM–215L Notice of Proposed Rulemaking (NPRM) and Final Rule

On August 15, 2012, PHMSA published an NPRM under Docket HM–215L (PHMSA–2012–0027; 77 FR 49168) that did not propose any specific amendments regarding the requirements for the air transportation and handling of lithium batteries. However, the NPRM did propose the incorporation by reference of the 2013–2014 Edition of the ICAO Technical Instructions, which addresses the air transportation of lithium batteries. In the final rule issued under Docket HM–215L (PHMSA–2012–0027) published elsewhere in this issue of the **Federal Register**, PHMSA incorporated the 2013–2014 Edition of the ICAO Technical Instructions by reference. Accordingly, for purposes of the HMR, a shipment of lithium batteries are permitted to be transported by air in accordance with the 2013–2014 Edition of the ICAO Technical Instructions (with the exception of primary lithium batteries and cells aboard passenger carrying aircraft and unapproved prototype lithium batteries and cells aboard passenger carrying aircraft), or the applicable requirements currently specified in the HMR (see § 171.24(d)(1)(ii) and (iii)). Incorporation by reference of the 2013–2014 Edition of the ICAO Technical Instructions provides shippers and carriers with the flexibility to choose the method of compliance most appropriate for their operation and transportation scenario. However, it also places the responsibility to ensure that the proper method is chosen for each shipment, as domestic requirements may differ from those contained in the 2012–2014 Edition of the ICAO Technical Instructions. In the HM–215L final rule, PHMSA noted that it ''is requesting additional comment on various issues related to the air transportation and handling of lithium batteries in a separate Notice.'' This Notice is the notice referenced in the HM–215L final rule.

Request for Information

Under the Docket HM–215L final rule published elsewhere in this issue of the **Federal Register**, shipments of lithium batteries may be prepared in accordance with the ICAO Technical Instructions, 2013–2014 Edition (subject to the additional conditions specified in § 171.24(d)(1)(ii) and (iii)) or the applicable requirements currently specified in the HMR. Incorporating the 2013–2014 ICAO Technical Instructions into the HMR authorizes the use of these standards, but without additional action, differing domestic standards will remain in the HMR.

In this document, PHMSA now seeks comments on potential amendments to the appropriate sections of the HMR consistent with provisions in the 2013–2014 ICAO Technical Instructions, not to the provisions proposed in the January 11, 2010, NPRM, as PHMSA is currently prohibited by the FAA Modernization and Reform Act of 2012 from imposing requirements more stringent than the ICAO standards.

PHMSA seeks qualitative and quantitative information from the public on the following questions. In your comments please refer to the specific question number(s) to which you are responding.

1. Do you anticipate any unintended consequences for shippers or carriers if PHMSA authorizes the use of the 2013–2014 ICAO Technical Instructions as an optional method of compliance with the HMR, but does not issue a final rule revising the HMR to require domestic shipments of lithium batteries to comply with the lithium battery provisions specified in the 2013–2014 Edition of the ICAO Technical Instructions? Please note that, HM–215L final rule allows compliance with the current HMR to be met through voluntary compliance with the ICAO Technical Instructions.

2. As adopted in the HM–215L final rule, which individuals, and how many, will chose to comply with the ICAO Technical Instructions 2013–2014 Edition (except those specified in §§ 171.24(d)(1)(ii) and 171.24(d)(1)(iii)) as opposed to the current requirements of the HMR?

3. Do you anticipate confusion and/or inappropriately packaged/prepared shipments if PHMSA were to authorize the use of the 2013–2014 ICAO Technical Instructions, but does not issue a final rule revising the HMR to require compliance with the specific lithium battery provisions with those contained in the 2013–2014 Edition of the ICAO Technical Instructions? If so, which entities would be confused and what specifically would cause confusion? If you believe there will be confusion, under what circumstances and over what period of time would you expect such confusion or errors to occur? Are there ways to mitigate such problems without adding additional regulatory burdens?

4. What changes, if any, would be made to shipments and/or operational processes if PHMSA were to require compliance with the applicable provisions for lithium batteries specified in the 2013–2014 Edition of the ICAO Technical Instructions? Specifically, what costs and/or benefits (if any) would result if PHMSA were to publish a final rule that adopts the lithium battery provisions of the 2013–2014 ICAO Technical Instructions into the HMR? If there would be any costs or benefits, if possible, please provide data to support the comments. As noted above, this final rule would replace the proposals in the January 11, 2010, NPRM.

5. What are the benefits of allowing shippers and carriers the option to choose between alternative standards, depending on the type of shipment? How do these benefits from flexibility compare to the benefits of requiring a single standard? Are there any disadvantages or costs to allowing domestic shipments to follow a standard specific to domestic shipments?

Comments should be directed to the docket for the lithium battery rulemaking, which can be found at *http://www.regulations.gov* under docket number PHMSA–2009–0095.

Issued in Washington, DC, on December 21, 2012 under authority delegated in 49 CFR part 106.

R. Ryan Posten,

Deputy Associate Administrator, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–31244 Filed 12–31–12; 4:15 pm]

BILLING CODE 4910–60–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 4 January 7, 2013

Part III

The President

Proclamation 8924—National Slavery and Human Trafficking Prevention Month, 2013

Proclamation 8925—National Stalking Awareness Month, 2013

Federal Register
Vol. 78, No. 4
Monday, January 7, 2013

Presidential Documents

Title 3—

The President

Proclamation 8924 of December 31, 2012

National Slavery and Human Trafficking Prevention Month, 2013

By the President of the United States of America

A Proclamation

This month, we rededicate ourselves to stopping one of the greatest human rights abuses of our time. Around the world, millions of men, women, and children are bought, sold, beaten, and abused, locked in compelled service and hidden in darkness. They toil in factories and fields; in brothels and sweatshops; at sea, abroad, and at home. They are the victims of human trafficking—a crime that amounts to modern-day slavery.

As Americans, we have long rejected such cruelty. We have recognized it as a debasement of our common humanity and an affront to the principles we cherish. And for more than a century, we have made it a national mission to bring slavery and human trafficking to an end.

My Administration has been deeply committed to carrying this legacy forward—beginning with trafficking that happens on our own shores. We have strengthened protections so all workers know their rights, expanded efforts to identify and serve domestic victims, devoted new resources to dismantling trafficking networks, and put more traffickers behind bars than ever before. In the months ahead, we will continue to take action by empowering investigators and law enforcement with the training they need, and by engaging businesses, advocates, and students in developing cutting-edge tools people can use to stay safe. We will invest in helping trafficking victims rebuild their lives. And as one of the world's largest purchasers of goods and services, the Federal Government will keep leading by example, further strengthening protections to help ensure that American tax dollars never support forced labor.

Our commitment to stopping human trafficking does not end at our borders. As a leader in the global movement to combat this scourge, the United States has renewed sanctions on governments that harbor the worst offenders. We have partnered with groups around the world to help men, women, and children escape their abusers. And recognizing that no country can meet this challenge alone, we have aided others in addressing modern slavery's root causes, and encouraged nations across the globe to pass comprehensive anti-trafficking laws, enforce them rigorously, and care for survivors.

We know the road ahead is long, and change will not come easily. But as we renew our pledge to erase modern forms of slavery from the face of this earth, let us also draw strength from the movements of the past. We recall the words of the Emancipation Proclamation—that every life saved is ''an act of justice,'' worthy of ''the considerate judgment of mankind, and the gracious favor of an Almighty God.'' We reflect on the Amendment that wrote abolition into law, the decades of struggle to make its promise real, and the Universal Declaration of Human Rights that has drawn nations together in the pursuit of equality and justice. These achievements once seemed impossible—but on this day, let us remember that they were not, and let us press on toward the future we know is possible.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2013 as National Slavery and Human Trafficking Prevention Month, culminating in the annual celebration of National Freedom Day on February 1. I call upon businesses, organizations, faith-based groups, families, and all Americans to recognize the vital role we can play in ending all forms of slavery and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 2013–00203
Filed 1–4–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8925 of December 31, 2012

National Stalking Awareness Month, 2013

By the President of the United States of America

A Proclamation

Each year, millions of Americans face the fear, isolation, and danger of being victims of stalking. At some point in their lives, 1 in 6 women and 1 in 19 men will be stalked, and many of these crimes will go unreported and unprosecuted. During National Stalking Awareness Month, we rededicate ourselves to supporting victims of stalking and sharpen our resolve to bring perpetrators to justice.

Stalking is a pattern of unwanted contact that causes victims to fear for their safety or the safety of family members. It can include implied or explicit threats; harassment; or nonconsensual communication through phone calls, text messages, or emails. The perpetrator is usually someone the victim knows. Stalking behaviors may appear innocuous to outside observers, but victims often endure intense physical and emotional distress that affects every aspect of their lives. Many feel forced to move, or change jobs. Tragically, stalking tends to escalate over time, and it is sometimes followed by sexual assault or homicide.

My Administration remains committed to building a robust criminal justice response to stalking—one that holds offenders accountable, offers protection and support to all victims of violence, and empowers them to break the cycle of abuse. In January 2012, we held the first-ever White House stalking roundtable with survivors, law enforcement officers, victim advocates, and researchers. We have built partnerships with communities across the Nation to implement anti-stalking efforts. And we continue to support nonprofit organizations and local, State, and tribal governments as they develop more effective responses to violence against women—including direct services, crisis intervention, transitional housing, legal assistance to victims, court improvement, and training for law enforcement and courts.

We are also working to address the threat of cyberstalking. While advances in technology are making this crime more prevalent, they can also pose unique opportunities to address it. Communities are developing new tools that help connect victims to local services, and State governments are updating statutes to further protect people from cyberstalking. Through our Apps Against Abuse challenge, my Administration recognized mobile applications that are empowering people to defend themselves against dating violence, sexual assault, and stalking.

Thanks to the dedicated work of law enforcement officials, community leaders, advocates, organizations, and survivors, our country has made great strides in combating stalking. During National Stalking Awareness Month, we resolve to keep building on this momentum until no American lives in fear of this crime.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2013 as National Stalking Awareness Month. I call upon all Americans to recognize the signs of stalking, acknowledge stalking as a serious crime, and urge those impacted not to be afraid to speak out or ask for help. Let us also

resolve to support victims and survivors, and to create communities that are secure and supportive for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 2013–00204
Filed 1–4–13; 11:15 am]
Billing code 3295–F3

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Federal Register

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 3477/P.L. 112–219
To designate the facility of the United States Postal Service located at 133 Hare Road in Crosby, Texas, as the Army First Sergeant David McNerney Post Office Building. (Dec. 28, 2012; 126 Stat. 1595)

H.R. 3783/P.L. 112–220
Countering Iran in the Western Hemisphere Act of 2012 (Dec. 28, 2012; 126 Stat. 1596)

H.R. 3870/P.L. 112–221
To designate the facility of the United States Postal Service located at 6083 Highway 36 West in Rose Bud, Arkansas, as the "Nicky 'Nick' Daniel Bacon Post Office". (Dec. 28, 2012; 126 Stat. 1601)

H.R. 3912/P.L. 112–222
To designate the facility of the United States Postal Service located at 110 Mastic Road in Mastic Beach, New York, as the "Brigadier General Nathaniel Woodhull Post Office Building". (Dec. 28, 2012; 126 Stat. 1602)

H.R. 5738/P.L. 112–223
To designate the facility of the United States Postal Service located at 15285 Samohin Drive in Macomb, Michigan, as the "Lance Cpl. Anthony A. DiLisio Clinton-Macomb Carrier Annex". (Dec. 28, 2012; 126 Stat. 1603)

H.R. 5837/P.L. 112–224
To designate the facility of the United States Postal Service located at 26 East Genesee Street in Baldwinsville, New York, as the "Corporal Kyle Schneider Post Office Building". (Dec. 28, 2012; 126 Stat. 1604)

H.R. 5954/P.L. 112–225
To designate the facility of the United States Postal Service located at 320 7th Street in Ellwood City, Pennsylvania, as the "Sergeant Leslie H. Sabo, Jr. Post Office Building". (Dec. 28, 2012; 126 Stat. 1605)

H.R. 6116/P.L. 112–226
To amend the Revised Organic Act of the Virgin Islands to provide for direct review by the United States Supreme Court of decisions of the Virgin Islands Supreme Court, and for other purposes. (Dec. 28, 2012; 126 Stat. 1606)

H.R. 6223/P.L. 112–227
To amend section 1059(e) of the National Defense Authorization Act for Fiscal Year 2006 to clarify that a period of employment abroad by the Chief of Mission or United States Armed Forces as a translator, interpreter, or in a security-related position in an executive or managerial capacity is to be counted as a period of residence and physical presence in the United States for purposes of qualifying for naturalization, and for other purposes. (Dec. 28, 2012; 126 Stat. 1608)

H.J. Res. 122/P.L. 112–228
Establishing the date for the counting of the electoral votes for President and Vice President cast by the electors in December 2012. (Dec. 28, 2012; 126 Stat. 1610)

S. 1379/P.L. 112–229
D.C. Courts and Public Defender Service Act of 2011 (Dec. 28, 2012; 126 Stat. 1611)

S. 2170/P.L. 112–230
Hatch Act Modernization Act of 2012 (Dec. 28, 2012; 126 Stat. 1616)

S. 2367/P.L. 112–231
21st Century Language Act of 2012 (Dec. 28, 2012; 126 Stat. 1619)

S. 3193/P.L. 112–232
Barona Band of Mission Indians Land Transfer Clarification Act of 2012 (Dec. 28, 2012; 126 Stat. 1621)

S. 3311/P.L. 112–233
To designate the United States courthouse located at 2601 2nd Avenue North, Billings, Montana, as the "James F. Battin United States Courthouse". (Dec. 28, 2012; 126 Stat. 1623)

S. 3315/P.L. 112–234
GAO Mandates Revision Act of 2012 (Dec. 28, 2012; 126 Stat. 1624)

S. 3564/P.L. 112–235
Public Interest Declassification Board Reauthorization Act of 2012 (Dec. 28, 2012; 126 Stat. 1626)

S. 3642/P.L. 112–236
Theft of Trade Secrets Clarification Act of 2012 (Dec. 28, 2012; 126 Stat. 1627)

S. 3687/P.L. 112–237
To amend the Federal Water Pollution Control Act to reauthorize the Lake Pontchartrain Basin Restoration Program, to designate certain Federal buildings, and for other purposes. (Dec. 28, 2012; 126 Stat. 1628)

H.R. 5949/P.L. 112–238
FISA Amendments Act Reauthorization Act of 2012 (Dec. 30, 2012; 126 Stat. 1631)

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